



The Role of Law in Development Agenda

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Abstract. Development simply means the process of growing, changing or becoming better. Development has also been defined as the process of change i.e. the process of changing and becoming larger, stronger or more impressive, successful or advanced, or of causing something to change. The ultimate aim of development is the constant improvement of the well-being of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits therefrom. A lack of meaningful development manifests in situations like poverty, societal lawlessness, stagnation, among others. Unfortunately, this is the status quo in a lot of societies. This paper seeks to identify and discuss the meaning of development, the various aspects of development, the role of law in actualising development in the society and the challenges which the law encounters in the process. The paper concludes that the law indeed has a vital role to play in the attainment of a developed society whose inhabitants have access to every requirement necessary for them to attain their full potentials.

Keywords: challenges, development, law, role, society.

1. Introduction

In many parts of the world, the past years have been marked by flagrant disregard for the rule of law – from mass killings of civilians and deliberate displays of cruelty to horrific violence

and discrimination against women and girls, unfair trials and gross miscarriages of justice. Widespread corruption robbed citizens of resources, agency and dignity. Weak and failing institutions showed scant respect for rights and justice. Where rights were violated and justice denied, insecurity and poverty flourished. Tens of millions were forced to abandon their homes and seek shelter elsewhere, in lands often unprepared or unwilling to welcome them. Lives were lost, destinies thwarted, opportunities missed.

Development is a process towards improving living conditions. Law is considered an effective and utility mechanism in driving the processes which are designed to secure development. Laws are tools and instruments for overcoming the decadence and inefficiency that hinder development.

To this effect, this paper takes a look at the meaning of development and the various aspects of development. It also reviews the roles which the law is expected to play to bring about the development of any society. The paper also reviews extensively, the challenges which the law encounters in the course of its operations to ensure development in the society. Some recommendations are made at the end of the paper.

2. What is development?

Microsoft Encarta defines development as the process of change i.e. the process of changing and becoming larger, stronger or more impressive, successful or advanced, or of

causing something to change. The ultimate aim of development is the constant improvement of the well-being of the entire population on the basis of its full participation in the process of development and a fair distribution of the benefits therefrom. According to Amartya Sen, who articulated the Human Development Approach to defining development, development is 'a process of expanding the *real freedom* that people enjoy.' He further argued that development is not the mere accumulation of goods but the enhanced freedom to choose; to lead the kind of life one values. These choices which the individual has under the paradigm of development may alternatively be regarded as the dimensions of human development.

According to the Declaration on the Right to Development, 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 the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom. Development is a process towards improving living conditions. Law is considered an effective and utility mechanism in driving the processes which are designed to secure development.

Development in many less developed countries would inevitably be conditioned by the fact that it occurs in the context of a complex economic, political and cultural relationship with more developed countries. The enhancement of living conditions must clearly be an essential – if not the essential – object of the entire economic exercise and that enhancement is an integral part of the concept of development"

In a society besieged by the evils of economic, environmental, social and security challenges, all in monumental proportions, promoting development should be a priority. We can distinguish between two sides of human development here. The first is the formation of human capabilities, such as improved health or knowledge. The other is the use that people make of their acquired capabilities, for work or leisure.

3. Various aspects of development

3.1 Economic development

This form of development can, in the simplest terms, be regarded as the creation, by a state, of economic wealth for its citizens. It implies a positive growth in trade, industry and development of wealth of a country so that all people have access to increased income.

Economic growth means measurement of national income and output in terms of Gross National Product. Human development is not confined to the rise or the fall of the GNP. It aims at 'expanding the choices people have to lead the kind of life that they live...and it is thus about much more than economic growth, which is only a means – if a very important one – of enlarging people's choices' Its scope includes the process and policies by which a nation improves the economic well-being of its people. From the perspective of economic development for transformation, law and legal institutions are the main tools necessary to remove bottlenecks, deepen financial activities and broaden market transactions.

Laws are tools and instruments for overcoming decadence and inefficiency that hinder development. Law and legal reforms are central to the economic development and social transformation of any nation. Sadly, the reformers in Nigeria carry on as if law and legal reforms are tangential and at the periphery of their reforms.

North examined long-term differences in economic performance among nations and concluded that countries that protect property rights and establish predictable rules for resolving contract disputes provide a better environment for economic growth than those that do not. "How effectively agreements are enforced," North asserts, "is the single most important determinant of economic performance."

From an economic perspective legally enforceable property rights are considered desirable because they provide security of tenure. Security of tenure gives landholders incentives to invest in land conservation and improvement. Property rights constrain the sovereign and prevent expropriation by the state. Enforceable contract law prevents private firms

from appropriating value. These two sets of institutions extend the time horizon for the entrepreneur and make many more types of contracts possible. Without them, people would be reluctant to cooperate and entrust their capital to others. In North's view, the legal system's protection of property rights and enforcement of contracts lowers transaction costs for exchange and allows resources to be transferred to those who can use them in the most productive fashion. In this way, the law promotes economic development.

The main economic virtue of a formal system of contract law is that it provides a means for enforcing promises and thus facilitates non-simultaneous exchanges. This serves to expand the set of potential contracting opportunities, an expansion that is presumed to expand the set of opportunities to create wealth. It is not clear that informal methods of contract enforcement are perfect substitutes for formal mechanisms. But the absence of legal enforcement mechanisms may also lead to violent methods of enforcement which entail large deadweight costs to society. Law, through the mechanism of security interests, plays an important role in lending. Indeed, many studies have confirmed that this is the case in the West, where the regime of secured transactions does not suffer from the problems in creating, perfecting and enforcing security interests prevalent in the Third World. Such studies lend support to the contention that all a developing country needs is a proper legal system of secured transactions to promote the use of security interests, which in turn will lead to increased lending and economic development. To ensure a sound economy the legal regime must be equally sound and provide an assuring platform for entrepreneurs and businesses that can create jobs towards alleviating or at least significantly diminishing poverty.

3.2 Cultural Development

Cultural development is the change or evolution of the culture like traditions, beliefs, norms, behavioral patterns, arts and everything that relates to human thought and work. Development is not synonymous with economic growth alone. It is a means to achieve more satisfactory, intellectual, emotional, moral and

spiritual existence. As such development is inseparable from culture.

Ignorance about the culture of others impoverishes one's own and to destroy the culture of others is an act of self-mutilation. Therefore respect for culture and its corollary dialogue are essential for survival of humanity because culture in its vast diversity is a common source of wealth, heritage and creation which facilitates law and social development.

3.3 Socio-Political Development

Social development is simply an upward directional movement of society from lesser to greater levels of energy, choice, mastery, enjoyment and accomplishment. Development of individuals and societies result in increasing freedom of choice and increasing capacity to fulfill its choices by its own capacity and initiative. Political development is broadly, the development of the institutions, attitudes and values that form the political power system of a society.

Political development enhances the state's capacity to mobilize and allocate resources and process policy inputs into implementable outputs. This assists with problem solving and adaptation to environmental changes and goal realization. The contemporary notion of good governance also dwells on efficient, effective and non-corrupt public administration. Every society possesses a good reservoir of potential human energy that is absorbed and held static in its organized foundations – its cultural values, physical security, social beliefs and political structures. At times of transition, crisis and opportunities, this energy is released and expressed in action. Policies, strategies and programs that tap this latent energy and channel it into constructive activities can stir an entire nation into action and rapid advancement.

Socio-political development makes for sound and efficient management of human, natural, economic and financial resources for equitable and sustainable development. It does this by insisting that leaders be accountable for their actions, be transparent in their dealings and efficient in their performance. It is in the areas of accountability and transparency that law comes into play.

3.4 Environmental Development

The environment is a key factor in every activity, be it economic, socio-political or cultural. If the environment is not well maintained or developed, every activity grinds to a halt. It is our duty to ensure that present interactions with the environment does not destroy the ecosystem, the biodiversity or the structure of the environment. To achieve this, the idea of keeping the environment clean and in its natural state must underlie every policy and laws that affect the environment.

Development economists regard well-defined and freely alienable property rights as essential methods of ensuring that individuals both have adequate incentives to invest in property and are able to transfer property to those who value it most highly. Meanwhile, for those whose vision of development entails redistribution of wealth and power in society, redistribution of property rights, and in particular rights to real property, offers a natural method of achieving their goals. It is the law that provides for these rights.

Theoretically, the long term result of environmental degradation will manifest in the inability of the environment to sustain life. If this continues to occur on a large scale, it will translate to the extinction of humanity. Abuse of the environment may have no visible impact until a certain threshold is reached for example a body of water may absorb toxins being dumped in it for a very long period of time without showing any signs of degradation till the moment of sudden breakdown when it is discovered that all forms of life in it are dying off.

The question remains: how far has the existing framework on environmental matters addressed, tackled, halted or otherwise abated the problem of environmental degradation in its entire ramification? Environmental quality has been declining in many countries despite a growing body of environmental laws. This question will be answered in a subsequent section.

4. Law and Crime

There are so many reasons why crime is problematic.

In the first place, crime and violence deplete the stock of physical capital. At the most basic level, acts of terrorism or vandalism destroy physical infrastructure such as roads, power generation facilities, and other public facilities. Beyond such immediate effects, the state of law and order can affect investment in a country. Crime is generally perceived to have an adverse effect on the overall investment climate. Crime causes a reduction in investment by creating a risky environment wherein businesses are likely to resist investment because criminals are likely to reap the returns. Corruption and crime are considered important obstacles to business, particularly when the government fails to implement law and order and tolerates criminal action and extortion. It can be surmised that countries which have greater crime rates may suffer from reduced investment if entrepreneurs view the crime rate and inefficacious law enforcement to be insurmountable barriers to doing business in those countries. In this way, crime causes a reduction in investment in physical infrastructure.

Second, crime erodes the development of human capital. Destruction of human capital includes the wasting of lives and the associated human productivity lost due to untimely deaths, incompetent and ineffective replacements. Also, the allocation of governmental expenditures and scarce resources to fight crime in the forms of increased funding to security and quasi-security agencies, maintenance of order and expansion of prisons constitute a diversion of resources which could have been spent on development projects.

Crime and violence destroy social capital. What is social capital? According to Wikipedia, social capital is a form of economic and cultural capital in which social networks are central, transactions are marked by reciprocity, trust and cooperation, and market agents produce goods and services not mainly for themselves, but for a common good which is valued by all. The main premise of social capital is that social networks have value. Social capital refers to the collective value of all social networks [our connections] and the inclinations that arise from these networks to do things for each other, i.e., norms of reciprocity.

We cannot dispute the inescapable fact that in Nigeria today we live in fear because of the

activities of kidnappers, armed robbers, political assassins, internal terrorists and militants, extra judicial killings, etc. All these are manifestations of internal security problems currently confronting us. These all constitute grave threats to the peace, security and development of Nigeria. States with poorly functioning legal systems and poor crime control mechanisms are unattractive to investors, so economic growth also suffers. Addressing the issues of security is crucial in order to execute successful development projects. Again, the law is a necessary ingredient here.

5. The Nexus Between Law and Development

Without proper functioning institutions of governance based on the rule of law that guarantee, establish and promote social stability, social justice and legal certainty, there cannot be investment assumption of risk that forms the basis of market economy development, let alone sustainable development. The resultant effect is lack of investment which in turn slows economic growth and consequently deprives the government of resources to invest in education, social safety nets and sound environmental management all of which are critical for development.

In various parts of the world, tens of thousands have been killed, and many more disappeared, as wars or violence rage between gangs, militias of different ideologies and government security forces, though few perpetrators have been brought to justice. A common problem underlies each and every one of these tragedies: the failure of the rule of law.

Law in social engineering can be likened to a process in which law provides the framework that society builds upon. Taken differently, law could be regarded not only as a means to an end but that which constitutes the ‘intentionally constructed framework for social order.’ The rule of law is a premise without which development cannot be sustained. Clean government is as important as clean water. The rule of law is about equal protection, accountability and transparency. Without access to justice and the rule of law, development cannot flourish, investment will not take root,

the planet cannot survive, the poor cannot overcome poverty, and women cannot fight discrimination and become agents of their own destiny.

No matter where in the development spectrum a particular country stands, establishing peace or protecting the planet, eradicating poverty or encouraging economic opportunity, require good laws and regulations that are fairly administered by transparent and accountable institutions and that, most importantly, produce fair outcomes for all.

As IDLO said in its statement to the Summit:

“Building the rule of law takes vision, time and money. But it is the soundest investment there is. The more governments and the international community are willing to invest in it, the less they will have to scramble to address catastrophic development failures, from famines to refugee crises. Building the rule of law and ensuring access to justice is more efficient than mending the broken pieces when states fail.”

The rule of law is both an enabler and facilitator of development. The rule of law is central to any civilization as it provides a modus operandi and infuses predictability into social and individual behaviors. A world anchored in peace, stability and shared prosperity was one which fostered sustainable development. Goals designed to uplift people and to ensure provision of basic services cannot be realized without adequate safeguards and prudent management of our natural resources and environmental capital.

Strong judiciaries, with the right expertise, are core to the rule of law, constitutionalism and enforcement of environmental law. Without an effective judiciary, we will end up with constitutions without constitutionalism, which in turn will directly undermine the rule of law. An independent judiciary and judiciary process is vital for the implementation, development and enforcement of law. Without adherence to the enforcement of the rule of law, there cannot be order in the society. Order is necessary for development.

The goal of governance is often designed and presented to actualize development through a variety of manifestations – stability, nation building, or democratization. The non-

realization of the goals often depends on the implementation strategy of the government on the one hand and on the other hand, the indifference of the governed to ensuring government accountability.

The rule of law also could be integrated into concrete and measurable targets, such as doubling over the next decade the number of people who enjoy access to legal advice at low or no cost, or halving the number of people who have no legal identity. Without a human rights culture 'rule of law' remains a dream. However, a culture of respect for the rule of law remains both an essential foundation for human well-being and a distant goal in many places.

Where the rule of law is strictly observed, it gives rise to an independent and efficient legal system which in turn engenders a just society. It further makes room for easy accessibility of the legal system for the citizens. A system that upholds the rule of law is one in which fair and equitable laws are applied equally to the citizens without reference to their status and such application is consistent, coherent and defined. The rule of law and good governance are inseparable in any effort to achieve good sustainable development.

Respect and observance of the rule of law has tremendous potentials to facilitate the creation and sustenance of an enabling environment of peace, security and stability conducive to the promotion and attainment of development. In the words of the United Nations Environmental Program Executive Director,

We all have a duty to do whatever we can to restore respect for the rule of law, which is the foundation for a fair and sustainable society.... Sustainable development cannot be achieved unless law governing society, economy and relationship with the earth both internationally and domestically are put into practice and connect with our deepest values. Law must be enforced and complied with by all of society and all of the society must share its obligation.

Development requires the support of key people within the system and the core group needs to be given enabling assistance to help build the internal political will that these reforms require. An analysis of the existing law involves asking some broad pertinent questions, answer to which

will provide policy makers with a window onto the strengths, weaknesses, overlaps and gaps in the current legal frameworks.

The role of law in promoting economic development cannot be underscored because most of our lives and interaction with each other are regulated by law. The kind of laws needed to promote and establish development are the laws which are superior to any person's personal interest. Law serves an economic function because it recognizes the freedom to do business within defined parameters. For example, the law of contract is a device to promote market institutions and the economy by recognizing and protecting the freedom to choose interfaced by deliberate government policies that imply that in promoting selfish economic interests entrepreneurs will promote the overall economic interest of society. By promoting competition through the mechanism of law government prevents monopolies and undue profits and enhances efficiency in goods and service delivery. In order to enhance the growth of business and consequently economic development, governments in developed societies use law as a catalyst for economic development. The laws that promote economic development do not atrophy. They respond to social conditions, international developments and emerging trends. They are organic and forward looking. They tend not to lag behind the activities of entrepreneurs, merchants and business men but rather chart new courses for them in realization of much needed economic growth and human development.

6. Challenges

Many countries, especially the transitional and developing economies, continue to face the challenges of balancing out political mandates, good governance and development with competing socio-economic challenges. The governments of African countries continue to feign ignorance of the cause(s) of the increasing economic hardships being experienced by its people.

It is often noticed that inability to enforce rights is not caused by absence of courts; rather such inability lies with cobwebs of technicalities and costs that are beyond the reach of affected

individuals. Expectedly, the lack of potency in international legal instruments finds a companion in a national inefficiency that consequently explains the hostage conditions that a people find themselves in; while their governments continue to fail. Political leaders may have had the talk, but they didn't quite have the walk: their commitment to genuine reform was often "*skin-deep*" and there was "*lack of follow-through*".

There are myriads of scenarios which represent instances where public institutions expected to manage specific processes in the public interest failed to succeed due to inability to fully appreciate social peculiarities while designing and implementing its development programs. The consequences of ignoring the locality and particularity principles underscore the contention that systems or places to a larger extent, differ in accordance to urgency of needs and what must be explored to circumvent impossible institutional bottlenecks that would otherwise frustrate the realization of a desirable end. The viability of economic systems with these localities has direct correlation with functionality of the laws. Most legal systems are still functioning poorly despite all the hundreds of millions of dollars expended on aids. The reason for this is the inadequate investment in the enforcement and compliance efforts.

The problems with the Nigerian legal regime for development are myriad and is indicated by archaic or multiple laws and regulations, overlaps in administrative and institutional structures, absence of laws in critical areas, and a general state of confusion that is a disincentive to investment by local and international investors and entrepreneurs.

African countries have typically adopted stringent environmental legislations. For example, South Africa and Ghana both have constitutional provisions relating to the environment. Several African countries like Nigeria have enacted punitive legislation prohibiting the dumping of toxic wastes. Other African countries have set up special commissions by decree to tackle specific environmental problems in specific regions, and environmental impact assessments are now required for all substantial development projects in most African countries. However, lack of

strict enforcement is the bane of these legislations.

It is common knowledge that regulatory and supervisory institutions in developing countries are too weak to ensure absolute compliance with law and order. Labour unions do not fare better. Poor governance and corruption also constitute grave problems. In many cases, poor administration and enforcement weakens the law. While Brazilian laws regarding timber extraction are rigorous, for example, their implementation is difficult. This is because IBAMA, Brazil's environmental agency, has few officials, and little equipment and resources to monitor logging companies, resulting in much illegal harvesting.

Regulatory obstacles may also hinder development by increasing costs and creating incentives. Constraints may take the form of bureaucratic procedures that increase the transaction costs of a particular activity without a corresponding public benefit. Citizens would expectedly desist from further involvement in such activities. Or they may unintentionally create incentives for undesirable behavior, as when commercial cyclists decide to use alternative routes or avoid particular parks in a bid to avoid paying some outrageous and unwarranted fees and levies imposed by governmental agencies.

7. Recommendations

At the heart of good governance is an equitable, effective and efficient legal and judicial system that caters to the needs of the people. Empirical evidence supports the view that the reform strategy succeeds where economic policies move in tandem with legal and judicial reform efforts. We must jointly support judicial systems that are socially sensitive and equipped to efficiently and justly serve local communities; an approach that engenders the confidence required for both domestic and global transactions. Such judicial systems require the involvement of various groups including the judiciary, the law societies, legal aid groups and the academia.

Another area that needs attention is the strengthening of domestic institutions of conflict management. The most frequent cause for the

collapse in growth is the inability to deal with the consequences of external shocks – i.e., terms of trade declines or reversals in capital flows. Endowing the economy with resilience against such shocks requires strengthening the rule of law, solidifying (or putting in place) democratic institutions, establishing participatory mechanisms, and erecting social safety nets. When such institutions are in place, the macroeconomic and other adjustments needed to deal with adverse shocks can be undertaken relatively smoothly. For meaningful development to endure the supremacy of the constitution is to be considered, the rule of law respected by all levels of government and more importantly, the independence of the judiciary must be secured so as to ensure that the dispensation of justice is undertaken fearlessly. Active participation of persons in a given society requires the facilitation by not only the instruments of law, but an efficient framework for the protection of basic rights and freedom. Furthermore, collective participation in a society provides a foundation for stability and development. The stability provides a framework for institutionalized self-enforcement of laws in a society. This requires the commitment of all to support legitimate livelihood of all by ensuring observance of the rule of law in spirit, practice and in letters. Adequate investments should be imputed into the judiciary as well as implementation, enforcement and compliance with existing laws.

The existence of fundamental rights in any society requires corresponding availability of verifiable infrastructures, authorized by law, for their enforcement and the realization of individual freedoms. The unenforceability of rights occurs daily in a variety of ways. The retrogression of society begins with the inability to protect rights which would have enabled an individual to contribute to society's general well-being. This breach or failure to uphold rights causes needless anxieties to individuals and creates further breaches in the evolutionary process of a given society. Typical instances of this litter developing countries where basic and fundamental rights are unenforceable. Furthermore, when rights cannot be enforced, the people as units become weak links rather

than strong links to processes that are designed for progress in any society such as development plan and societal stability. There seems to be a trend where basic rights only exist under the law, but are not realizable in practice. The existence of fundamental rights in any given system is an affirmation of human dignity and values with commitment to uphold them. It is often the existence of rights and their realization that provide the most important distinction between the developed and developing countries.

The obsession with comprehensive institutional reform leads to a policy agenda that is hopelessly ambitious and virtually impossible to fulfill. Telling poor countries in Africa or Latin America that they have to set their sights on the best-practice institutions of the U.S. or Sweden is like telling them that the only way to develop is to become developed – hardly useful policy advice! Development does not have to follow much the same path in less developed countries as it did in the more developed countries. Every society should adopt a development pattern or course that is best suited to its peculiarities. The experimentation which has been a way of governance remains too costly for human lives and society in general.

Is law a necessary determinant of development? The answer remains in the affirmative. And as has been widely quoted: *It is lawyers who run our civilization for us.....our governments, businesses, our private lives. We cannot buy a home or rent an apartment, we cannot get married or try to get divorced; we cannot leave our property to our children without calling on the lawyers to guide us. To guide us, incidentally, through a maze of confusing gestures and formalities that lawyers have created.*

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