



Enforcement of rule of law: The new paradigm for sustainable national development in Nigeria

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Abstract

The study examined enforcement of the rule of law as the new paradigm for sustainable national development. Specifically, the study investigated the relationships between the rule of law and national development. The study adopted qualitative research approach which depended largely on secondary data collected through review of extant literature. The study was anchored on modernization theory propounded by Tamaha (1995). The study finds that if the rule of law is taken in to account, it can serve national development to the extent of better development to the betterment of the government and its citizens. Furthermore rule of law advances the development in the process of changing it as the given nation requires. Such development provides restoring confidence and transforming the institutions that produce citizen security, justice and jobs as they are the major roles of rule of law. It was thus recommended that development of emerging nations should be the focal point of the political class while legal frameworks that will hasten this sustainable development should be instituted.

Keywords: Enforcement, law, rule of law, development, national development

Introduction

The Rule of law as it relates to development mainly depends largely on two key actors. The first is the government which is responsible to provide good governance and second is the citizens who are expected to play their part and contribute a better degree of citizen participation that in turn gives them citizenry power (Kumssa and Mbeche 2004 ^[6], Sachiko and Durwood, 2007, Sen, 1999). These are the two major active powers with their respective institutions that may determine the enforcement and respect for rule of law (ibid). Drawing inference from the above, rule of law comprises the system of laws by which the legislative, executive and judicial branches of government contribute to the prevention of the arbitrary exercise of their respective powers upon the citizens (Cotterrell 1992). Thus the preservation of citizens' rights in order to advance their willingness to maintain the functions of rule of law, maintains legal and developmental sustainability is very essential. Additionally, the reliability of laws for the purpose of producing and breeding a well-ordered society guides state to facilitate enforcement mechanisms. This empowers citizens to initiate action to make use of the facilities provided by law (Cotterrell 1992).

Shaw in Desai and Potter' (2008) ^[17] explained their concern about the future threats to development that may arise because of unbalanced development opportunities that requires the functions of rule of law to play a balancing role (Desai and Potter, 2008) ^[17]. Having seen the future of human security threats for this study, "Enforcement of the Rule of Law-as Instrument for Sustainable National Development" should function as independent, efficient, and accessible legal systems, with a government that applies fair and equitable laws equally, consistently, coherently, and prospectively to all of its citizens, which is the removal of all unfair treatments (Sachiko and Durwood, 2007 ^[16]:16, Sen, 1999: 3 Ballamy 2011).

As rule of law originates from the "sovereign power" (state) and flows to the citizens who are the main actors in the process of national development and enforcement of laws, it is very important to keep this balance between the state and

the citizens which is the role of law to govern both (Rajkovic 2010). As Bellamy (2011) ^[25] asserted that "law gives people instructions and guidelines to respect law for the advantages of living in law –governed environment" (Bellamy, 2011). Law facilitates social interaction and helps curb the abuse of power by making all equal under the law" (ibid). Bearing this in mind, the functions of rule of law with legal institutions will be paid special attention in this study and the study is going to unveil to what extent the rule of law can serve as instrument for sustainable national development.

Thus, this study investigated the enforcement of the rule of law as the new paradigm for sustainable national development.

Rule of Law and Development

The connection between enforcement of the rule of law and development has been in the discourse of academia in socio-legal and socio-economic phenomena. Merryman (1977) reminds us the ideology of law and development has been around for almost half-a-century and 1960s saw the rise of the concern on Law and Development (Merryman, 1977).

"As far as my understanding is concerned it is a universal truth that development should not be approached as a verbal story" (Hyde 2002) ^[10]. It should be enforced in to practice (ibid). This is because development in its practical course of action constitutes different issues that impact the daily life human society. In other words as Ehrlich (2002) states that all studies in the field of social science are based on the concept of human society (Ehrlich 2002). For example, according to Ehrlich (2002) and Hyden (2002) the fundamental principles of Sociology of Law are to study the legal matters from societal perspectives as society is the sum total of human association that have relations with one another in the process of social development. The rule of law as the product of social development and wisdom through legislations, it is used as an instrument of "social engineering". Deflem (2008) conveys the role of law from sociological perspective plays important role to re-engineer

socio-legal knowledge as it deals with social role of law in development process (Deflem 2008) ^[5].

Marryman (1977) referring to the law and economics movement of 1960s, that law is an engine for social reform and lawyers and judges could serve as social engineers to advance reform efforts by bridging the gap between the law in the books and the law in action which is capable to govern the development in action (ibid).

Previous studies attempted to bridge development studies and sociology of law by incorporating rule of law as a legal agent of societal change in the process of development (Cotterrell 1992, Sumner and Tribe 2008) ^[5]. It is also equally important to understand the relationship of Development Studies and Socio-legal Studies (Sociology of Law) which is connected to development study along with its main component parts with Sociology of Law from its societal and legal perspectives (Hyden 2002 and Sumner and Tribe 2008). Thus sociology of law and development studies will be bridged by bringing development issues such as democracy, human rights, corruption, good governance and freedom of expression and use rule of law as a benchmark.

Theorizing Rule of Laws and Development

From this perspective Haggard and Tiede (2011) theorized that rule of law and economic growth have become one of the most dynamic development discourse of the contemporary works of studies such as political science, economics and law (Haggard and Tiede 2011) ^[25]. However there remains more debates and contests about the very concept of rule of Law and its impact on sustainable development (ibid 674). Though the study is debatable, after many years of disappointing in building the rule of law in a given society's legal systems, the development community has paid a great attention to see rule of law as legal instrument that can influence overall development (Tamanaha 2011) ^[25].

For the early social contract theorists most notably Hobbes (2012) the rule of law meant in the first instance the provision of personal security and property. Hobbes in Haggard and Tiede(2011) restated "rule of law as security of a person" Hobbes in (Haggard and Tiede 2011) ^[25]. It should be noted that security of person can be practical through mitigation of violence, protection of property rights, institutional checks on government and control of private capture and corruption (ibid). From such theoretical stand point, it is believed that a well-functioning legal instrument with well-organized and equipped institutions governed by rule of law, are indispensable for the governance of socio-economic and political developments. This is because the current national/global system is at a complex system of economic, social and political interactions that needs legal guidelines (Haggard and Tiede, 2011, Tamanaha 2011) ^[25]. Through such interactions of a given society, there is an interest of each member of society, government and institutions that need to be achieved through exchanges of goods and service (ibid).

The processes of such multifaceted exchanges of material or ideas are value driven as every human person and legal person runs to secure the interest of the respective group. In this process development as a form of economic growth, good governance, human rights issues and so on reveal themselves accompanied with contested debates. As development is the concept which is debatable both

theoretically and politically at the same time complex and ambiguous needs a legal instrument that can give guidelines to govern those societal interactions and debates (Sumner and Tribe 2008).

From sociology of law perspective this can be seen referring to (Ehrlich 2002 and Deflem 2008) as both explain that law is important to govern the social interactions in the process of development change.

As the contemporary national development policies and the role of rule of law for development are becoming the topics of discussion, it is also a serious concern for development community that rule of law with related concepts of legal systems, economic growth, political modernization the protection of human rights and many other development goals are all believed to hinge on the rule of law (Yu and Guernsey 2011) ^[27]. The foremost financial institution (WORLD BANK) stated that the difficult challenges of development encompass the entire sphere of change in a given social system and acknowledged that:

The challenge of development is to improve the quality of life, better quality of life generally calls for higher incomes-but it involves much more. It encompasses as end in themselves better education higher standards of health and nutritionals, less poverty, environment, more equality of opportunity, greater individual freedom, and richer cultural life (World Bank 199).

The complex and diversified goals of national development are scrutinized in a very comprehensive and revolutionary approach by Sen (1999) using the concepts of functioning and capabilities. Sen (1999) ^[13] in his concept of capabilities approach to this complex and multidimensional development process argues that what is the most significant matter for citizens is their capability to function (Sen 1999). The development approach of the concept of functioning refers to those tangible and intangible things that a human person has right to value. Such things that a person can value differs from simple, such as the daily intake nutrition and avoidance of treatable disease up to more complete ones such as self-respect and the environment in the society(ibid). On the other hand, there are discussions and the proceedings of legal amendments on legal discourses at a higher level. The foremost worlds organ, the Report of the UN Secretary General (2006) ^[8], gives attention to the importance of "United Nations support for the rule of law emphasising on the needs of strong efforts to build state legal institutions which are the most vital legal tools to give proper legal protection for those who practice to function according to their capabilities (Tamanaha, 2011 ^[25], Sen, 1999:75). The UN Secretary General in his report listed those institutions which are the prime arms of a given national government along with the citizens. Such legal institutions that impact the complex and multidimensional development process are: court administration, legal drafting, judicial accountability, prosecutions, international and mixed tribunal , legal training and land and property rights international humanitarian, human rights and refugee law, constitutional law institution building, public administration reform and so on (Report of secretary General 2006).

With such well-organized legal systems the capabilities of a person can be protected and flourished then inevitably leads to the freedom that a person has to choose his choice of functioning, enlightens his personal features covering personal characteristics into functioning and his power of command over commodities availability of goods and services (Sen 1985) ^[20]

The instrumental value of law originates from those legal institutions and active participation of citizens in shaping of the judicial reform as it is part of a larger effort to make the legal systems in developing countries and transition economies more market friendly (Messick 1999). Messick (1999) ^[13] argues that the broader legal reform movements, or revising commercial codes, bankruptcy statutes and company laws and teaching justice ministry officials how to draft legislation that fosters private investment which is the core for overall developments (ibid). Due to such facts before a decade ago few questions were raised about the importance of legal reform for development and little was known about the impact of the judicial system on economic performance. Others argued that such reforms cannot be achieved without a society guide consensus, while others contend that the reform project can help this consensus (Messick 1999; Sen 2000, 1999) ^[13].

Importance of Rule of Laws toward Sustainable National Development

In sustainable national development, rule of law plays an important role that sustains the development process as Gordon (2010) states referring to the classical socio-legal philosopher such as Max Weber and Douglass North in one version and Minton Friedman and Friedrich Noyek in another. Gordon (2010) argues that well-functioning markets to benefit the national development require the support of a framework of defined and effectively and predictability enforced legal rules and rights (Gordon 2010). Gordon (2010) continues the assertion that even though rule of law has been paid little attention, the height of the so called Washington Consensus in (1990) neo-liberal promoters stressed in particular that the rule of law protects property rights, especially in foreign direct investment and entirely contracts (ibid). The role of rule of law in its much broader notion functions to supply public goals such as healthcare and education infrastructure, to constitute conditions facility trade and commerce, and to regulate harmful private as well as public conduct etc. (ibid). Bearing this in mind rule of law is the most important when it comes to rights-based development issues such as democracy, human rights, corruption, freedom of expression and good governance.

Theoretical Framework

This study is anchored on Modernisation Development Theory Modernization theory as a paradigm shift was first introduced by the political development movement after World War II, by American economists, political scientists and sociologists Tamanaha (1995). According to Tamanaha (1995) ^[24] modernisation theory embraced that development was predictable course of action intensifying communal demarcation in economic, political and social institutions (Tamanaha 1995) ^[24]. Thus in such process for modernization theorists, the differentiations should be the creation of a free market system, liberal democratic political institutions, and the rule of law (ibid). Modernization theory backs its argument taking essential elements such as, rationalization; based upon the familiar dichotomies found in the social theories of Durkheim, Weber, Tonnies and Parsons, involving the shifts from particular to universal, from ascription to achievement, and from affectivity to affective neutrality all of which purportedly accompanied the functional activities of society (Tamanaha 1995) ^[24].

From sociology of law perspective, rule of law has come to be acknowledged as an agency of power and instrument to govern the activities of societies in development process as independent agency of social control and social direction (Cotterrell 1992). This is because according to modernisation theory, rule of law emphasises on national integration in turn creates peace and stability as such political order helps to address conflicts that threatened developing countries (Tamanaha 1995) ^[24]. Modernisation theory bases on democratization by emphasizing pluralism, competitiveness and accountability which are vital for national development that fosters mobilization or participation through education, with an aim toward expanding the proportion of the populace actively involved in the political arena (Tamanaha 1995) ^[24]. In general the modernization theory underpins the chosen topic based on 7 core characteristics of rule of law model as Trubek and Galanter detailed in Tamanaha (1995) ^[24].

1. Society is made up of individuals who consent to the state for their own welfare;
2. The state exercises control over individuals through law, and it is constrained by law;
3. Laws are designed to achieve social purposes and do not offer a special advantage to any individuals or groups within the society;
4. Laws are applied equally to all citizens;
5. Courts are the primary legal institutions with the responsibility for defining and applying the law;
6. Adjudication is based upon a comprehensive body of authoritative rules and doctrines, and judicial decisions are not subject to outside influence; and
7. Legal actors follow the restraining rules and most of the population has internalized the laws, and where there are violations of the rules enforcement action will guarantee conformity (ibid).

The role of Government in the process of National Development

The Government of a given modern state is the foremost institution that represents the entire population with the respective institutions, at national, regional and international level. This important institution through its arms such as legislative, executive and judicial branches frames the formal rules and plays a prime role in enforcing them with its different coercive institutions (the police, army, the court at different administrative levels) (Kumssa and Mbeche 2004) ^[6].

Furthermore the government produces public goals and services and facilitates the rules and regulations that allow national development process to flourish. The government guided by the rule of law also carries out and puts in place the necessary policies that can facilitate efficient distribution and allocation of resources to accelerate the national development and to fulfil the needs of citizens. As Kumssa and Mbecha (2004) ^[6] state that the government is also responsible of providing the most important institutional infrastructures such as laws (rule of law for this thesis) to protect property rights, and maintaining public peace and order, without which long term investment which is vital for national development and sustained socio-economic development is impossible (Kumssa and Mbecha 2004 ^[6]:846). In doing so the government as the main pillar of national development plays the role of generating future incomes. Potter et.al (2008) ^[17] recommended effective

government institutions are needed to build the legal institutional and regulatory framework and put in place good social policy to ensure the provision of key public services (Potter et al. 2008) ^[17]. In another way for the developing countries initiatives in all development fields to create a system capable to carry the tasks necessary for development such as importance of governmental stability, the maintenance of public order and respect for the law are essential (Rahnema and Bawtree, 199). In general government as institution provides security facilitation of all kinds and strengthening the non-productive forces consumption such as military, police and so on which play important roles in keeping peace and order that guarantee the national development process to be meaning-making (Kumssa and Mbeche: 2004 ^[6]:846, Osman et. al. 2012). Such being the case, the role of institutions in the process of national development depends on the quality and effectiveness of the institutions to carry out the functional roles of rule of law. It is because a successful national development requires a committed government with strong visionary leadership, coherent and impartial legislation and a well-equipped enforcer (Kumssa and Mbeche 2004 ^[6], Greif and Kingstone 2011). In other words as Aldashev (2009) ^[1] articulates that one of the key factors in the entire process of development is the legal system. It is because the characteristics of the legal system should affect the development behaviour of individual actors by positively influencing all competitions of material and human capital (Aldashev 2009 ^[1]: 257). In this vital development process the legal system and the role of rule of law- should lead to a better allocation of resources that increases and encourages total factor productivity (ibid).

The role of Community Organizations National Development

Community organizations are important social institutions of collective society that accommodate various norms and value in the process of their interaction. The interaction plays a vital role for overall development. This is because norms which are standards of behaviour and conducts which are accepted in a given society (Kumssa and Mbeche 2004) ^[6]. Whereas values refer to beliefs, what is accepted or not accepted and for what is important, for a particular society (ibid). How they are important to play roles in development is that development is a process of change/ results primarily from internal stimuli as its discourse continues and is determined by resources and organization (Kumssa and Mbeche 2004) ^[6]. As the development discourse continues in such community organizations as institutions of development, the development actors develop the awareness towards institutional significance for overall understanding, and how institutions can be selected and how the members patterns of their behaviour be motivated (Grief and Kingston 2011, Shirley 2005) ^[21]. Furthermore, in such motivational stimuli the individuals will be more willing to specialise, investment and communicate as well as share knowledge (North 1990: 34 in Shirley (2005) ^[21]. Shirley (2005) ^[21] points that (development) changes are supported by changes in society's dominant beliefs and norms; thus institutions are the products of human efforts to give structural meaning to an uncertain world with societies dominant beliefs system on how the world operates (North 2004 in Shirley 2005: 615). As Kumssa and Mbeche (2004) ^[6, 21] note in the national development process of economic

production and social welfare need effective utilization and coordination of resources and institutions. As such positive development change cannot occur in either production or quality of life if resources and inputs are not utilized effectively (Jones and Yogo (1994) in Kumssa and Mbeche 2004 ^[6]: 849).

In such manner development change can come when resources are combined and the responsible development actors such as state, public and private enterprises and households are mobilized in accordance with the law in place (Kumssa and Mbeche 2004, Shirley 2005) ^[6, 21]. On top of that community organizations as community networks play an enforcement role in which behaviour within a group is governed by "rules" which are enforced by members of the group themselves and that enables them to develop rules to successfully avert the adverse consequence of development process (Grief and Kingston 2011) ^[25].

Conclusion/ Recommendations

This study examined the enforcement of rule of laws as the paradigm for sustainable national development. In this study, different essential inseparable component parts of development such as democracy, human rights, corruption, good governance and freedom of expression were explored from the perspectives of national development. The existence of an instrument that governs the interaction between the above mentioned concepts is very important for the concepts to have a meaningful role in the process of national development. And that governing instrument is the rule of law which is presented in this paper as an instrument for national development. Thus, the rule of law facilitates the establishments of peace and order; and this peace and order in turn facilitates the establishment of socio- economic and political transformations of which are essential to the full-fledged development of human personality.

To this end, the study recommends that development of emerging nations should be the focal point of the political class while legal frameworks that will hasten sustainable development should be instituted.

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