

THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Transforming Nigeria through the Law for National Development

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Abstract:

The progress of a nation depends upon several factors including its people. The ultimate aspiration is the fulfillments of its hopes and aspirations. Every citizen must of necessity take upon his duties and responsibility to the society, for in a sense, he is part of the democratic process. This prompted the rationale for the inclusion of the Fundamental Objectives and Directive Principles of State Policy in the Constitution of the Federal Republic of Nigeria by its drafters.¹ Democracy draws its strength from the Constitution and public opinion, the more well informed that opinion, the greater its strength. But the teething problem is that, government in developing countries have tended to be pre-occupied with power and its material prerequisites with scant regard for political, social and economic ideals as to how society can be organized and ruled to the best advantage of all.¹ Secondly, it does not actually mean that our laws are inadequate or unenforceable, but that the mandates given by the electorates to the operatives of the law who seek political power are not faithfully carried out. This paper seeks to examine some provisions of our current policies and laws in tackling contemporary economic and legal problems that affects national development in Nigeria. Our finding reveals that we need to rethink processes, procedures, relationships and even fundamental concepts of governance with the governed to boost national development. Generally, our national law must meet global standards in socio-economic transactions and provide a system of sustainability, ascertain ability, and good orderliness. This forms the basis for the needed transformation for national development. The paper concludes that, the strengthening of various institutions of government through pragmatic laws and deliberate policies will stimulate the needed development.

Keywords: National development, democratic order, law

1. Introduction

As we survey the contemporary world including our national environment, the predominant reality is that of change. There is change in our perception and appreciation of our individual, inter-group, national and even international relationships. Nigeria's fundamental problem is that we are yet to get down to this level of reflection as a nation. We have managed our economy for several decades with no particular compass or lodestar other than simply spending wealth from natural resources. This happens because we have not known or realize that real economic wealth is not what is found in the soil but what we create with or without such resources. We live in a dynamic and globalized world in which events thousands of miles away can reshape and impact our perception of our local environment, activities and priorities. ¹ Thus, in the contemporary society such as Nigeria, we need to rethink processes, procedures, relationship and even fundamental concepts of law as a guide in this period of transition. Additionally, the rules for the management of societies are changing as new laws continue to emerge. It is against this background of expected and implied changes in perception and perspectives that we must approach the examination of our laws given the background of dynamic interplay of ideas, and relativism in our contemporary world.²

The emergence of multi-national corporations, national firms and the private sectors as the major economic players in the national space plays a major role in national development. For Nigeria to derive optimum satisfaction in this area, positive economic reforms are the only way to develop these productive forces. But it should be noted that, in the course of these reforms, it is very important to maintain that state directed or centrally planned economy is not exclusively socialist, nor is the market economy the preserve of a capitalist economy, whether with a private sector led market or state directed market economy, there is a need for a strong developmental and democratic state- able to enforce its own laws and hold the ring for fair competition among its stakeholders. Therefore, Nigeria needs to adopt a clear national, economic and social philosophy, perhaps through the instrumentality of some positive laws to surmount these challenges.³ These have consequences for the emergence, codification and interpretation of laws as a guide to conduct the relationship and distillation of the values and

¹ C. Onunaiju, "Ezekwesili's Market Obsession", The Nation, Tuesday March 8, 2016, p.19.

² J. O. Akande; "Fundamental Objective and Directive Principles of State Policy within the Framework of a Liberal Economy- A Note" *Issues in the 1999 Constitution*, NAILS, 2000, p.221

^{6E} Soludo; "Why Economic Philosophy Matters: World Views and the rise of Nations" The Nation, Tuesday March 8, 2016, p.3.

ethos of the society through the grundnorm. Generally, the law is expected to provide a system of preservation of order and values in the society, and also provide a framework of interpretation of those values. The challenge in Nigeria today, is the slow passage of these Bills in both the National and State Assemblies and the delay in assenting to them by the Governor or President respectively. Secondly, most of these laws and amendments are scattered in various government gazettes, and the stakeholder merely observe them in breach. We need to embody these laws in an acceptable framework to meet the needs of an evolving, developing and innovative Nigerian national legal order. The need for reflection and transformation become even more insistent when we recognize that the grundnorm is the unseen guiding hand in an emerging democratic order and the necessary basis for development.

2. The Linkage between the Law, Democratic Order and National Development

Democracy as a system of government rests on the assumption that, sovereignty resides in the people who merely delegate the rights inherent in that sovereignty to their elected representatives. That is why the rights of the individual are an important aspect of the democratic order because he is a social, legal and economic being and involves in both the unit of production as well as consumption.⁴ Consequently, the organization of society and the economic development of the nation must start with the individual. In order to materialize the above assumptions, we need to put in place an effective machinery to enhance the full development of the individual. Secondly, we must provide an appropriate legal framework and values that can enhance the exercise of individual rights as well as facilitating the full development of economic potential of the society in a manner that guarantees a high quality of life for every individual citizen. As watchdogs of the society, the lawyer must be able through his own independence and commitment to the law promotes accountability by helping citizens check the excesses of their leaders. They can also help the society establish and sustain an effective and viable institution, processes and a framework that aligns with constitutional democracy. In any case, given the communal basis of our indigenous culture, what kind of re-formulation or accommodation of our legal framework do we need to make if we are to guarantee individual rights consistent with communal expectations and practices? In an attempt to answer this question, we shall adopt the position of the Chief Judge of Anambra State when he said;

There would no development without the rule of law. Countries with efficient justice systems place premium on the rule of law to attract investments. This pillar of rule of law should be enhanced through the erection of infrastructures for the speedy dispensation of justice coupled with the systematic funding of the judiciary to enable training and retraining for the requisite manpower. The outcomes will include un-enforced inflow of foreign investment, protection of intellectual property, enhanced standards of living and the tendency to explore the realms of science and technology.⁵

The important point to note is that the individual citizen must be the center of our consideration if the linkage between law, democracy and national development are to be wholesome and relevant.

As a result of the advancement in globalization, liberalization and information technology, the landscape for international business has been reshaped and transformed. Goods, services and finance can move across national borders with little or no restraint. To some extent, the control of national economies has been ceded to multinational corporations and international capital. The competition for Direct Foreign Investment (DFI) amongst developing countries is on the increase. The only power substantially left to national governments is that of regulation through laws. Even in this, the knowledge base and the negotiating skills within each nation are vital for its ability to navigate skillfully in order to enhance or conserve its national interest. As hertz has observed,

Unregulated or under-regulated corporations (now) set the terms of engagement themselves. In the third world we see a race to the bottom, multinationals pitting developing countries against each other to provide the advantageous condition for investment, with no regulation, no red-tape, no unions, a blind eye turned to environmental degradation. It is good for profits but bad for workers and local communities. As corporations go bottom fishing, host governments are left with little alternative but to accept the pickings. Globalization may deliver liberty but not fraternity or equity⁶

Indeed, because of the underdevelopment and distortion of capitals in the country, the nation has suffered the worst consequence without enjoying its benefit. The framers of Nigerian Constitution, having recognized this popular struggle for a viable economic system, make provisions that will enhance the efficiency, equity and welfare of the citizens rather than the prevailing system which dispossesses the vast majority to enrich a few in the Constitution.⁷ Many of the provisions on the

⁴ N. Egba, "The Law, Democracy and National Development", Keynote Address delivered during the Nigerian Bar Association Annual General Conference held in Calabar, 2001

⁵ P. Umeadi J." Development Impossible without Rule of Law", The Nation, Tuesday March 8,2016 p.27

⁶ K.S.Hedges, "Directive Principles of State Policy in the Constitution of India", Lecture p. 64

⁷ E. E. O. Alemika, "Fundamental Objectives and Directive Principles of State Policy within the Framework of a Liberal Economy", *Issues in the 1999 Constitution*, NIALS,2000 p.210

economic objectives were designed to manage and diffuse the struggle for greater economic justice in the country. These provisions entrenched a liberal capitalist economic by coating it with the following welfare economic management provisions:

2.1. The State Shall, Within the Context of the Ideal and Objectives for Which Provisions Are Made in This Constitution⁸

- Harness the resources of the nation and promote national prosperity and an efficient, dynamic and self-reliant economy;
- Control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
- Without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy manage and operate the major sector of the economy.
- Without prejudice to the right of any person to participate in areas of the economy within the major sector of the economic, protect the right of every citizen to engage in any economic activities outside the major sector of the economy.

2.2. The State Shall Direct Its Policy towards Ensuring

- The promotion of a planned and balanced development,
- That the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
- That the economic system is not operated in such a manner as to permit the concentration of wealth or means of production and exchange in the hands of few individuals or of a group and;
- That suitable and adequate shelter, suitable and adequate food, reasonable and national minimum living wage, old age care and pensions, and unemployment, sick benefits and welfare of the disabled are provided for all citizens.

2.3. A Body Shall Be Set Up By an Act of the National Assembly Which Shall Have Power

- To review, from time to time the ownership and control of business enterprises operating in Nigeria and make recommendations to the President on the same; and
- To administer any law for the regulation of the ownership and control of such enterprises.

These provisions anticipate active participation of the government in the economy through privatization and commercialization. But the question is, how is the government going to promote planned and balanced economic development where it is only marginally involved?⁹ The present government has taken a number of steps under its Economic Recovery and Growth Plan (2017-2020) to actualize these objectives. The Nigerian Government is undertaking major valiant steps to combat the economic crisis that were precipitated by internal and external problems ranging from recession, high unemployment, inflation, rising fiscal deficit to recurring balance of account deficits and huge debt overhang. These economic reforms led to the liberalization of the economy and opening up of erstwhile monopoly sectors to the private sector. There was the need as consistent with global trends for a robust legal and regulatory framework to activate these processes.¹⁰ Nigeria does not currently have an overarching framework for competition and consumer protection law and policy, although there are a number of legislations at federal and state levels which touch upon consumer protection, the need for a unified framework of competition and consumer protection law is highly recommended. The current draft bill on this regulatory regime requires speedy passage. The needs and benefits of a national policy for competition are many. These include encouraging enterprise, innovation, efficiency and widening of choice.¹¹ The current signing of Executive Orders by government are meant to improve local content in public procurement with science, engineering and technology. This is expected to promote the application of science and technology towards achieving the nation's developmental goals across all sectors of the economy. The Treasury Single Account Policy¹² introduced in 2015 is also a welcome development.¹³ Prior to the implementation of the policy, over seventy-billion-naira cash belonging to the government had been lost to leakages through 17,000 accounts being operated by Ministries, Departments and Agencies (MDA)¹⁴

The National Assembly has set up various regulatory bodies periodically to review the ownership and control of business enterprises operating in Nigeria.¹⁵ The Agencies are to regulate anti-trust activities, prevent monopolies and prohibit

⁸ See section 16(1) of the 1999 Constitution as amended.

⁹ E. E.O Alemika, "Fundamental Objectives and Directive Principles of State Policy within the Framework of a Liberal Economy" *Issues in the 1999 Constitution*, NIALS, 2000 p.212

¹⁰ The Draft Consumer Protection Bill before the National Assembly

¹¹ A. Terhemen, "To Ensure an Orderly Development of the Economy", *The Nation* Tuesday, July 22, 2014 p37

¹² Enacted in compliance with the provisions of Section 80 and 162 of the 1999 Constitution as amended.

¹³ Enforced through circular Ref. No: 428/S1/120 of 7th August, 2015

¹⁴ K. Adeosun, "TSA accruals now N8.9 tr", *The Nation* Tuesday, March 27, 2018 p.5

¹⁵ National Agency for Food and Drug Administration (NAFDAC), Standard Organisation of Nigeria (SON) Act, 2015, Economic and Financial Crimes Commission, Corporate Affairs Commission

exploitative and arbitrary charges for goods and services by private and public enterprises. The gains may be feasible if patriotic and knowledgeable people are appointed to manage such organizations¹⁶.

The greatest impediment to Nigeria's development is rooted in the country's structure both politically and economically. The current loud demand for the restructuring of the national economy is derived partly from the unfair distribution of the country's wealth, political lopsidedness or marginalisation among others. These challenging issues in our national polity have to be addressed frontally. Essentially, a restructured Nigeria will engender healthy economic competition among the regions and induce them to unleash their development potentials in the areas they have comparative advantage. It will address the incoherence and disarticulation in Nigerian economy.¹⁷ The federal government is already overburdened on matters in the exclusive legislative list in our Constitution which contains myriads of matters that are of national importance; these are aviation, banks, commercial and industrial monopolies, customs and excise duties, drugs and poisons, export duties, immigration, maritime, shipping and navigation, incorporation and winding up of bodies corporate. The shedding of some these matters to the concurrent legislative list over which both the Federal and State houses of Parliament can make laws and the extent of the exercise of such legislative powers is urgently recommended. The relationship between the institutions of the law and development are analogous to that of a wheel within a larger wheel. The functional efficiency of the entire system depends on the ability of the smaller wheel to generate sufficient power to drive the larger wheel.

Nigeria's energy requirement is a veritable panacea for growth and development. Until we fully comprehend that fact, the energy sector in Nigeria – the downstream and electricity will continue to be epileptic and fraught with problems. The current legal regulatory framework provides very little for exploitation of gas resources. Existing policy instrument like the Gas Master Plan and the National Gas Policy do not adequately provide a clear legal framework required to attract investment in the gas sector. Some key recommendations were proffered by a legal expert, such as placing energy matters on the concurrent list, creating a legal framework for renewable energy to attract investment, creating a specialized court for energy related disputes, address infrastructure deficit, carry out law reforms on pricing, increased private sector participation, standardising arbitration in line with global best standards, and entrench respect for the sanctity of contracts.¹⁸

But beyond the need for economic and fiscal restructuring lies the more fundamental issue of political restructuring. Accordingly, there is still the need to correct the lopsided allocation of powers between the federal government and the component states. In a true federal structure, the states must have sufficient control over their internal affairs and sufficient autonomy to address localized problems so that they will have not only the power but also the resources to correct injustices between social classes and groups. The political horizon has been so unstable that even the current democratic dispensation is not seen by many as a transition towards true fiscal federalism. This democratic transition will not be complete and the political terrain stable until the issue of political and economic marginalization of the broad masses has been corrected. The concentration of the wealth of the nation in a few hands is antithetical to the exercise of political power. The future of Nigeria depends crucially in its ability to embrace in a dynamic, fast-paced and technologically driven world. Professor A O Anya¹⁹ observes that;

In any viable socio-political and economic system which is what a nation state is... that vision, philosophy and ideology that gives validity, credibility and legitimacy to the national personality is embodied within a constitutional framework. The ideas which give life to the citizenry depend on the depth of the intellectual anchor and relevant underpinnings of national vision...

Since the law is the interpreter, moderator and conservator of the national vision, it is both the lubricant and cement that relaxes and binds the national vision. In the vision statement proposed by the Vision 2020 Committee, it was suggested that:

Nigeria shall be "united, industrious, caring and God fearing democratic society, committed to making the basic needs of life affordable for everyone and creating Africa's leading economy..."²⁰

That vision will not be realisable unless it is propelled by a coherent and creative legal framework. In the emerging social and democratic Nigeria of the 21st century, the fate and fortunes of the individual Nigerian should be the focus and concern of governance and of the law. A critical point that has been made from time to time is the need for 'legal certainty' in our legal jurisprudence and good governance structure.²¹ Development cannot thrive in an environment where the law is uncertain, obsolete and conflicting. For example, the CAMA²² is due for review as some of its provisions have become obsolete and no longer practicable in today's business world. In some instances, there are some conflicting provisions between CAMA and the Companies Regulations. The essence of the Companies Regulations was to specify the Corporate Affairs Commission (CAC) procedural requirements where they are not provided for in CAMA. Furthermore, section 83(1) of the Sheriff and Civil

¹⁶ In compliance with Section 16(3) of 1999 Constitution.

¹⁷ L. Nwaketti, "Why Nigeria Needs Restructuring" The Nation Tuesday May 8, 2018 p.24

¹⁸ Y. Omorogbe, "Freeing Power from Fed. Govt's Exclusive Grip", The Nation Tuesday March 27, 2018 p.24

¹⁹ N. Egba, "The Law, Democracy and National Development", Keynote Address delivered during the Nigerian Bar Association Annual General Conference held in Calabar, 2001

²⁰ Ibid.

²¹ Fagbohun, "Environmental Law and Policy; Missing Link", The Nation, Tuesday Nov. 7, 2017 p.23

²² Companies and Allied Matters Act 1990

Process Act²³ which requires the Attorney Generals Consent before executing court judgments against State or Federal government is anachronistic which does not encourage good business environment should be expunged.

Unfortunately, the government has not evinced any consuming passion to improve the welfare of the Nigerian citizen as the primary call to serve in politics. It is possible that the predominance of the military ethos in our governance in the last forty years can be held responsible for this sense of social anomie and lack of consciousness of the dividing line between right and wrong in the society. The laws in Nigeria and the operators have a role in turning the tide of the emerging under development in our society. The framework of laws and the profession of law in Nigeria should be a distillation of the best in behaviors and conduct. In a two-day legislative summit,²⁴ Osibanjo²⁵ noted thus;

The most dangerous cause of recession was corruption which contributed mostly to the slide into economic decline. For if the truth must be told, some of the abuses of the ethics of public service in our country in recent times including the looting and fraudulent conversion of public resources have been with the active connivance and even assistance of operators and other professional men.

The problem of Nigeria may not be paucity of laws; rather it is the application of those laws. In our search for democratic stability and economic growth, the institutions of the law are crucial. In the pursuit of that desirable new future for Nigeria, small incremental growths are no longer sufficient to achieve our goals. We need to cultivate leap-frog strategies in our development. We also need a paradigm shift in our vision for future development and in the institutions of the law. Both must undergo fundamental transformation. If Nigeria's competitiveness is increased through law reforms, chances are that we would get more Foreign Direct Investments (FDI) into the country which in turn creates new employment.²⁶ The paradigm shift should more importantly be in the area of administration of justice. Professor Osipitan²⁷ said, investors would be attracted if they know that criminals would be apprehended and prosecuted timely. The Administration of Criminal Justice Act (ACJA) 2015 was passed into law purposely to avoid unnecessary delay in the trial of criminal and corruption cases, though so far it has not lived fully in meeting its expectations. The absence of case management is also a clog in the wheel of speedy dispensation of justice in the country.²⁸ The tool is not just aimed at speeding up trial but ensuring that cases are concluded and justice served. This would put an end to impunity as the system will not only inspire confidence in the legal system but would attract foreign investment into the country.²⁹

The law on Arbitration should be improved to help in decongesting the court. Arbitration is time saving, cost saving in terms of time and value of money. The problem is that, Nigeria has gained notoriety for easily setting aside arbitral awards, and also tampering with the sanctity of contract entered by parties. Parties no longer see the need to resolve their issue through arbitration. More importantly, the Arbitration and Conciliation Act 1988 is old and needs reform since adjudicatory process is dynamic, and the sphere of international commercial arbitration has developed globally. The quick passage of the amended Arbitration and Conciliation Bill currently before the National Assembly will aid investors who need to be assured that when disputes arise, the system for resolution and quick response is reliable³⁰

3. Conclusion

In all that has been said so far, it has been well established that the law can be a powerful instrument for socio-economic and socio-political engineering. The problem of Nigeria may not be paucity of laws; rather it is the application of those laws. No one needs convincing proof about the progressive immoderations of the average Nigerian in the last fifty years. We shall continue to emphasize it until our stakeholders and the elites recognize the grave danger, and indeed an emergency that faces the Nigerian socio-economic system in this 21st century. Currently, two thirds of Nigerians live below poverty line, two thirds of school age are not in school, and half of all Nigerians are illiterates who can neither read nor write. Life expectancy is brutish and short. This is not a robust profile of a nation that can play a viable role in the competitive world. Under normal circumstances, the law is expected to shape and focus on people-oriented policies and programmes. Secondly, the law should create a more conducive environment for socio-economic development and thirdly, it should provide a better framework of stability for the socio-political system. In the pursuit of these goals, some degree of creative change and transformation had been introduced through the law for the benefit of the wider society in this work. Specifically, two changes have been suggested, namely; the creation of an investment friendly environment in our socio-political economy through pro active legal framework in line with global best standards that can stabilize our fragile economy. Nigeria is a large country in which information flow and communication faces formidable problems. Neither contemporary Nigeria nor our legal

²³ LFN (2004)

²⁴ V. Oluwasegun, "Legislative Framework for Economic Growth and Sustainable Development", Nation Tuesday, Nov.7, 2017 p.5

²⁵ Vice President of the Federal Republic of Nigeria

²⁶ F. Ajogwu, "Limit Appeals to Supreme Court to reduce Congestion", The Nation, Tue, Jan.24.2017 p.19

²⁷ A. Phillips, "Lawyers Mustn't Aid Corruption", The Nation, Tue, Feb.14, 2017 p.21

²⁸ Oyewole J, Case Management by Judges such as pre-trial conferences in both civil and criminal cases and witness protection programme should be enhanced.

²⁹ The introduction of Plea and Case Management Hearing (PCMH) will help in the management of criminal litigation and sentencing in the country. The purpose of PCMH is to enable the court to deal before hand with all the issues about the case that may derail or cause delays in the trial. The Nation, Tuesday, Nov.7, 2017 p.27

³⁰ W. Olanipekun, "The Need for effective Dispute Resolution Mechanism", The Nation, Tue, March, 27, 2018 p.23

institutions can be considered examples of organizations where fast changes and responses to situations are possible. Yet both are essential in the pursuit of accelerated socio-economic growth and a stable democratic polity. It should be noted that the continuously evolving structures can only be stabilized when their responsibilities are well defined, focused through sustainable and ascertainable legal framework. Our findings reveal that, if Nigeria is to survive the challenges of the competitive world of the 21st century, we need to pursue functional and structural decentralization of legislative and economic powers within the framework of our laws. Specifically, the creating of strong and virile institutions also needs strong managers, such as the National Assembly and its members, the Judiciary and its members, and notable Agencies such as the Economic and Financial Crimes Commission, The Police Force, National Economic Council, Law Reform Commissions and Civil Society groups like SERAP³¹ to be accountable and live above board in the pursuit of their activities. In addition, we must encourage the development of professional educational institutions and ensure equal opportunities to everybody as contained in chapter 2 of the Constitution by making it justifiable. This has been re-enforced by the decision of the Economic Community of West African States Court of Justice³² We must encourage and facilitate the incorporation of modern technology and management in our national economy. As we do all these, we must bear in mind the warning of Loch Welch, thus; As institutions prosper and get more comfortable, the priority begins to shift gradually from speed to control, from leading to managing, from winning to conserving what has been won, from serving the citizen to serving the bureaucracy.³³

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³¹ Socio Economic Rights and Accountability Project(SERAP)

³² *Registered Trustee of Socio Economic Rights and Accountability Project (SERAP) & UBEC v. FRN (ECW/CCJ/APP/0808. (Unreported)*

³³ CEO General Electric, one of the largest corporations in the world.