



The Rule of Law and Economic Development of Nigeria

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"Without good governance and a strong commitment to the rule of law and a genuine will to control corruption, all of which are essential for accountable government, development would be difficult if not impossible."

- Andrew S. Natsios

Strong Economies are Built on Rule-based Foundations

In conjunction with monetary stability (or instability) and fiscal equilibrium (or disequilibrium) the rule of law defines the conditions of stability or otherwise of any economy. Fundamentally, the rule of law refers to the equality of all before the law such that the law and not the discretion of men rule all citizens of the country who are in turn expected to obey the law and live as it permits. Under military regimes, the head of state is synonymous with the law because whatever he pronounces as law stands. But the discretion of a man cannot be reasonably predicted since it is not checked by other constitutionally empowered counterbalancing forces. Furthermore, his/her capacity to single-handedly articulate programmes that will positively affect the conditions of the citizens is equally limited; the result is that such sole discretion cannot meaningfully support investment decisions which invariably need reasonable levels of certainty for long-term planning. Established and known set of rules for governing people in such a way that people's private property are adequately protected will invariably have strong influence on peoples' investment decisions and invariably promote productive investments and overall economic growth by orchestrating socio-political order. Generally, the attractiveness of a country as a place conducive enough for investment actually starts with the levels of secure private property rights and strong legal system which exists in that country. Investors are equally concerned

about the capacity of the legal system to enforce contracts, degree of official corruption etc. Accordingly, the respect for private property and life is in turn strongly built on the following three basic laws namely (a) stability of possessions (b) transfer by consent and (c) keeping of promises. These laws have consequently underscored the heights attained by the developed nations of the world. Barro (1998)² developed an index for measuring the rule of law on a scale of 0 to 6, and found that a country's growth rate increases by half a percentage point with each increment in this index which turns out to have the most explanatory power for economic growth and investment in all sampled economies. Similarly, Fraser Institute equally has an index which tracks the degree of freedom to do business and compete in the market place. The same countries that rank low in the rule of law also rank low in this index³. The rule of law creates stable background for freedom, and is fundamental to building institutions and ultimately the economy. Property rights protection which is in the heart of enterprise is meaningless without an effective rule of law which is the nexus between business and government who ought to be the traditional enforcer of these rules. Accordingly, it will be no exaggeration to say that the rule of law is perhaps the most essential property for achieving economic prosperity because it protects investments and ensures efficient workings of the market exchange system all which promote productivity. Absence of effective rule of law inhibits economic development because it displaces peaceful ways of resolving conflicts and to form institutions of trust, and security of property become illusory.

The rule of law regained its crescendo as a marching song when this present administration continued to confess by word of mouth its willingness to follow due process in the conduct of government business. While the preceding administration embarked on a severe fight against corruption which was marred by hypocrisy and poor adherence to its avowedly mouthed pursuit of due process, this administration wants to succeed by

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² Barro, Robert. (1998). 'Determinants of Economic Growth'. Cambridge, Mass.: MIT Press.

³ Ian Vasquez. (2002). 'Globalization and the Poor'. The Independent Review, v.VII, n.2, Fall 2002, ISSN 1086-1653, Pp. 197- 206.

upholding due process in its activities. So far, as many applauds as faux passes trail their activities and leads to the question as to whether there exist authentic prospects for genuine development since the rule of law is the most single potent determinant of economic prosperity?

A Country Destroyed by Dictatorial Discretion

Discretion supplants the rule of law which is propped and sustained by constitutional checks which the independence and counterbalancing pressure which the three arms of government provide. In the absence of constitutional governance, the discretion of one dictator forms the basis upon which governance runs. For up to four decades, the military has ruled Nigeria. But it is also a fact that any government that obtains power through force has in effect carried out a coup de tat against the rule of law. Thus the very first provision of the constitution demonstrates the unacceptability of coup d'etat which usually starts with the suspension of the constitution, basic rights and freedom of the people as well as the overthrow of the Supreme Court. On the other hand, the checks and balances arising from the trichotomy of powers among the executive, legislature and judiciary ensures and limits the exercise of the power of each arm within the defined ambit of the constitution so as to avoid any abuse of power. Each arm is therefore expected to enjoy constitutionally defined institutional autonomy.

Between 1960 and May 29, 1999 civilian regimes have effectively been in place for barely nine years (1960–1965 and 1979–1983). Military regimes were in charge for the rest of the period: January 1966 – July 1966 (General Aguiyi-Ironsi); July 1966–1975 (General Gowon); 1975–1979 (Generals Murtala and Obasanjo); 1984–1985 (General Buhari); 1985–1993 (General Babangida); 1993–1998 (General Abacha); 1998– May 1999 (General Abubakar), May 1999 – April 2007 (Olusegun Obasanjo). Under the military, the rule of law was jettisoned as dictatorial discretion reigned supreme. This eventually nurtured massive corruption, led to inappropriate policies and constant policy reversals which consequently marred the effectiveness of good policies. Aside this disadvantage, there are also uncertainties that characterize political processes built on immediate and short term imperatives which are implicated by such reversals. Obviously these reversals do little to generate and sustain investor confidence which is seriously needed for attracting the resources for long-term growth. Table 1 presents an idea of the scale of economic policy reversals that characterized part of that era.

Table 1: An Outline of the Financial Sector Reform in Nigeria

A. Exchange Rate

1986	Establishment of the first-tier and second-tier (autonomous) foreign exchange markets.
1988	Bureaux de change established.
1992	Devaluation of the official exchange rate.
1994	Reintroduction of exchange controls and suspension of bureaux de change.
1995	Exchange controls relaxed. Operation of bureaux de change permitted. Autonomous foreign exchange market introduced.
1996	Official fixed foreign exchange market operated for Government trans-actions Continued operation of the autonomous foreign exchange market.

B. Interest Rate and Monetary Policy

1987	Deregulation of interest rate
1989	Auction market for Government securities introduced. Continued use of direct monetary policy instruments (cash reserve requirements)
1990	Introduction of stabilization securities for liquidity management.
1991	Reintroduction of interest rate controls.
1992	Removal of interest rate controls. Liberalization of bank credit market.
1993	Introduction of indirect monetary instruments (open market operations)
1994	Re-imposition of interest controls. Review of Central Bank operations
1995	Continuation of interest controls Initiated fiscal reforms.
1996	Retention of interest controls Continuation of fiscal reforms

These spate of reversals galvanized weak and poor macroeconomic performance for several decades. That trend does not seem to have been eliminated even at present. Reversals in government economic policies jeopardized planning and gave fillip to other related anti-growth problems such as infrastructure deficiencies, poor security of lives and property, pervasive corruption and rent-seeking, poor access and high cost of finance, weak institutions, ill-defined property rights and abysmally poor enforcement of contracts.

It is correct however to assume that he who holds unreserved discretion to reverse established policies equally has power to unilaterally enunciate new economic policies no matter how good or bad such

policies may be. Since the levels of consultation are limited to those who are in the good books of the dictator, there were severe limitations on the robustness of formulated policies. The result is the formulation of barrages of inappropriate macroeconomic policies. An example can be made of the decision to adopt the structural adjustment programme on the advice of the IMF and the World Bank against the wishes of majority of the Nigerian people. Although the structural adjustment programme was a good idea in principle, sole discretionary authority and wisdom did not allow for enough consultations on how best to adapt the programmes to our peculiar circumstances for maximum benefits; it did not also give room for articulating conclusive and appropriate strategy for financing the programmes and for utilizing the gains that will flow from it. These benefits were consequently wasted thus turning what could have been made a good project into a source of great pain to many Nigerians. Another good example included the foreign exchange markets. The trial and error journey from SFEM to FEM and IFEM, severely affected macroeconomic stability; raising monetary aggregates and consequently inflation beyond targets, while purchasing power depleted, and inventory piled up. Savings and investment rates were not left out, and there was consequently poor growth. Much of the purported gains from SAP for instance were equally downed by the political transition programme of that era which cumulatively was very much akin to the 1979 political profligacy. It is therefore not difficult to understand part of what caused the underdevelopment of the country for many years. The country was perfectly besieged and held hostage by a tyrannical system of military leaders most of whom their core interest in seeking and retaining political power was to rape Nigeria of its oil. But has the transition to democracy changed the situation? This is debatable because even though democracy is associated with constitutional checks and balances, it does not guarantee the enthronement of the rule of law. The fourth republic although within democratic context was characterized by bouts of dictatorial discretion and raises the question of whether Nigeria practices a constitutional government.

Is there Constitutional Government in Nigeria?

Representative or constitutional government gives majority of the citizens - in line with the levels and degree of dispersion of power - a seeming equivalent of the power and authority which is enjoyed by dictators. That way everybody becomes a ruler through the constitution. Ideally, no man's rights and privileges are infringed upon. In summary therefore it bestows

legitimacy and authenticity to social, political and economic actions as laws are enforced within the frameworks of the constitution accepted by the citizens. This is the fulcrum of liberty: the propeller of development and growth. However, while this is wished by every country or socio-political setting it rarely manifests fully in reality because many forces are opposed to it. Constitutional government therefore requires that the authority of the executive and legislative arms of government be exercised within the confines defined by constitution and through appropriate institutional trajectories. Every country has a constitution but that does not make the government of the country a constitutional government. Likewise, Nigeria has a constitution, but does Nigeria truly have a constitutional government? Although experience has shown that constitutional government has never been fully achieved in full anywhere, but this varies in degrees across country and across regions as the case may be. The degree of success in achieving such government will in turn depend on the political space cornered by power seekers, ideological antagonists, special interests etc.

Abuse of office by various arms at various tiers of government has made the separation of powers in Nigeria ineffective and consequently impossible for the achievement of desired levels of constitutional government. For instance, because the military has held power for several years in executive capacities, acted on behalf of the legislature and consequently controlled the judiciary it appeared that the tradition got so entrenched that even under democracy, the executive arms dominates and often wants to control the legislature and has largely succeeded in many instances at buying up the judiciary and where it is impossible to do so, it totally disregarded its legal interpretations and verdicts. The legislature on its own has tried very much successfully at different times to encroach into the exclusive terrains of the executive such as in budget making as well as in encroaching into the terrain of the judiciary such as in trying to interpret the laws. One thing is very clear, the motivations behind the attempts to infringe on the independence and separate powers of the various arms by the other is fundamentally self-serving. This abuse of power is primarily one of the reasons why there is no appreciable degree of the conduct of rule of law in the country. When the legislative arm that is supposed to be making laws is busy trying to interpret laws already made in such a way as to enable its members who would have been severely penalized by such laws for their many wrong doings to escape to escape the hands of justice, it is obvious that we cannot achieve the goals of

constitutional government. But that is exactly what has dominated our political scene not only horizontally as with the arms of government but equally vertically in terms of the tiers of government. For instance, because of its might, the federal government had in the past made unconstitutional policies that adversely affected other tiers of government particularly in the area of fiscal federalism.

Two cases may suffice as examples from the previous administration. Although both cases are politically motivated one has its head pinned to revenue distribution. The first is the undemocratic and unconstitutional removal of the Plateau state Governor via the declaration of a state of emergency in that state. There was equally the case of the removal of the governor of Anambra state in similar circumstances. In May 2004, the executive governor of Plateau state was sacked by the President because he could not halt ethnic clashes in Plateau state. Yet clashes prevailed in several other states without anything close to emergency being mentioned. Another instance was the withholding of the Lagos state local government council funds by the Federal government against the judgment of the Supreme court which made it obvious that the federal government had no power to withhold allocation of funds to any tier of government. In general, the executive arm in the fourth republic took control of practically every arm of government in an unprecedented demonstration of political muscle flexing. Court rulings were not complied with while advice was not heeded and thus just as it is under the military; the constitution was partially set aside. In many instances, the president had deployed executive machinery, being in control of the police and other security agencies, to intimidate, harass and subjugate the federal legislators thereby cowing them into accepting his position in many instances.

Let us examine some aspects of the legislature's encroachment. So far the present regime seems unwilling to interfere with the workings of the national assembly albeit directly as was the case with the preceding regime. However, in some areas such as budgeting and probes, the legislature appears to have stepped aboard. The legislature rather than scrutinizing and recommending the scaling down of budgets as is conventional in most parts of the world would on the contrary just like the executive arm determine what further projects should be pursued and by how much the budget should be raised. The legislature in the last budget unilaterally injected into the budget certain programmes which the executive arm felt were not

consistent with its programmes for achieving macroeconomic stability and respective sector strategies. Funny or regrettably too, some of the recommended increases are done in order to settle their own pecuniary expectations. The increasing attempts by the legislature to take over the practice of budgeting rather than monitoring of its implementation have resulted in enormous delays in budgeting. Some analysts also described it as legislative lawlessness as the national assembly wants to start dictating to the executive arm how to run its programmes. Sometimes, previous years budget are not signed into law until up to five months into the fiscal year. Undue fight for supremacy and the glaring absence of coordination between the two arms of government for the same reasons has resulted in continued budget delays.

The role of the judiciary as an integral part of the governance system, as well as the guardian of the constitution is indispensable. It is the court judicial system that will ensure a Nigerian society where the constitution is obeyed: a society that is free of corruption and abuse of official privileges and authority. While in recent times this arm of government deserve some applause in the way they intervened in curbing the excesses of the previous administration, it is still important to draw attention to the fact that the judiciary is still affected by same rot which is making the executive and legislative arms function at less than optimally desired levels. According to Ajayi (2007)⁴ "there have been some concerns among Nigerians about the integrity of the Judiciary. In addition to allegations of corruption up to the Supreme Court, accusing of a Chief Justice of corruption, right to his face in 2005, it has been alleged also that Court paper works would disappear from the Court room without any trace. In such circumstances only God knows how the case would be determined since the Judge has to determine his judgment on the evidence before him....In some cases it has been alleged that Lawyers front for some Judges for cases in their courts. Is there any way by which a Judge would make a ruling based on the gift from the Government, the plaintiff or defendant through the lawyers to influence the case? Not too long ago 'a lawyer allegedly took a bribe of about N30 million from a Governor who was desperate to foil the impeachment process against him. The lawyer was believed to have delivered the said sum to a principal

⁴ Femi Ajayi.(2007). 'The Power to Destroy a Country Lies with the Judiciary: Nigerian Judiciary at a Crossroad'. NigerianWorld. April 4. <http://nigeriaworld.com/columnist/ajayi/040407.html>

character that was said to be in a position to twist the matter for the said governor”. The corruption sleaze which has equally tainted the judiciary is not only the challenge to its true independence and capacity to sustain constitutional governance. There are the other worrisome issues of the hijack of the judiciary by the executive arm. When executive governors arbitrarily remove or appoint judges contrary to constitutional provisions and such appointments or removals subsist, it all means that there is no authentic legislative independence. Okerefor⁵ (2006) wrote: “On 6th June 2007, the Oyo state Governor, Otunba Alao Akala reportedly sacked, the state’s Acting Chief Judge, Hon. Justice Olagoke Ige and immediately replaced him with Hon. Justice Afolabi Adeniran within the context of a widely perceived design to ensure the quashing of the governor’s indictment for corruption by an administrative panel set-up by the former administration. Though Justice Ige’s appointment as acting chief judge is said to have remained unconfirmed by the National Judicial Council (NJC) in line with constitutional dictates, Justice Ige was reportedly sacked for being indifferent to a similar application recently dismissed by another judge. A fresh application to quash the governor’s indictment is reportedly to be heard by the newly appointed acting chief judge, Hon. Justice Afolabi Adeniran....We are very concerned about the total subversion of the rule of law in the course of pursuing a political objective, the invidious interference with judicial independence and the politicization of judicial office and function, all of which is implicated in the instant choice of the new acting chief judge”. Furthermore, Mahmud Jega⁶ wrote: “The weeks leading up to emergency rule in Ekiti State had been Nigerians’ most tense, most anxious and most critical probably since the June 12 crisis of the early 1990s. In two short weeks, a state House of Assembly sacked a Chief Judge and ignored warnings from the Nigeria Bar Association, the Federal Attorney General and Minister of Justice and even the Chief Justice of Nigeria that it had no power to do so. Within those two weeks too, a state governor and his deputy were impeached by the House of Assembly in flagrant violation of constitutional procedure, two more governors were served with impeachment notices, another five were said to be about

to receive similar notices, 15 governors were set to appear before the Code of Conduct Tribunal for allegedly falsifying their declaration of assets, and a full 31 governors out of 36 were facing various probes by the increasingly arbitrary Economic and Financial Crimes Commission [EFCC]. In the wake of last May’s defeat of the infamous third term constitutional amendment bill, many pundits had predicted that the Presidency could throw the nation into a contrived turmoil in order to be able to declare a national state of emergency, abort next year’s scheduled elections and perpetuate its rule. Recent events indicate that the crisis hour has arrived”.

Respect for Private Property and Life

The primary mechanism through which the rule of law affects economic growth and development is through its impact on the system of private property. When people have rights over what belongs to them, they can trade on it. It is difficult for legitimate and lawful economic exchange to take place on properties for which those who possess them have no real right to transfer them. But this right starts with the right to ones life which is invariably the most fundamental property of any person. Once born, humans find themselves jealously and desperately guarding their lives from harm and death. The 1999 constitution of Nigeria - just like many other constitutions across countries in the world - recognizes these fundamental rights. Accordingly it stipulates that “every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria....Every citizen of Nigeria has the right to acquire and own immovable property anywhere in Nigeria.....No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law”. The question now is: to what extent are peoples fundamental rights to life and property protected in Nigeria? Which investor will gladly want to do business or invest in an environment where the right to his life and wealth generated by him are not fully protected and guaranteed?

The relegation of the rule of law to the background following long years of military rule in Nigeria equally brought about the neglect of the fundamental values of individual freedom and rights. Till date, people in uniform or flashing identity cards showing that they are uniformed persons wantonly and brazenly shirk their

⁵ Lloyd Okerefor. (2006). ‘Oyo State: Let the Judiciary Beware’. www.accesstojustice-ng.org/Oyo%20State%20Let%20the%20Judiciary%20Beware.doc -

⁶ Mahmud Jega (2006). ‘A Nation in Crisis’. Weekly Trust, October 22, 2006

pecuniary responsibilities such as paying toll charges, or meeting up with expected civic behaviour such as queuing up in some places or when the occasion calls for such etc. This unwarranted privilege is borne out of fear of uniformed persons who up till now have some unwritten license to rough-handle persons without being questioned. In extreme cases where they can easily escape justice, they can kill. Nigerian police history is replete with hundreds of cases of wanton extra-judicial killings of innocent persons for which the culprits also walk away unpunished from the arms of justice. The mal-handling of persons by military personnel and the police is quite common. Some recent celebrated cases of human rights abuses using the military and police include the massacre of MASSOB by security operatives in Anambra state, the massacre at Odi etc.

Akinfeleye (2008)⁷ speaking on the consequences of the government's failure to fund education properly said: "it appears to me that the government in Nigeria is not quite serious about education. They invest more in political violence. They invest more in political rigging. They invest more in hooliganism rather than investing on human development. Money that is supposed to be given to students to empower them to learn is used for vendetta".

The World human rights report for 2008 presented many cases of violation. Examples include the extrajudicial killings by the military, police, other security forces and militants operating in different parts of the country particularly the Niger Delta. According to Sun newspaper⁸: "Our sure source claims that security operatives, particularly soldiers, are involved in the spiraling kidnap business. It was gathered that the soldiers do not only provide logistic support to the gangs that perpetrate the heinous crime, they also ensure easy passage for them to their hideouts. The source maintained: 'The soldiers actually collaborate or conspire with the kidnapers. After accomplishing their mission, soldiers act as escorts in the escape vehicle. The essence is that when they get to police checkpoints, they are easily waved on because, naturally, the police have been completely fooled by the arrangement. You know, the police will not go out of their way to conduct a check of a vehicle carrying soldiers. So, that way, escape

becomes a fait accompli". The Inspector-General of police observed that in his first 100 days in office that about 1,700 armed robbers were arrested, while 785 were killed by the police. At the federal capital territory, the police embarked on shoot-on-sight operations. The report also estimated that more than two hundred lives were wasted in the build up to and after the 2007 general elections. It equally alluded to countless cases of intimidation particularly of the human rights apologetics and media-house employees, rape of women as well as the harassment and physical subjugation of political employees. At the Niger Delta, members of the Joint Task force harassed, killed and raped people under government's protection. And to complicate the cycle of instability, while the extra judicial killings and unjustified destruction of peoples homes and other properties subsisted, the militants kidnapped tens of oil workers and government personnel, their children, relatives as well as attacking many oil installations.

The political troubles created through the use of armed gangs and thugs by politicians are also commonplace and have received very little attention from government especially in bringing the politicians fingered in using these gangs to book. Government has been weak and consequently tolerated these violations. The general elections of 2007 were like battle grounds in many states, senatorial districts and local government areas. The quest for power made many politicians import tons of ammunitions which were freely used by thugs and various political gangs to intimidate the voting public into voting for their candidates. In some instances it involved the harassment of electoral officers into changing election results in favour of their candidates.

Furthermore, the many years of ruling Nigeria without the constitution has resulted in feelings of marginalization and consequent springing up of many groups in pursuit of self determination. The Western parts of Nigeria feels marginalized; so much as the people of the Niger Delta; so much as the people from eastern parts of Nigeria. The consequence is the growth of militancy across the country. Rebellion in itself is unconstitutional but has grown out of the conduct of governance through unconstitutional means. Thus in eastern parts of the country, there is the Movement for the Actualization of the sovereign State of Biafra (MASSOB). In the Western part of Nigeria are two militant groups namely the Odua Peoples Congress and the Odua Peoples Front. In the North are the military wing of the Arewa Peoples Congress, the Talibans and other small militant groups. There is also

⁷ Sunday Punch (Interview). Education Column. August 31st. P. 46.

⁸ Henry Umahi, Henry Chukwurah, Philip Nwosu (2008). 'Kidnap: The Military Connection'. Saturday Sun, August 30. <http://www.sunnewsonline.com/webpages/news/national/2008/aug/30/national-30-08-2008-001.htm>

the Movement for the Emancipation of the Niger Delta (MEND) as well as the Movement for the Survival of the Ogoni People (MOSOP) both of which are militant groups from the Niger Delta. All these groups are associated with varying degrees of destruction of property and lives. In the northern parts many of the groups have been involved in politically motivated religious riots and killings. The Niger Delta militants have been well known for hostage taking and deliberate vandalization of oil installations in the country.

We can actually go on and on as far as this subject is concerned. However, the message has been communicated with respect to how much lives and property are protected in the country. How government agencies are implicated and how these activities are tolerated. There is also the obvious consequences and manifestations which are visible in variants of insurgences. What will be the typical reaction of a potential foreign investor who reads about these unfortunate developments?

Stability of Possessions

Hume made it clear that social activities and practices come with problems particularly with respect to sharing of obviously scarce resources endowed by nature. Both the sharing and the ease of transfer from one person to another create social tensions. Thus possession assumes a social dimension in which members of the community may have to exercise control over others. The power of parents over children is the most obvious example. Within the family unit itself problems are generated by conflicts among children with regard to possessions. Thus parents establish rules to ensure the stability of possessions. So it comes as no surprise that when we move to larger social units, where we cannot count on limited benevolence, other formal mechanisms or artifices such as promise keeping must be employed to solve problems and resolve conflicts⁹. In addition to the stability of possessions are two other key factors which altogether confer the right to hold property, the liberty to deal with property as the owner pleases, and the right to have contracts performed. These are the transfer by consent and the keeping of promises which will be examined below within the context of the Nigerian system.

As already stated, the constitution of Nigeria is designed to guarantee fundamental rights on the citizens. Primary

⁹ Nicolas Cappaldi (1990). 'Hume's Account of Property'. Reason Papers. A Journal of Interdisciplinary Normative Studies. No. 15. Summer. P.55

in this right is that of life and property. Confiscation of personal possessions in Nigeria is largely with respect to land and mortgages in commercially juicy areas. At the federal capital territory for instance, the past regime demolished many buildings whose titles were legitimately acquired from the appropriate agency of government which had responsibility for issuing such land titles. Upon dispossession of such property, no pecuniary compensations were offered. In other instances, houses bid and won by some people were equally revoked. Many governments had also at various times revoked oil licences and blocks which were duly allocated to some persons who had earlier met the conditions for receiving those allocations. The power to indiscriminately dispossess those who have legally acquired property is a clear indication of instability in possessions. This act is rampant among many state governments in which the titles or certificates of occupancy on the land bought by perceived political enemies are withdrawn at will without the victim being able to get appropriate redress. This is because in many instances, these power-drunks who orchestrate the instability in possessions do not abide by court verdicts. Same undercurrents are behind the rebellion of ethnic groups such as those operating at the Niger Delta. The feeling is that they have been illegitimately dispossessed of their lawful property in return for nothing: no development. There is equally another variant of this notion in which the police itself can and do willfully dispossess persons of their property through threats and intimidations.

Keeping of Promises

Effectiveness of the rule of law must manifest in the keeping of promises or enforcement of contracts. That is the bit which gives most confidence to investors both locally and internationally. The fact that what is agreed is binding on parties involved and can be enforced with maximum objectivity and ease gives great confidence to investors as they can make and negotiate long-term plans and programmes without fear that unanticipated changes can alter those arrangements. There are many ways in which promises are made and kept but the most popular is through the judicial system. This is because those entering into contracts keep them aside the reasons of reputation and its consequential advantages but primarily for fear of lawsuits. Vital posers are: When a firm advertises a programme for which the public is expectant and equally made some levels of psychological and financial commitments, does the firm realize that it is some promise or contract that must be kept? When passengers' departure are delayed by airlines, do the airlines realize that it is a violation of

contracts and promises made to the customers at the point of purchase of air tickets? When government takes taxes or makes budget and promises to provide electricity for all within a four year period, does it realize that it is a contract or a promise that must be kept? We all know that in this country, keeping promises and enforcing contracts are at a zero level. Even private firms whose prosperity lies largely on the enforcement of contracts are major violators of this very important component of the rule of law.

Unlike in military regimes, the public have become much more disposed to the use of the court system for redress without fear of reprisals. Unfortunately however, the Nigerian judicial system as a key factor in the development of this country is yet to wake up to that reality. In 2005 for instance, the World Bank and IFC Doing Business publication out of one hundred and forty-five countries of the world which they sampled, ranked Nigeria the eight slowest country in terms of the enforcement of contract. In 2008 Nigeria is the one hundred and forty second. See table 2 below. According to the 2005 survey, contract enforcement required 23 procedures (39 procedure in 2008) and 730 days (now 457 days in 2008). But some of the reasons for this development are obvious. The Nigerian courts are bereft of necessary facilities for minimum levels of acceptable performance. Document processing is not computerized; judges and other workers within the system are poorly remunerated, funding for general operations of the system do not come as and at when due. The cumulative effect therefore is corrupt approach to cover the shortfalls.

Nature of Procedure	Indicator
Procedures (number)	39
Duration (days)	457
Filing and service	42
Trial and judgment	273
Enforcement of judgment	142
Cost (% of claim)*	32
Attorney cost (% of claim)	15
Court cost (% of claim)	12
Enforcement Cost (% of claim)	5
Source: World Bank/IFC Doing Business 2008	

With corruption ignominiously entrenched within the judicial system comes many other associated vices such

as the delay and consequent denial of justice. In a modern society, the speed with which cases are dispatched and contracts enforced are fundamental measures of actual and potential levels of economic prosperity because in their absence, there is virtually no market system. Consider this observation by the Nigerian Bar Association: “The new leadership of the Nigeria Bar Association (NBA) yesterday took a look at the Appeal Court and described the several conflicting decisions of the court on the same issue as regrettable and disturbing.... such conflicting decisions of the same court were pointers to the fact that the appellate court judges required constant training and retraining”¹⁰. Similarly, on 22nd January 2004, Daily Times of Nigeria reported that: “Four High Court Judges among them three former members of the Akwa Ibom State Governorship and Legislative Election Petition Tribunal have been suspended by the National Judicial Council (NJC) over alleged bribery and corruption and attempt to pervert the course of justice. They are Justice M. M. Adamu of Plateau State High Court, Justice B. T. Ahura of Benue State High Court and Justice A. M. Elelegwu of the Customary Court of Appeal, Delta State, who NJC said, were suspended following its findings on complaints of bribery and corruption against them. The fourth person, Justice Chris Senlong of the Federal High Court, Lagos, according to NJC, was suspended for his role in allegedly trying to influence the tribunal to give judgment in favour of a party in the Akwa Ibom State governorship election petition”. This news is of course distasteful and shows the extent of preparedness of our judiciary to be a true umpire in the enforcement of contracts. The starting point of the failure is the inability of the judiciary itself to keep its promise of delivering justice no matter the circumstances.

One good and recent demonstration of the level of our contract enforcement is the case between Virgin Nigeria and the federal government. A few weeks ago, the federal government ordered that Virgin Nigeria – Nigeria’s national air carrier – should move its operations to Murtala Muhammed Airport 2 (MMA2) within a week from where it operated at the international and domestic wings of the airport. From every indication, this was not part of the original deal between the federal government and Virgin Nigeria. “As a way of luring Virgin Atlantic into Nigeria, the government gave them the right to use the international

¹⁰ Kamarudeen Ogundele (2008). ‘NBA slams Appeal Court on conflicting judgment’. The Nation. Saturday, August 30. <http://www.thenationonlineng.com/dynamicpage.asp?id=60904>.

terminal as the base for all their flight operations (both international and domestic) in order to create a hub. The same government in order to lure the private sector into replacing the old burnt down domestic terminal gave the preferred bidder the right to be the sole operator for domestic terminals at MMIA. In order to help this company recoup their investment the government is forcing all domestic flights to use said terminal. In the case of Virgin it goes against the contract the same government signed that allows them use the international terminal for all their flight operations, domestic and international. The government basically bargained with a chip they already handed to someone else. Not only that, a monopoly has been created. Future expansion at the airport (for the next 36 years) as it relates to domestic services is now left to the hands of one private investor. This agreement would also bar aggressive airlines such as Virgin Nigeria or Arik who are aggressively expanding their footprint from building their own terminals as everyone must use the terminals provided by the owners of MMA2¹¹.

Any End to Violations of Rule of law in Nigeria?

Although democracy has not eliminated the violation of the rule of law, it has considerably minimized it. One of the big questions however revolves around the extent to which the current democracy has minimized the violations of the rule of law. Deducing from experiences with the recent democratic experience the question can be modified to reflect the seeming entrenchment of stiff-necked rejection of court judgments and usurpation of the roles of the judiciary and legislative arms by some principalities of the executive arm. An end to this will have much to do with zero tolerance to corruption. "Corruption renders codified law ineffective. By weakening property rights, corruption deprives investors of compensation for risk taking and increases uncertainty about potential investment payoffs. This decreases the incentive to invest, which in turn dampens economic growth"¹². But who will bail the cat now that sufficient evidence nails even the judiciary which should be the final hope of the common man.

Reform of the judiciary and the entire justice system is very key. This includes the reform of the police, and the

¹¹ Gboyega Apata. (2008) 'Re: Govt Orders Virgin Nigeria To Relocate to MM2'. Posted on August 11 to nbforum@yahoo.com Gboyega Apata (Gboyega@gmail.com).

¹² Jason Higbee and Frank A. Schmid (2004). 'Rule of Law and Economic Growth'. International Economic Trends. The Federal Reserve Bank of St. Louis. http://research.stlouisfed.org/publications/iet/20040801/cove_r.pdf

staff of the courts, the prisons and all stakeholders in the delivery of justice in Nigeria. Incidentally, recommending the appropriate approach to this reform is beyond the scope of this essay. What I will however like to emphasize is the role of civil society groups, think tanks and the media in this campaign. Why I think in terms of this route is because of the grievous compromise which we have been able to establish among the three tiers of government as well as on key agencies that have fundamental roles to play in the fight against corruption and the entrenchment of the rule of law.

The Nigerian media has been playing tremendous role in orchestrating needed reforms as well as in whistle blowing. This is very much expected because in many other countries such as in Indonesia, the corrupt practices of the government were brought into public domain by the media. The Nigerian media can be more investigative so as to be able to bring many underground issues militating against good governance in this country to the knowledge and awareness of majority of Nigerians. Even for entrepreneurial purposes, media that is able on a continuous basis to investigate and publish issues and cases that are seemingly un-exposable will definitely enjoy great patronage. Very much contrary to unjustifiable sensationalism, the media should play more actively in trying to publish authentic verifiable facts with respect to corruption and abuse of office irrespective of whose ox is gored. One major stumbling block in this respect is the reluctance of the national assembly to pass the freedom of information bill into law. This act holds the ace to good governance in Nigeria as it will enable the exposure of hitherto mysterious incidences which have been tucked away in some instances as state secrets which ought not be investigated. It will also give force and confidence to those who have facts that ought to be exposed but can not do so in the absence of an enabling act that permits such revelation. It is my belief that in addition to a reformed justice system, the freedom of information bill will further strengthen the capacity for the achievement of justice and the rule of law in Nigeria. With enormous evidence which can be provided through the enabling acts of freedom of information, the judiciary may have to slow down in the denial of justice through delays purportedly in search of evidence.

Here comes the role of civil society organizations and those in civic roles such as religious groups and business organizations and to some extent think tanks. Our civil society groups appear to have been bought over by

government or put another way are merely setups to attract the patronage of government. Since these operate largely as organizations that are umbilically tied to government for its survival, there is no way they can play more forceful roles in bringing about the much desired good governance. For our civil society groups to be effective, they ought to be financially independent of government so as not to be compromised in the pursuit of noble causes. For instance the media cannot fight for the freedom of information bill alone successfully. They will need the support of civil societies and organizations in civic roles to intensify the pressure on the legislature in order to make this a success. We look forward to the emergence of a new breed of civil society groups who reject or are not keen to partake in the old system of cronyism, nepotism and self-dealing, and who demand openness, fair competition and clean business. We equally look forward to the emergence of a vibrant print and electronic media, with enthusiasm for exposing official wrongdoing and corruption. Generally, the civil society should mobilize Nigerians to seek alternative remedy to the trial of those perceived corrupt ex-governors, as it is obvious that the Rule of Law concept can be a flexible tool to perpetuate corruption¹³. Here equally comes the role of think-tanks. The key role for think-tanks is to undertake independent analysis and generate new ideas on helping policymakers on how to solve problems of common interest such as the corruption cankerworm and the rule of law. Consequently, they provide public policy research, analysis and advice, are non-profit, and operate independently from governments and political parties. Few focused and well-organized think-tanks currently operate in Nigeria. More think-tanks that are vibrant with strong ideological bent need to manifest and help in charting courses with well-researched workable ideas which the civil society groups can equally run with. The involvement of the academia here is very important as they are in the best position to provide well-researched and analyzed alternatives to many of the problems. Well-researched and logically consistent argument for lifting Nigeria out of its current morass and which can be escalated in order to pressure the state into conforming to standards and implementation of programmes that is for the well-being of the majority of the Nigerian people is desperately needed.

I will stop here because I am already tired and feeling sleepy... dis story no dey end!

¹³ Che Oyimnatumba (2008). 'EFCC, Ribadu and The Civil Society Sympathy'. August 13. <http://www.whichwaynigeria.net/efcc-ribadu-civil-society-sympathy/>