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THEME OF THE EVENT: *Building Resilience In Pursuit Of
Justice And Accountability For
Human Rights Struggle In Nigeria*

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BUILDING RESILIENCE IN PURSUIT OF JUSTICE AND ACCOUNTABILITY FOR HUMAN RIGHTS STRUGGLE IN NIGERIA.

Abstract/Introduction

All across the globe, Nigeria inclusive, the twin concepts of justice and accountability have remained scarce commodities, extremely difficult to come by despite known efforts made to entrench them as integral part and guide for human co existence. This address therefore presents yet another opportunity for in-depth insights into the constraints encountered in our collective struggles for justice and accountability towards a protected and sustainable human rights environment in Nigeria. It examines, from the onset, the concept of justice and the theory of accountability in the context of our socio-political evolution and development and, in particular, the documented struggles for human rights in Nigeria. In highlighting the unfortunate nexus between the ideology of the Nigerian State firmly founded on regime protection exploitation and despoliation vis-à-vis our pretentious claim to a nationhood comprising citizens with sovereignty, it various hurdles in the way of Nigerian as custodians repositories and beneficiaries of the rights as well as the objects of this dysfunctional state are exposed. The rights of Nigerian whether human or fundamental, socio-economic or political, environmental or cultural all suffers suspended priority in the enduring quest to satisfy the original purpose of the Nigerian State which is built around the colonial masters and now organized to protect their heirs in authority and neo-colonial masters now strategically located in the Nigerian ruling elites class. Bad as it is, the paper argues that a thoroughly examined culture of resilience conceived and nurtured on the principles of justice and accountability is possible and need to activate a functional and responsible society which can crystallize our quest for adequate protection of the rights of Nigerians.

In the end, it provides concrete proposals for building solid resilience in pursuit of justice and accountability knowing that our struggles for human rights in Nigeria will always experience roll backs and setbacks except with

adequate resilience, fresh tactics, innovative mechanisms and improved deliberate inclusion in our approach.

Term Clarifications

1. Justice

Broadly speaking, justice has been defined as an action in accordance with the requirements of law. In simple terms, justice has come to be known as giving to each person what he or she deserves. To this extent, justice and fairness are closely associated and used interchangeably. Similarly, the concepts of morality and ethics are ineluctably linked to justice in the sense that for the principles of justice to stand, it cannot be devoid of some ethical and moral standards. In other words, it is just when it is fair and ethical. Ethics relate to the study of moral values and how they affect conduct. But justice generally is in reference to codes of rightness while fairness relates to the ability to interpret and determine issues without dependence on one's feelings and interests. In most cases, the theory of fairness is mostly applied to resolve concrete and specific cases as against general situations. Whether right or fair, justice has managed to infuse in itself the notion that it is right, fair and therefore moral and ethical.

Several variants of justice are now categorized into;

- a) Distributive justice which relates to the kind of justice that determine what counts as a fair share. It is also distributive when it's owed by a community to its members, including the fair allocation of common advantages and burdens⁽¹⁾.
- b) It is retributive or restorative because it defines the state's response to activities that violate the rules of a society or community within the context of fair play understanding.
- c) Corrective justice seeks to restore equality when it has been disturbed or disrupted⁽²⁾.

By and large, the characterization of justice, as major ingredients for a harmonious society, is essentially measured by the judicial system of a country. Here in Nigeria, it is exclusively within the purview of the Nigerian Judiciary under **S. 6(1) of the Constitution of the Federal Republic of**

Nigeria 1999 (As Amended). It is appreciated that social strife abound in any society where human interaction and interface occur. The dispensation of justice through the judicial system of such a country strives to protect the interest of everyone who approaches it. It is by the belief and trust that justice will be served that the notion of justice itself is sustained. It (justice) takes a flight not at the point when a case is won or lost, but at that point where the public, whom it is meant to serve, loses confidence in the judicial system erected to dispense it. It is that confidence borne by citizens and parties to a dispute that discourages resort to self help. The law as a potent instrument for social engineering is available to dictate centres of dispute resolution and reconciliation, yet it is the confidence that citizens share and repose in the notion of justice as dispensed by the nation's judicial system that invariably secures decent orderly behaviour in the event of disputes and contests. Thus, the assertion that justice, at all time and in all spheres, is the first condition of civilization is correct and must be guarded. It is also for that reason that the courts and justices who dispense justice are enjoined to be independent and impartial to be able to discharge this crucial responsibility without fear, let or favour.

2. Accountability

A most concise definition of accountability is the one given in the Cambridge dictionary which describes the term 'accountability' as:

"The fact of being responsible for what you do and able to give a satisfactory reason for it, or the degree to which this happens".

To be accountable is to be answerable and responsible for whatever action taken. For the purpose of our discourse presently, this word accountability underscores either the progress or retrogression made in pursuit of any serious endeavour including our campaigns for justice and human rights. It complements the crusade for justice in the sense that it boosts, in greater measures, the confidence and desires of partners and associates who seek collaborations towards common goals. It involves a process through which

power holders and persons saddled with responsibilities are made to account for their actions. Applying this principle in relation to state operation, it approximates such situation in which individual persons or communities take ownership of their rights and entitlements and ensure that states, as primary duty bearers, respect, protect and fulfil their obligations towards them, the people.

According to the United Nations Human Rights Post-2015 Framework, accountability is a three or four dimensional venture;

- a) It refers to the obligation of those in authority to take responsibility for their actions, to answer for those actions to the people affected and to be subjected to some form of enforceable sanctions if their conducts and explanations are not adequate.
- b) Responsibility being another ingredient of accountability requires that those in position of authority have clearly defined duties and performance standards, subjecting their behaviour to be assessed objectively and transparently.
- c) Answerability envisages that public officials and institutions provide reasonable justifications to those affected by their decisions.
- d) Enforceability requires putting mechanisms in place that monitor the degree to which public official and institution comply with established standards.

Apply this situation to concrete cases you would find, for instance, that the State is expected and enjoined to take full responsibility for human rights abuse once it is alleged. In fact, the law requires, in such instance, that the only way the State can repudiate liability is if it justifies the alleged infraction. For this proposition of the law, we reference the case of **Agbakoba V Director, SSS** ⁽³⁾ where the Supreme Court took the following position:

"Where the constitution gives a right and facts have been proved which prima facie show an infringement, it is for the person alleged to have infringed that right to justify the

infringement and not the person whose right has been infringed to exclude all circumstances of justification.

The foregoing standards of operation are therefore demanded and extracted from each given state as irreducible minimum codes of conduct towards building a civilized society on the assumption that power brokers and holders are not, all together, able to refrain from abuse of powers and privileges. It presupposes that more often than not, the tendency for rulers, particularly in our clime, to heighten the incidence of rights violation is assured while a decline in respect for human dignity and purpose is given. Accordingly, justice and accountability become veritable operational fundamentals in delineating boundaries, moderating the excesses of State powers and ensuring adequate provisioning for redress and recompense.

3. Human And Fundamental Rights

Often a time, we have seen these words used as though they mean one and the same thing. Indeed, many people including lawyers use them interchangeably. However in law, they do not mean the same thing even if they are related. Human right has its root in the concept of natural law discovered and formulated by the Greek and Roman Philosophers. They precede and predate countries and constitutions. Human rights are human because they inure to human beings by reason of their humanity. For instance, right to movement exist because the human being has been created with legs to move; freedom of expression is available because we, as human beings have been created with mouths and tongues to speak; freedom of thoughts and religion because we have been created with our minds etc. At earlier times, they have been referred to as natural rights, natural justice and even moral rights and so forth.

Fundamental Rights on the other hand has its provenance in the codified laws of countries or establishments such as constitutions, bills of rights, international instruments, conventions or protocols on the rights of the citizens etc. They are fundamental rights because they became entrenched and made inalienable by the fact of their codification in the corpus of legislation of a given country with a remarkable distinction that they, thereby, stand and tower above every other law in a given country and in the hierarchy of her legislations.

This proposition of law has found judicial approval in the Supreme Court case of **Ransome Kuti vs. AG Federation** ⁽⁴⁾ where His Lordship, Hon. Justice Kayode Eso (JSC) (as he then was) described fundamental rights thus:

“.....But what is the nature of a fundamental rights? It is a right which stands above the ordinary laws of the land and which, in fact, is antecedent to the political society itself. It is a primary condition to a civilized existence”

But more instructive in the judicially recognized differences between human rights and fundamental rights is the remarks of His Lordship, Hon. Justice Nasir, PCA (President Court Of Appeal) (as he then was) in the celebrated case of **Uzoukwu vs. Ezeonu II** ⁽⁵⁾ where he made the following statement:

“due to the development of constitutional law in this field distinct difference has emerged between “fundamental rights” and “human Rights”. It may be recalled that human rights were derived from and out of the wider concept of natural rights, they are rights which every civilized society must accept as belonging to each person as a human being. These were termed human rights. When the United Nations made its declaration, it was in respect of “Human Rights” as it was envisaged that certain rights belong to all human beings irrespective of citizenship, race, religion and so on. This has now formed part of international law. Fundamental rights remain in the realm of domestic law. They are fundamental because they have been guaranteed law of the country; that is, by the constitution. Not all fundamental rights are available to all persons in a country. Some of the provisions are limited to the citizens while other provisions are

applicable to all persons, citizens and aliens alike. This is the position in this country, in the United States, India and many other countries".

Some Constraining Factors Against Human Rights, Justice And Accountability.

In some respects, the general theme "Building Resilience in Pursuit of Justice and Accountability in relation to Human Rights Advocacy in Nigeria" immediately communicates a subtle conflict of ideas and fierce contestation over tacts and strategies of implementation. It presents a vivid response of a backward state trapped in a preconceived notion that greater liberty to citizens and access to justice invariably approximates a powerful citizenry gradually equipped to revolt against the ruling class. It discountenances, in its desperation to retain power, the fact that such a situation promotes citizens' participation capable of fostering harmonious coexistence. Thus, repeated state avowals and pronouncements to the effect that liberty, justice and accountability are essential ingredients for a peaceful, progressive and harmonious society are not enough to guarantee their operationalisation. They do not crystalise because they are so stated. They have always been fought for throughout history no less in the African continent where they were originally presented in furtherance of colonial dominance over their subjects. Late Comrade Olaitan Oyerinde a Labour activist and writer was right when he argued in his presentation titled "***The Working Class Movement and the Struggle for Human Rights***"⁽⁶⁾ as follows:

"For instance, whereas working class ideologus and social movements regard gainful employment as a right and therefore, a claim which individuals can make on the state, their opponents would invariably argue to the contrary. For them, full employment is presumably one of those assumptions the science of economics which no state should overreach itself to attain. Secondly, rights have evolve in a dynamic process of struggles, negotiations and concessions involving social

movements and classes that span the entire history of capitalism”

Similarly, quite a number of clogs still exist in the extant laws and rules jeopardizing access to justice with respect to enforcement of fundamental rights. Not a few courts presided over by “timorous judges” are still constrained by the inhibiting factors of “locus standi” as espoused in the old case. **Ibrahim Adesanya vs. President Federal Republic of Nigeria.**⁽⁷⁾; refusing to appreciate that the more recent case of **Fawehinmi vs. President FRN**⁽⁸⁾ and many others thereafter on the hurdle of locus standi. See also **Fawehinmi vs. Akilu**⁽⁹⁾ where the Supreme Court Per Eso JSC (as he then was) made the following profound statements on the issue of locus standi:

“the comment that it will be a sad day in the country if anybody is allowed to bring any spurious investigations is therefore uncalled for it is universal concept that all human beings are brothers and are assets to one another. All human beings living in the same country are more closely related to one another and are in truth and in fact each other’s keeper than those living in countries separated by great distances. The death of one is a loss to the other whether but natural or felonious means.

Eso jsc (as he then was) further held in the same case” as follows:

“the issue of locus has always been held as one of the utmost importance, by this court for in effect, it is one that delimits the jurisdiction of the court, for in the interpretation of the Constitution, is to hoped that the courts would not possess acquisitive instinct and garner more jurisdiction than has been ascribed to it by the organic law of the land. It is I think has inhibiting your Lordships and rightly too, in being careful, as your Lordship should be, in threading carefully on the soil of locus standi I think again with respect that it is a departure from the narrow attitude of this court in the Abraham Adesanya case and subsequent decision.

My humble view, and this court should accept it as such, is that the present decision of my learned brother Obaseki JSC,

in this appeal has gone beyond the Abraham Adesanya case. It is the view of my learned brother Obaseki, which I fully share with respect, that "it is the universal concept that all human beings are brothers and assets to one another". He applies this to ground locus standi. That we are all brothers is more so in this country where the social cultural concept of 'family' and 'extended family' transcend all barriers. It is not right then for the court to take note of the concept of the loose use of the word 'brother' in this country? 'Brother' in the Nigerian context is completely different from the blood brother in English language".

More worrisome and curious is the Court of Appeal of **Agbeniga vs. Aderimoroye & Ano**⁽¹⁰⁾. In which the court took the strange view in dismissing the appeal that an action against the breach of fundamental right to life cannot be maintained against an individual but a public.

Earlier the Courts have expressed the same view in **Madu vs. Onuaguluchi**⁽¹¹⁾. It is easy to hazard a guess why this is so because under S. 174(1) of the Constitution of FRN 1999. It is believed that the Attorney General of the Federation and, by extension, the Attorney General of the respective states as Chief Law Officer are, amongst other things, mandated to institute actions against public persons and institutions on behalf of private persons for redress. Whereas we hear often about nolle prosequi, we hardly hear of this crucial aspect of the powers of our Chief Law Officers which has highlighted the call for the separation of the office of Minister of Justice from that of the Attorney General of either the federation or state.

How Then Can We Build And Sustain Resilience In Human Rights Advocacy In Nigeria.

Importantly, very drastic and profound reforms and innovation were however introduced in the Fundamental (Enforcement Procedure) Rules

2009 as against what were obtained in the FREPR 1979. Even from the preamble to the Rules, remarkable reforms were achieved granting

- (i) Greater access to citizens and victims of rights violation to seek redress
- (ii) Citizens, friends, allies, associates, relatives or even human rights organizations are encouraged and welcomed to institute fundamental rights enforcement procedure actions in courts on behalf of victims of rights abuse without the hurdle of locus standi. Indeed, public interest litigation is thereby encouraged.
- (iii) The statute of limitation is no longer a bar as it was under the previous rule that limited fundamental right action within one year of the alleged violation. See the Supreme Court case of **FRN vs. Ifegwe**⁽¹²⁾ in which the Federal Government through their counsel, a Senior Advocate Of Nigeria (SAN) sought to invoke the provisions of the **Public Officers Protection Act**⁽¹³⁾ The Learned Law Lords came heavily on him in the following words:

“at this stage , I think I can briefly dispose of the argument in respect of the section 2 of the Public Officers Protection Act (cap 379) Laws of Federation of Nigeria relied on by learned senior advocate that the respondent’s action was statute barred. It would be an argument carried too far to say that the Public Officers Protection Act applied to bar a relief sought in connection with an error committed in purely judicial capacity. It does not”

The remedy sought is to enforce a constitutional right contravened by a court acting judicially. The time within which to seek that remedy is not subject to the time limit prescribed by the Public Officers Protection Act, there is no reason.

Expeditious Hearing Of Human Right Case

Paragraph 3(f)(g) of the Preamble of FREPR 2009 as articulated by My Lord Hon. Justice Idris Legbo Kutigi CJN (as he then was) speaks directly to this point. To be sure, it is hereby reproduced.

(f) The court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture, pursue the speedy and efficient enforcement and realization of human rights.

(g) Human rights suits shall be given priority in deserving cases, when there is any question as to the liberty of applicant or any person, the case shall be treated as an emergency

Simplified Service Of Court Processes.

Ord v. r. 2 & 5 of the FREPR amply emphasis the liberal approach expected from our country on the very important and jurisdictional issue of service of court processes including originating processes. It states:

Ord. V. r. 2 the application must be served on all parties directly, so long as a service duly effected on the respondent's agent will amount to personal service on the respondent

R. 5 if it is not possible to serve such order personally, or it is Prison Superintendent or other public official, it may be served by leaving it with any other officer working in the office of the Police Officer, or Office of the Prison Superintendent or the Public Officer to whom the order is directed. See also the case of **Malachy Ugwummadu vs. University Of Nigeria Nsukka**⁽¹⁴⁾

Adjunct to this is the urgent need to intensify and escalate our campaign for the elevation of the rights and privileges under Chapter Two of the 1999 Constitution dealing with the Fundamental Objectives and Directives of State Police (S. 13 – 24) to enforce and justifiable rights. By virtue of S.6(6)(c) these right are made enforceable in the following terms:

S.6(6)(c) The Judicial powers vested in accordance with the foregoing provisions of the section

(c) Shall NOT, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by authority or person or as to whether any law or any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set in Chapter II of this Constitution.

In no better way could the weight of this constitutional anomaly and deceit be felt than the views expressed by the revered Jurist, Hon. Justice Akinola Aguda in his book⁽¹⁵⁾ Crisis Of Justice when he said in reference to the denial of citizens t the right to food and shelter

“can we imagine a greater torture for an able bodied man or woman to wake up in the morning and not have the smallest clue as to how or where he is going to find a meal to eat the whole of that day, not to talk of the day after? I take it as most inhuman and degrading for an able – bodied man or woman willing and able to work to find himself or herself a victim of unabated and frustrating prolonged unemployment. Such a situation leads progressively from optimism to pessimism and from pessimism to fatalism accompanied by a dreadful feeling of insecurity of complete economic helplessness and failure. When the stage of economic helplessness and failure is reached that surely must be a state of torture.”⁽¹⁴⁾

I have found Sarah Knuckey and Su Anne Lee’s Eleven (16) practical steps towards building the foundation of resilience for human rights educators⁽¹⁶⁾ and supervisors very instructive and hereby adopt same as follows:

1. Build shared goals and strategies through participatory processes
2. One size doesn’t fit all: Adopting suitable approaches for individuals
3. Taking a holistic approach: Projecting and tackling all likely issues identified
4. Grow peer-to-peer support networks
5. Focus on resilience and capacities, and celebrate wins
6. Create multiple channels of open communication

7. Invest in mentorship
8. Prioritize preparation and normalization
9. “Do as I say, but not as I do” is a barrier to reform: Leading by example
10. Be accountable
11. Reflect, learn, revise, reflect...

Conclusions

The paper strove to deconstruct and much as possible the key terms used in this address in a way that gave better clarity to the concepts of justice, accountability, human and fundamental rights and the resilience required to overcome the ever present pushbacks against agitations of this nature. Concrete decided court cases were provided to situation issues under review within the larger context of the law and state policies as the courts saw them. Practical recommendations were drawn from documented studies on this issue. In the end, I see this effort by the Amnesty International Nigeria as a wake call for a new consciousness around the challenges of our collective struggle for right advocacy and protection which require fresh tactics and innovations. In the event, we must also intensify sensitizations and mass organization of our people to actively [participate in policy formulations, implementation and even review. We must also return to our traditional centres of struggle, organized labour, professional groups, civil society organization leveraging on the foregoing innovations to deepen our democratic values towards socio-economic, cultural and environmental rights.

Thank you for the opportunity.

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