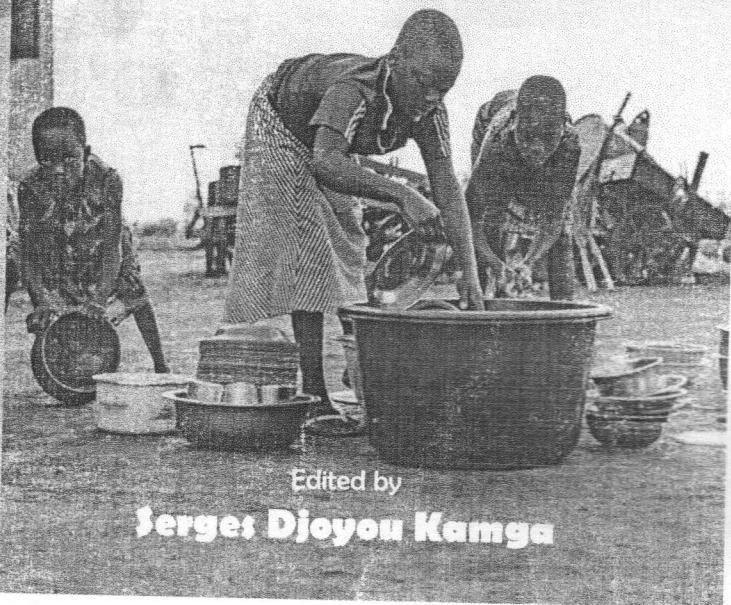


THE RIGHT TO DEVELOPMENT IN AFRICA:

Issues, Constraints
and Prospects



Edited by

Serge Djoyou Kamga

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Chapter 11

TOWARDS A DEVELOPED AFRICAN STATE: REPOSITIONING THE JUDICIARY FOR EFFECTIVE CRUSADE AGAINST CORRUPTION: A DESIRED PARADIGM?

Olatoke J.O, Onuora-Oguno A.C and Akubo M

Abstract

Rights and development in Africa are two key concepts that have been a subject of discourse for so long. This is owing to the low standard of living and corruption being an obstacle to development and developmental rights in Africa. This chapter views human rights as moral principles or norms that describe certain standards of human behaviour and are regularly protected as natural and legal rights in municipal and international law. Development within the conceptual framework of this chapter refers to the process by which a nation improves the economic, political and social wellbeing of its people. Over the years, corruption

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has been a pressing issue in Nigeria and other African countries and this, to an extent, is the main reason for the epileptic development in sub-Saharan Africa. The chapter proceeds on a doctrinal approach to examine the impact of corruption on the right to development in Nigeria and concludes that if the Nigerian judiciary is repositioned it would aid the realisation of the right to development

Key words: Judiciary, Corruption, Development, Right

1. INTRODUCTION

In recent times, one of the best practices of the comity of nations is the adoption of the Declaration on the Right to Development by the United Nations General Assembly in 1986.¹ The United Nations General Assembly opines that 'the right to development constitutes a human right and the equality of opportunity for development is a prerogative of nations, hence this right is not subject to being taken away from or given away by the possessor'.² The rationality behind the United Nations' insistence on the right to development is to rescue from the shackles of underdevelopment poor nations of the world, mostly African countries.³ This is in view of the fact that Africa as a continent has been afflicted with poverty and this stems from the fact that the number of countries that have been ravaged by poverty in Africa is legion.⁴ There have been numerous measures adopted by the comity of nations to bring Africa to the limelight through the right to development, but to no avail.⁵ All these measures have become fruitless as there is no end to underdevelopment in sight. This is because the menace of corruption has eaten deep into our norms and values and into all state apparatus, hence bad leadership and maladministration have become the latest trend amongst African nations.

The above issues are the reasons the writers have undertaken this research by examining the role of corruption as a factor that inhibits the actualization of the right to development in Africa, causes of corruption, and its effect on the right to development. The chapter also suggests possible solutions to this menace. It

- 1 Nagan Winston, 'The right to development: Importance of human and social capital as human rights issues.' (2013) 1 (6) *Cadmus Journal* 24-48.
- 2 Abdulkadir Bolaji Abdulkadir and Abdulfatai O Sambo, 'The Right to Development and the Sustainability of the Environment: The Meeting Points' (2015) in *Essays in Honour of Honourable Justice George Adesola Oguntade, JSC (RTD)*, (Law Students University of Ilorin) 181.
- 3 Africans were relieved upon colonialism and slavery being brought to a halt; little did they know that the plague of poverty, corruption and underdevelopment would befall them.
- 4 Nigeria, Togo, Cameroon, Chad, Niger Republic, Gambia, Congo, Uganda.
- 5 Some of the measures include: New Partnership for African Development (NEPAD) of 2001 the Agenda 2063, The African Priority Programme for Economic Recovery of 1986, the Lagos Plan of Action for the Economic Development of Africa 1980; The African Alternative Framework to Structural Adjustment Programme for Social Economic Recovery and Transformation of 1989; the African Charter for Popular Participation for Development of 1990; the African Priority Programme for Economic Recovery of 1986; the Millennium Development Goals and now the Sustainable Development Goals.

views human rights as moral principles or norms that describe certain standards of human behaviour that are regularly protected as natural and legal rights in municipal and international law. Development within the conceptual framework of this chapter refers to the process by which a nation improves the economic, political and social wellbeing of its citizens. It is in this light, and relying on the doctrinal methodological approach, that this chapter suggests, among other things, that corruption should be classified as a crime against humanity which can be triable by an independent and impartial tribunal such as the African Court where it is committed by African leaders and other state actors.

2 THE CONCEPT OF HUMAN RIGHTS AND DEVELOPMENT

Rights are the common entitlements of people which every civilized and just society recognizes as essential claims for their development, and which are, therefore, enforced and protected by the state apparatus.⁶ Human rights are rights vested in all men without regards to race, sex, nationality, ethnicity, language, religion or any other status. Human rights include: right to life and liberty, freedom from slavery and torture, right to freedom of expression and press, right to freedom of religion, right to personal liberty.⁷ One of the fundamental impacts of the comity of nations is the establishment of a body of human rights laws;⁸ For the purpose of our discourse, we shall limit our conceptualization of human rights, to the 'right to development', and how corruption has impacted negatively on development in Nigeria and Africa. The right to development was *ab initio* given recognition by the African Charter on Human and Peoples' Rights (ACHPR).⁹ Article 22 provides that:

1. All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.
2. States shall have the duty, individually or collectively, to ensure the exercise of the right to development¹⁰

6 K.K Ghai 'Rights: Meaning, Features and Types of Right' <<http://www.yourarticlelibrary.com/essay/law-essay/rights-meaning-features-and-types-of-rights/40373>> Accessed 9 June 2019.

7 See Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria and Universal Declaration of Human Rights 1948.

8 This is an internationally protected code to which nations subscribe and its people aspire.

9 African (Banjul) Charter on Human and Peoples' Rights, adopted June 27, 1981, CAB/LEG/67/3 Rev. 5, 21 I.L.M 58 (1982) Article 22. Before its subsequent recognition under United Nations Declaration on Right to Development, UN General Assembly Resolution 41/128 of 4th December 1986. UN Doc A/Res/41/128, 1986. Article 1 provides that 'The Right to Development is an inalienable Human Right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized'

10 Article 22(1)(2).

The right to development is one of the emerging rights in international human rights law. Hence, there is a plethora of literature on the subject. Scholars, jurists and researchers have made commendable contributions to this field of knowledge. An attempt shall be made to discuss some of the works of scholars and jurists on the subject. Eso describes human rights in general as those rights that are 'above the ordinary laws of the land'.¹¹ The learned jurist states that 'human right is a conditional sine qua non for a civilized existence',¹² while Eze is of the opinion that human rights 'represent demands or claims which individuals or groups make on society, some of which are protected by law and have become part of *lex lata* while others remain aspirations to be attained in the future'.¹³ However, Eso, in his pronouncements, has failed to specifically make an averment on the right to development. In another dimension, the right to development is seen as 'a comprehensive economic, social, cultural and political claim which aims at the constant improvement and betterment of the well-being of the citizens in which human rights and fundamental freedoms can be fully realized'. It is an inalienable human right by which every human person and all people are entitled to participate in and contribute to and enjoy economic, social, cultural and political development by which all human rights can be fully realized. Among such rights are the right to basic education.¹⁴

2.1 The concept of development

Development can be defined as a process of economic and social advancement in terms of quality of human life. It can be measured in terms of culture, wealth, education, healthcare, and opportunities, and can be commonly classified by the following terms: first, human development index (HDI), a UN standardised measure based on 3 factors: life expectancy, literacy/education, and standard of living. Secondly, gross domestic product (GDP), value of goods and services divided by the number of people in a particular country. Giving a definition of the concept of development is problematic,¹⁵ and devoid of an all-encompassing definition.¹⁶ Rodney is of the view that; development is a relative concept, which

11 *Ransome Kuti vs. AGF (1985) NWLR (PT.6)211* The court held that those Rights are in fact 'antecedent to the political society itself.'

12 Inclusive of the Right to Development stand above the Society because they avail citizens the opportunity to make claims against duty bearers.

13 Eze Osita, 'Prospects for international protection of human rights in Africa. (1974) 4 (1) *African Review* 79-90.

14 Onuora-Oguno Azubike *Development and the Right to Education in Africa* (Palgrave Macmillan Publishers, 2018) 18.

15 Salim Bashir Magashi, 'The Human Right to Development in Nigeria' (2016) Unpublished PhD Thesis, <StellenboschUniversity, https://scholar.sun.ac.za/bitstream/handle/10019.1/98432/magashi_human_2016.pdf?sequence=2&isAllowed=y> accessed 6 March 2019.

16 See also Kanga S. D, 'Realizing the Right to Development: some reflections' 2018 *History Compass*, e12460. <<https://doi.org/10.1111/hic3.12460>> accessed 21 January 2019.

can only be determined by comparing two or more phenomenon.¹⁷ To Udombana, development is the accomplishment of human potentialities.¹⁸

Kamga adopts the definition of 'development' postulated by the UNDRTD (preamble) thus:

Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all Individuals on their basis of their active, free and meaningful participation in development and in the fair distribution of benefit resulting therefrom.¹⁹

Therefore, we note that development is a complex and difficult term to define and further requires unpacking and deconstructing, not simply taking for granted its meaning at face value. Hence, this work shall now proceed to examine corruption and the concept of the 'right to development' in Africa.

3. CORRUPTION AND THE RIGHT TO DEVELOPMENT IN AFRICA

Corruption is the dishonest or fraudulent conduct by those in power, typically involving bribery.²⁰ It is the misuse of entrusted power (by heritage, education, marriage, election, appointment or whatever else) for private gain.²¹ Nigeria is the most populous country in Africa and a major player in the world oil sector, which is one of sectors that corruption has dominated.²² Corruption affects human rights in a plethora of ways. For example, the right to food, water, education, health and the ability to seek justice can be violated if a bribe becomes a *sine qua non* to gaining access to these basic rights.²³ Although the relationship between corruption and economic performance is now extant in development literature, the nexus between corruption and its impact on the realization (or non-realization) of human rights to development is less understood and, therefore, in need of further elaboration. Emerging research appears to show a strong connection between corruption and

17 Walter Rodney, *How Europe Underdeveloped Africa* (Howard University Press, Washington 1982) 10

18 Udombana Nsogurua J 'The Third World and the Right to Development: Agenda for the Next Millennium' (2000) *Human Rights Quarterly* 757.

19 Kamga (n 16).

20 OxfordLivingDictionaries <<https://en.oxforddictionaries.com/definition/corruption/corruption>> accessed 7 March 2019.

21 'What is Corruption' <<https://www.corruptie.org/en/corruption/what-is-corruption/>> accessed 9 March 2019.

22 Transparency International, <http://www.codesria.org/IMG/pdf/Isaac_Olawale_Albert-2.pdf> accessed 2 April 2019

23 Julio Bacio Terracino, 'Corruption as a violation of Human Rights: discussing the growing social implications of Corruption and its connection to human rights violations,' (International council on Human Rights Policy, Workingpaper, 2008) <http://www.ichrp.org/files/papers/150/131_terracino_en_2008.pdf> accessed 9 March 2019.

the right to development in Africa, though this nascent research does not show any hierarchy among human rights affected.

What is clear, however, is that when corruption becomes endemic in a polity, it benefits the well-connected and wealthy, enhances poverty and impoverishment. The effect is that it leads to the weakening of structures which are cardinal for protecting human rights and development. The traditional approach is to view corruption as impacting on, or a contributing factor to violations of the right to development. Having regards to the provisions of the United Nations Declaration on the Right to Development, and taking into cognizance the provisions under the African Charter on Human and Peoples' Rights, and on the right to development, this work submits that corruption is a hindrance to the realization of the right to development in Africa. President Muhammadu Buhari of Nigeria stated that an estimated sum of \$150 billion was looted in the last 10 years.²⁴ The looters who stole the huge funds and deposited same in western countries, the later which are keeping the funds, have violated the rights of Nigerians to development. The reason being that, if a large chunk of the stolen funds is retrieved and injected into socio-economic development, the government can create jobs, guarantee security and ensure infrastructural development.²⁵

3.1 Causes of corruption in Africa

The causes of corruption refer to the motivating factors behind corruption, or why people indulge in corruption. These have been proffered as follows:

- a) **Poverty:** not only encourages corruption but corrupt public institutions, in turn, exacerbate poverty. The poor engage in corrupt practices out of desperation for wealth. It is no coincidence that the most corrupt countries often have the poorest of citizens. It is estimated that seven hundred and sixty-six (766) million people, representing 10.7 percent of the World's population, lived in extreme poverty in the year 2013.²⁶ Due to population explosion in sub-Saharan Africa, an estimated three hundred and eighty-nine (389) million people lived on less than 1.90 dollar per day in 2013; that represents an increase (in numerical terms) of 113 million people since 1990. Hence, sub-Saharan Africa accounts for half of the world's poverty-stricken people.²⁷
- b) **Illiteracy and Poor Education:** just like poverty, the most corrupt countries are often those with low rates of adult literacy. Literacy can prevent corruption in several ways. First, those who can read well are more likely to read newspapers and online media, and therefore, be able to critically evaluate their own public institutions and politicians. Secondly, basic education makes

24 <<https://allafrica.com/stories/201705140149.html>> accessed 14 June 2019.

25 'Human Rights Law and Corruption', *Vanguard newspaper* (Nigeria 18 December 2015) p. 14

26 World Bank <<http://www.datatopics.worldbank.org/sdgatlas/archive/2017/SDG-01-no-poverty.html>> accessed 14 June 2019.

27 Ibid.

people more likely to find stable careers, and therefore, makes them less desperate.²⁸

- c) **Unemployment:** unemployed persons are more likely to succumb to illegal ways of making money out of desperation. For instance, many internet scammers (yahoo boys) engage in this type of activity because they lack the opportunity to make legitimate gains.²⁹
- d) **Greediness and lack of personal satisfaction:** it is undoubtedly an important cause of corruption. Corruption continues to exist because the people with the most resources in the society are not contented with what they have. The more they have, the more they want to acquire. In corrupt societies, politics is an avenue for greedy leaders to use their positions to embezzle vast amounts of public funds meant for the public good.³⁰
- e) **Weak Governance:** in corrupt nations where governments are unable or unwilling to stop corruption, it becomes a pointer to the fact that they lack strong-willed or impartial anti-corruption agencies. A weak government cannot fight corruption because it will not in any way be compelled to take effective anti-corruption measures.

3.2 Effect of corruption on Nigeria's attainment of the right to development

The effects of corruption on Nigeria's economic development are innumerable. The striking effect is that it leads to reduction in economic advancement and development through the reduction of investment rewards that serves as a motivational device for investors. This is because most investors are not disposed to offering bribes as a conditional sine qua non to being allowed investment rights/operational licenses.³¹

Corruption is a major cause of poverty in Nigeria and renders citizens poor and uneducated.³² It has led to decaying and dilapidated infrastructures, lost glory in terms of educational standards, mismanagement of loans, inadequate medical

28 See generally, Onuora-Oguno, (n 14)

29 Ojolo Tolulope, 'Youth perception on yahoo-yahoo (cybercrime): a case study of Ado-Ekiti, Ekiti State Nigeria' (unpublished Master's thesis, 2017) <https://researchspace.ukzn.ac.za/bitstream/handle/10413/16122/Ojolo_Tolulope_2017.pdf?sequence=1&isAllowed=y> accessed 14 June 2019.

30 This situation is common in our country Nigeria as State Governors still find it difficult to pay salaries of civil servants despite bailout, monthly allocation and other funds they are getting from the Federal Government of Nigeria.

31 D G Keeper 'Corruption in Nigeria: A Threat to Sustainable Development' Proceedings of the 1st International Technology, Education and Environment Conference of African Society for Scientific Research (ASSR), Human Resource Academic Research Society, <<http://hrmars.com/admin/pics/224.pdf>> p. 172 accessed May 10 2019.

32 It is noteworthy that the poverty profile of Nigerians is on the rise. The UNDP Development Report 2001 places Nigeria at number 148 out of 173 countries surveyed. This has worsened when compared to the 2003 report, which put Nigeria at 152 among the 175 countries covered in the Report.

facilities and non-payment of salaries despite huge amounts of allocations and internally generated revenue (IGR). One such incidence of corruption took place in 2016, when the Nigerian House of Representative committee invited the former secretary to the Government of the Federation, Mr Babachir Lawal, over allegations of misappropriation and diversion of the sum two hundred and seventy million naira (270,000,000) meant for Internally Displaced Persons (IDP) in the north eastern state of Borno.³³ The money was alleged to have been used to clear grass by the office of the Secretary to the Government of the Federation (SGF). The scandal, which was an international embarrassment, led to the sacking of the former SGF who was subsequently being replaced by Boss Mustapher.³⁴ The effect of this act by the former SGF is that money meant for the feeding and health care of the IDPs is being diverted into private pockets, hence the IDPs are left to die of hunger and starvation. This is an act of man's inhumanity to his fellow men which has led to the death of many IDPs.

As noted above, amongst the effects of corruption on Nigeria's development is unemployment and its consequential poverty increases on one end. This is happening at a time when the number of private jet owners continues to rise sporadically at the other end.³⁵ Excruciating poverty exists right in the midst of plenty. For instance, almost 70 percent of Nigeria's population lives on less than \$2 dollars per day while life expectancy is tagged at 52 years. According to the United Nations Children Fund (UNICEF), Nigeria is number 6 in the world ranking in terms of countries with the highest number of out of school children, with 34 percent, i.e 2 in every 5 children, missing out on basic primary education.³⁶ This chapter submits that the effect of corruption on the quest to attain development is legion. For a nation to develop it must curb corruption, hence good governance and the establishment of a representative and an accountable government are also necessary to ensuring a developed nation.

4 CORRUPTION IN THE JUDICIARY (MUNICIPAL)

Judicial corruption is the 'last straw' and most disastrous of all corrupt acts inhibiting Africa's development, hence the need for an efficient judiciary. However, in recent times, litigants' experiences in litigation points to the fact that the reverse has been the case.³⁷ As in all sectors of the Nigerian society, corruption

33 Tony, 'Reps cry foul as Secretary to the Government of the Federation allegedly used 270 million naira to clear grass at Internally Displaced Persons camp in Borno' (Vanguard Nigeria, 6 October 2016) < <https://www.vanguardngr.com/2016/10/reps-cry-foul-as-sgf-lawal-allegedly-used-n270m-to-clear-grass-at-idps-camps/> > accessed 14 June 2019.

34 Ibid.

35 Anazodo, R O., Igbokwe-Ibeto CJ, and BC Nkah 'Leadership, Corruption and Governance in Nigeria: Issues and Categorical Imperatives' (2015) *African Research Review* 9 (2) 41-58.

36 UNICEF 'Countries with the highest out of school rates' < <https://www.unicef.org/press-releases/10-countries-highest-out-school-rates-40-cent-children-are-not-accessing-basic> > accessed 2 April 2019.

37 See Transparency International, (n 22 above).

predominates the judiciary. It has become endemic in the judicial system. The allegations and charges levelled against judicial officers in Africa are legion. One of such realities is the recent suspension of the Chief Justice of Nigeria.³⁸ Never in the annals of Nigerian history has this arm of Government enmeshed in a corruption scandal of such magnitude which is currently threatening to divest the judiciary of its integrity.³⁹ The Federal Government of Nigeria, on 11 January 2019, arraigned the Chief Justice of Nigeria, Justice Walter Onnoghen, before the Code of Conduct Tribunal, for trial, upon allegations of failing to declare his assets as provided by the law.⁴⁰ In one of the six charges he faced, charge No. CCT/ABJ/01/19, he was accused of maintaining five foreign accounts in violation of the Code of Conduct for Public Office holders. This charge was a sequel to a petition dated 7 January 2019 and filed against the embattled Chief Justice of Nigeria by a Non-Governmental Organisation.⁴¹ Consequently, the Code of Conduct Tribunal summoned the defendant to appear before it on 14 January 2019 to enter his plea to the charge in furtherance of his prosecution.⁴² Be that as it may, one of the ways in which the judiciary fights corruption is by deciding cases according to the dictates of our laws. Given the prevalence of corruption in Africa, in most times, it imposes the maximum sentence allowable by the law after securing conviction.⁴³ In the case of *AG Ondo State vs. AG Federation*,⁴⁴ the Nigerian Supreme Court had this to say:

Corrupt practices and abuse of power can, if not checked threaten the peace, order and good governance of the Federation or any part thereof.... If these were the only consequences of corruption, it would not have been so threatening. The deadly threat is the effect on economy of the country with the attend inflation and lack of control on the monetary and fiscal policies of the government...

The judiciary should promote and enhance its integrity, honesty, accountability and transparency.⁴⁵ Corruption in the judicial process is the foundation of corruption in other areas of the society. Where the criminal justice administration actors are

38 Justice Walter Samuel Nkanu Onnoghen.

39 Ikechukwu Nnochiri, 'Onnoghen: The Allegations, The Politics and The Unfolding Drama' (Vanguard Nigeria Newspaper, February 2019) <<https://www.vanguardngr.com/2019/02/onnoghen-the-allegations-the-politics-and-the-unfolding-drama>> accessed 6 March 2019.

40 'Suspended CJN to appear before the Code of Conduct Tribunal' <<https://www.africanews.com/2019/02/04/nigeria-s-suspended-chief-justice-walter-onnoghen-ordered-to-appear-before/>> accessed 14 June 2019.

41 A group under the Aegis of Anti-corruption and Research Based Data Initiative.

42 <<https://www.cnn.com/2019/01/14/reuters-america-nigerias-top-judge-asset-declaration-trial-postponed-to-jan-point-22.html>> accessed 14 June 2019.

43 Yūsuf Ali SAN, *The Role of the Judiciary in the Fight against Corruption* (Being a paper delivered at the 2017/2018 Federal High Court Legal Year Ceremony And Annual Judges Conference Held at the Abuja Headquarters of the Federal High Court on 14th September 2017) P. 37.

44 (2002) 9NWLR (PT. 769) 264.

45 Yūsuf Ali SAN (n 43 above) 40

partial, the wealthy and most, especially the corrupt, may escape the repercussions of their iniquities. Most importantly, a corrupt judge has been described as more harmful to the community than the man who runs amok with a dagger in his hand in a crowded street, as the latter can be restrained physically, while the former deliberately destroys the moral foundation of the society and causes torment on the citizens while still answering to the term 'honourable'. From the foregoing, it can be discerned that an independent and impartial judicial system is necessary for an effective fight against corruption. This work also suggests that the African Union should strive to position the African Court to enhance the fight against corruption, since the independence of domestic courts is no longer guaranteed due to political factors as well as corruption which is one of the major factors inhibiting criminal justice administration.

5 THE AFRICAN COURT AND ITS PROSPECTS OF ENDING CORRUPTION IN AFRICA

The African Court on Human and Peoples' Rights (the Court) is a (regional) court established by the comity of African nations to ensure the protection of human and peoples' rights in Africa. It compliments and reinforces the functions of the African Commission on Human and Peoples' Rights.

The Court was established pursuant to Article 1 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, (the Protocol) which was adopted by Member States of the then Organization of African Unity (OAU) in Ouagadougou, Burkina Faso, in June 1998. The Protocol came into force on 25 January 2004.

In April 2018, eight (8) of the thirty (30) state parties to the Protocol had made the declaration recognizing the competence of NGOs and individuals.⁴⁶ The Court has jurisdiction over all cases and disputes submitted to it concerning the interpretation and application of the African Charter on Human and Peoples' Rights, (the Charter), the Protocol and any other relevant human rights instruments ratified by the states concerned. Specifically, the Court has two types of jurisdiction: contentious and advisory.

The Court receives cases filed by the African Commission on Human and Peoples' Rights; and State parties to the Protocol and African Intergovernmental Organizations. Non-Governmental Organizations with observer status before the African Commission and individuals can also institute cases directly before the Court as long as the state against which they are complaining has deposited the Article 34(6) declaration recognizing the jurisdiction of the Court to accept cases from individuals and NGOs. The African Court can be used as an important tool

⁴⁶ See generally for the working of African Court, <<http://www.african-court.org/en/>> accessed June 14 2019. The States are; Benin, Burkina Faso, Cote d'Ivoire, Ghana, Mali, Malawi, Tanzania and Tunisia. While the thirty (30) states which ratified the Protocol are; Algeria, Benin, Burkina Faso, Burundi, Cameroon, Chad, Cote d'Ivoire, Congo, Gabon, Gambia, Ghana, Kenya, Libya, Lesotho, Mali, Malawi, Mozambique, Mauritania, Mauritius, Nigeria, Niger, Rwanda, Saharawi Arab Democratic Republic, South Africa, Senegal, Tanzania, Togo, Tunisia and Uganda.

to fight corruption on the continent of Africa. This may be achieved by making the African Court an alternative court for the fight against corruption, more so as the domestic courts are in some circumstances unable or unwilling to try corruption cases due to lack of judicial independence.

The African Court can realize the above aspiration by relying on some regional instruments. For instance, the African Union (AU) Convention on Preventing and Combating Corruption, adopted in 2003, addresses corruption in the public and private sectors. It represents a consensus as to what African countries should do in the areas of prevention, criminalization, international cooperation and asset recovery. Its provisions criminalize domestic and foreign corruption (bribery, money laundering, concealment of property, etc.). By virtue of paragraph 4 of the preamble to the convention that defines 'court' as any court established by domestic law, the African court or other regional courts lacks the jurisdiction to try offences that boarder upon allegations of corruption. Hence, for an effective fight against corruption in Africa, there should be a protocol to the convention in order to vest jurisdiction on the African court to try offences of corruption where political office holders are involved, rather than domestic courts, since domestic courts treat the trial of offences involving corruption with kid gloves.

The AU Convention on Preventing and Combating Corruption was adopted in 2003 and it came into force on 5th August 2006. It has been ratified by Algeria, Burkina Faso, Burundi, Congo, Libya, Lesotho, Madagascar, Mali, Namibia, Niger, Rwanda, South Africa, Tanzania and Uganda. The Convention addresses corruption in the public and private sectors. It represents a consensus on what African countries should do in the areas of prevention, criminalisation, international cooperation and asset recovery. Its provisions criminalize bribery, diversion of property by public officials, money laundering, and abuse of office for financial gains and concealment of property. By virtue of Paragraph 4 of the Preamble to the Convention that defines 'Court' to mean any court established by domestic law, the African Court or other regional courts lacks the jurisdiction to try offences that border on corruption. Hence, for an effective fight against corruption in Africa, the Convention must be amended to vest jurisdiction on the African Court to try offences of corruption where political office holders are involved, rather than the domestic court, since it appears that domestic courts treat the trial of offences involving corruption with kid gloves.

5.1 Legal instruments towards effective judiciary

5.1.1 Municipal

Nigeria has a number of legislations that are targeted at curbing corruption. These instruments include, but are not limited to, the following: The Economic and Financial Commissions (Establishment) Act 4 of 2004; The Independent Corrupt Practices and Other Related Offences Act 5 of 2000; Criminal Code Act Cap 77 LFN 1990; Penal Code Act ,18 of 1959; Administration of Criminal Justice Act 5 of 2015.

Section 7 of the EFCC Act, for instance, empowers the Commission to investigate and prosecute all forms of financial fraud in Nigeria. Section 26 of the ICPC Act places an obligation on both public servants and individuals to report any acts of corruption or plans to engage in bribery. While the above-named Acts hold great potential to help combat corruption if fully engaged, they have been critiqued for want of efficiency. According to Onuora-oguno and Ajoku:

The EFCC Act is awash with offences and their punishments. The problem has been the prosecution, trial and conviction of these offences, which have raised deep suspicion and public opprobrium. The modus operandi of prosecuting and trying these offences is deeply flawed.⁴⁷

The very low rate of conviction secured on corruption related cases is blamed on the manipulation of the various graft agencies by both the state and individuals.⁴⁸ Recently, the fight against corruption in Nigeria has received some lash backs with some opinions that they are politically motivated.⁴⁹

5.1.1 Regional/ Global

Restating the overarching spread of the corruption menace, it is important to highlight some other regional efforts targeted at curbing corruption. There is, for instance, the Council of Europe Criminal Law Convention on Corruption 1999,⁵⁰ the South African Development Protocol against Corruption 2001 (SADC PROTOCOL).⁵¹ There is also the United Nations Convention against Corruption which came into force on 14 December, 2005,⁵² and the Council of Europe Additional Protocol to the Criminal Law Convention on Corruption 2003 (COE PROTOCOL).⁵³ From the above initiatives, it can be argued that

47 Onuora-Oguno Azubike and Ajoku Ogechukwu "Pitfalls to Prosecuting Corruption in Nigeria" (2016) in *Corruption, Money Laundering and Assets recovery in Nigeria* M.A Ayode and S.A Igbinedion (eds.) 71-89, Department of Jurisprudence and International, Faculty of Law, University of Lagos.

48 David Uchenna Emweremadu, *The struggle against Corruption in Nigeria: The Role of the National Anti-Corruption Commission (ICPC) under the Fourth Republic* <<https://books.openedition.org/ifra/916?lang=en>> accessed 14 June 2019.

49 Akindele, S. T. "Critical Analysis of Corruption and its Problems1 in Nigeria." (2005) *The Anthropologist* 7.1: 7-18.

50 Convention came into force on 1st July 2002 and had since received ratifications from countries such as Albania, Bosnia, Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, Iceland, Island, Malta, Poland, Norway etc.

51 Yet to come into force however, it has been ratified by Botswana, Lesotho, Malawi, South Africa and Tanzania.

52 It has been ratified by the following countries vis-à-vis Austria, Albania, Algeria, Angola, Argentina, Australia, Austria, Benin, Bulgaria, Brazil, Burundi, Cameroon, Central African Republic, Slovakia, South Africa, Spain, Togo, Trinidad and Tobago, Mexico, Namibia, Nicaraguan Nigeria, Spain and Togo

53 The protocol came into force on 1 February 2005. The countries that ratified same are Albania, Bulgaria, Denmark, Latvia, Luxembourg, Sweden and Switzerland.

corruption is one scourge that must be tackled promptly and swiftly before it eats up the rubrics of the judiciary. The next section of this chapter assesses if the eradication of corruption in the judiciary is an important step to take in realising the right to development or not.

6 ERADICATING CORRUPTION IN AFRICA'S JUDICIAL SYSTEM: A PANACEA

Judicial corruption is the 'last straw' and the most disastrous of all corrupt behaviors inhibiting Africa's development. The tentacles of corruption in the judicial arm of most countries in sub-Saharan Africa run far, wide, and deep.⁵⁴ Judicial corruption may be defined as constituting the use of public authority for the private benefit of judges, resulting in the improper and unfair delivery of judicial decisions. Such acts include bribery, extortion, the abuse of court procedures for personal gain, and any inappropriate influence on the impartiality of the judges by actors within the judicial system. According to Transparency International (TI), Africa is amongst the world's most corrupt places, which is the major reason for the stunted development and economic impoverishment of many African nations. This is credited to the fact that twenty African countries are considered to be the most corrupt in the world.⁵⁵ An impartial judiciary with fidelity to the vision of equal justice for all is the foundation on which democracy and democratic practices thrive.

Ghana, which was recently rocked by an undercover sting operation initiated by a journalist (reminiscent of 'Operation Greylord,' conducted in Chicago, Illinois, USA), filmed judges taking bribes.⁵⁶ Twelve Ghanaian high court judges and 22 lower court justices were filmed accepting money as bribes to pervert justice. Thirty-four judges were alleged to have accepted bribes and extorted money from litigants to influence their decision. After 20 months of investigation, 20 of the judges were found guilty of bribery and were shown the way out of the system. Even South Africa's judicial system, reputed to be one of the closest to international standards on the African continent, has also come into disrepute in recent years.⁵⁷

Nigerian President, Muhammadu Buhari, recently commented that, 'On the fight against corruption in the country *viz a viz* the judiciary, Nigerians will be

54 'Eradicating Corruption in Africa's Judicial System,' <<https://mshale.com/2016/08/18/eradicating-corruption-africas-judiciary-systems/>> accessed 14 June 2019.

55 Transparency International Report: 'These are the 20 most corrupt country in Africa right now' <<https://www.pulse.ng/bi/politics/these-are-the-20-most-corrupt-countries-in-africa-right-now/vd2fc2k>> accessed 15 March 2019.

56 Herbert A. Igbunugo 'Catechism for Dismantling and Eradicating the Scourge of Corruption Embedded in the Judiciary Systems of Sub-Saharan Africa's Nation States' <<http://igbanugolaw.com/wp-content/uploads/2016/05/HAI-Final-Newsletter-Article.pdf>> accessed 15 June 2019.

57 <https://www.news24.com/Columnists/Mandy_Wiener/why-allegations-of-corruption-against-the-judiciary-are-alarming-20190206> accessed 14 June 2019.

right to say that the Judiciary is my main headache for now,' and that 'far-reaching re-forms of the judiciary remained a key priority for my administration.'⁵⁸

Without an honest and effective criminal justice system, the corrupt can escape the consequences of their crimes. Such impunity hinders dividends of democracy and the right to development. The risk that corrupt activity will result in imprisonment and accompanying public humiliation is minimal. The gains from corruption are, therefore, not discounted and there is, thus, little reason beyond personal integrity not to engage in corrupt acts.

Former president of the Nigerian Court of Appeals, Justice Isa Ayo Salami, was similarly of the view that,

The problem with corruption in the judiciary is real and has eaten deep into the system... we hear constantly of retired senior judges who practice as consultants in fixing judgments. These consultants take money from litigants to give judges or intimidate judges to pervert justice. It is my respectful view that appeal should be made to these retired senior justices to leave the despicable role of bribing or intimidating judges. They should engage themselves in other respectable vocations.⁵⁹

Perhaps the question to be engaged at this stage is the existence of other possibilities aside a strictly legal option in aiding the fight against corruption. The next section of the chapter examines some of the extra judicial responses.

7. EXTRA-JUDICIAL RESPONSES TO THE MENACE OF CORRUPTION IN AFRICA

The use of information and computer technology is being presently lauded as the means to aid the reduction of corruption and enhancing efficiency of all aspects of governance. Using information technological electronic gadgets, computer programs, and other technologies can monitor corruption in government and business offices.⁶⁰ In corrupt countries, the use of technology can be preferable to relying on anti-corruption agencies staffed with friends of corrupt government officials. The installation of these technologies should be done secretly, in a way that makes them impossible to be tampered with. According to Shim *et al*, statistics

58 How lawyers, judges are slowing down Nigeria's anti-corruption war — Buhari <<https://www.premiumtimesng.com/news/headlines/207102-lawyers-judges-slowing-nigerias-anti-corruption-war-buhari.html>> 15 accessed June 2019. See generally Dike Victor E, 'Corruption in Nigeria: A new paradigm for effective control' (2015) *Africa economic analysis* 1-22.

59 Justice Isa Ayo Salami 'Rules to stop erring judges: Why corruption thrives in the judiciary' <<https://www.vanguardngr.com/2016/10/rules-stop-erring-judges-corruption-thrives-judiciary-justice-isa-ayo-salami/>> accessed 14 May 2019.

60 C Bertot John, Paul T Jaeger, and Justin M. Grimes, 'Using ICTs to create a culture of transparency: E-government and social media as openness and anti-corruption tools for societies.' (2010) *Government information quarterly* 264-271.

show that countries that have engaged information technology fare better in the quest to end corrupt practises compared to countries that have not done so.⁶¹

Another factor that tends to fuel the existence of corruption is the level of drug addiction.⁶² Reducing the corruption that results from the drug trade involves the efforts of both the government and its people. The drug trade relies on the demand for hard drugs. Seminars should be held on a regular basis where people will be taught the negative impact of hard drugs. Governments should also sponsor television programs where doctors who have good teaching skills will highlight the disadvantages of hard drugs. In institutions of higher learning, a course on drug use should be integrated into the curriculum.⁶³

Good governance and employment creation are other factors that could aid the fight against corruption. The government and powerful individuals should work together to create jobs for the masses. It is noted that lack of good governance is a defined path way to sustain the level of corruption in any society.⁶⁴ As part of the good governance structure is the issue of technology as already discussed. It is suggested that those countries that lack technological development should invite other countries and private companies to help them build their technological infrastructure.⁶⁵ When the masses make money and learn skills as employees of those companies, they can start their own businesses. This will, in turn, create more jobs for the citizens of the country.

Another aspect of good governance is the welfare of workers in the various aspects of the nation's life. Ranging from the judiciary to the education sector, the government must pay public employees a living wage. The failure to do this affects the efficiency of workers.⁶⁶ It may seem counter-intuitive to pay corrupt employees more, but if police officers and low-level bureaucrats make enough money by working, they would not feel the need to take bribes. Public employees

61 Shim, Dong Chul, and Tae Ho Eom. 'Anticorruption effects of information communication and technology (ICT) and social capital' (2009) *International review of administrative sciences* 99-116.

62 See generally, Clutterbuck, Richard. 'Drugs, crime and corruption' (1995) *Houndmills and London: Macmillan*.

63 The Education for Justice Initiative of the UNDOC is a very good example of this initiative. See generally <<https://www.unodc.org/e4j/>> accessed June 15 2019.

64 Ogundiya, Ilufeye Sarafa. 'Democracy and good governance: Nigeria's dilemma' (2010) *African journal of political science and international relations* 201-208.

65 This concept is found under the solidarity rights paradigm of the United Nations. It is imperative that technical support is provided for states with high technical abilities to support e-governance structures that would limit corruption. See <<https://www.ohchr.org/Documents/Issues/Solidarity/DraftDeclarationRightInternationalSolidarity.pdf>> accessed 15 June 2019.

66 For instance, teachers are welfare neglect affects the quality of education. See generally Onuora-Oguno Azubike "Craving for the Message but shooting the Messenger: RBA to teacher Welfare and Quality in Basic Education in Nigeria" (2017) in *African Union Agenda 2063: Issues in Law, Policy and Education* Onuora-Oguno A.C., Egbewole W.O & Kleven T.M(eds), Palgrave Macmillan, Cham Publisher, New York.

should also undergo anti-corruption training and education, emphasizing the negative effects of corruption.⁶⁷

8. CONCLUSION AND RECCOMENDATIONS

In sum, this work has dealt with the role of corruption as a factor that inhibits the actualization of the right to development in Africa. It has also suggested possible solutions to this menace. It views human rights as moral principles or norms that describe certain standards of human behaviour and are regularly protected as natural and legal rights in Municipal and international law. Development within the conceptual framework of this chapter refers to the process by which a nation improves the economic, political and social wellbeing of its people. Conclusively, the most famous of the reasons for the epileptic development in sub-Saharan Africa is that African policy-makers, especially state actors, are bereaved of the will, zeal and dedication essential to formulating and implementing the socio-economic and developmental vectors, as well as lack the will to fighting corruption; as bad leadership and maladministration is not alien to our Country (Nigeria) and other African countries because the menace of corruption has become an endemic which has eaten deep into our norms and values: It is in light of the above that this chapter suggests, *inter alia*, that:

Corruption should be classified as a crime against humanity which can be triable by an independent and impartial tribunal such as the African Court where it is committed by African leaders and other state actors.

African leaders should provide employment opportunities for their citizens as this tends to reduce corruption. Mass awareness about corruption and its negative effects on African Nations to enlighten the citizens against the negative effects of corruption on the economy, could assist in the fight against Corruption. Corruption cases should be tried by a highly sophisticated institution such as the African Court, because its independence is more probable than domestic Courts.

The offences involving corruption to be tried by domestic courts should involve allegations of misappropriation of funds where leaders and state actors are involved. Offences involving a huge sum (bench mark) should be tried by the African Court, whereas where a lesser amount is involved, domestic courts should be allowed to exercise jurisdiction.

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⁶⁷ See generally Montinola, Gabriella R., and Robert W. Jackman. "Sources of corruption: A cross-country study." (2002) *British Journal of Political Science* 147-170.

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