LAW AS AN INSTRUMENT OF ECONOMIC GROWTH: THE NIGERIAN EXPERIENCE: BEING A SPEECH DELIVERED BY YUSUF ALI SAN LLM, FCI Arb; FSPSP, F.DRI, AT THE LEX FORA ANNUAL, DINNER AWARD NITE HELD AT THE NICON LUXURY HOTEL, ABUJA ON 6TH DECEMBER, 2012

INTRODUCTION:

I want to start by expressing my appreciation to the organisers of this program, for the confidence reposed in me by entrusting to me the responsibility of addressing this august audience made up of my learned colleagues on a topic as sensitive and relevant as this and at such a crucial time. Law and development is an interdisciplinary study of law and economic and social development. It examines the relation between law and development and analyzes how to use law as an instrument to promote economic development, democracy and human rights.[1]

The rule of law is usually thought of as a political or legal matter. However, in recent times, the rule of law has become important in economics too. Indeed, it has become the motherhood and apple pie of development economics. The rule of law is held to be not only good in itself, because it embodies and encourages a just society, but also a cause of other good things, notably growth. In fact Brian Tamanaha, a legal scholar at St John's University, New York, has stated that "No other single political ideal has ever achieved global endorsement".

The advancement of the rule of law at the national and international levels is essential for the realization of sustained economic growth, sustainable development, the eradication of poverty and hunger and the protection of all human rights and fundamental freedoms.

[1] http://en.wikipedia.org/wiki/Law_and_development

Gross domestic product per capita, adjusted for differences in purchasing power, varies widely among countries. In fact, a United Nations report shows that in 2001, real that is, purchasing-power adjusted) GDP per capita ranged between a high of 53,780 (Luxembourg) and a low of 470 (Sierra Leone), as measured in U.S. dollars. What explains these cross-country differences in real GDP per capita? Why are some countries wealthier than others?

Admittedly, there are large differences in countries' endowments with natural resources; however, an abundance of natural resources (or lack thereof) cannot fully explain the state of a country's economic development. Japan, for instance, has few natural resources. Yet, it is one of the richest countries in the world. A country's ability to accumulate physical and human capital, and the efficiency with which it turns its capital and natural resources into goods and services, seems to be a key factor. But what explains these cross-country differences in economic activity?

The essence of this paper, therefore, is to make a short treatise on the concept of the rule of law, examine what is meant by the term 'economic development', the nexus between rule of law and economic development and the impact of a weak rule of law on economic development. A further step will be taken to examine how economic development can be ensured through the law.

THE RULE OF LAW:
MEANING:
The Black's Law Dictionary, Sixth Edition, defines rule of law as:
"A legal principle of general application,
sanctioned by the recognition of authorities,
and usually expressed in the form of a
maxim or logical proposition called a 'rule'
because in doubtful or unforeseen cases it is
a guide or a norm for their decision. The rule

[2]United Nations Human Development Report 2003,http://hdr.undp.org/reports/global/2003.

of law, sometimes called the supremacy of the law provides that decisions should be made by the application of known principles of laws without the intervention of discretion in their application."

Simply put, Rule of Law connotes absolute predominance or supremacy of ***ordinary law of the land*** over all ***citizens,*** no matter how powerful. It is an ideal that appeals for unalloyed obedience to law and strict adherence to its stipulations.[3]

The Secretary-General of the United Nations defines the rule of law as:

"a principle of governance in which all person, institutions and entities, public and private, including the State itsel, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles o supermacy of law, equality before the law, accountability to the law, fairness in the application of the law, seperation of powers, participation in decision-making, legal ceretainty, avoidance of arbitrariness and procedural and legal transparency." [4]

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[3] See Oluwarotimi O. Akeredolu, "Rule of Law in Nigeria: Extant Profile and Challenges for the Bar, being the Keynote Address presented at the 2008 Biennial Law Week of the Nigerian Bar Association llorin branch held between 14t^{h} and 16t^{h} of May 2008.

[4]***What is the Rule of Low?***, United Nations Rule of Law.

Under the rule of law, rulers are subject to the law as ordinary citizens are. This idea is sometimes expressed through phrases such as "government subject to law" and "government bound by law."[5]

The term Rule of Law is made up of two important words viz; Rule and Law. It is desirable to consider the meaning of these words as espoused.

Rule: This connotes an accepted principle or instruction that states the way things are or should be done, and tells what is allowed and what is not allowed.

Law: This means a general rule, which states what always, happens when the same condition exists. It also means that which has been ordained with a view to regulating conduct and behaviour in the society. It has also been defined as a custom or practice recognized as binding by a community, especially as a result of having been so decreed by the governing authority.

HISTORICAL BACKGROUND:

The phrase Rule of Law' has been used since the 17th century, but the concept can be traced to ancient Greece. Aristotle put it this way:

'He who bid the law rule may be deemed to
bid God and Reason alone rule, but he who
bids man rule adds an element of the beast
... The law is reason unaffected by desire'

Plato and ***Aristotle*** imputed none of the liberal traditions adjunct to the concept such as democracy, individuality or equality but were solely concerned with the fact that a society needed a rational

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[5]Joseph flaz observes that such formulas would be tautological if they allowed us to say that any

governmental action conforms to the rule of law, for we distinguish governmental actions
from unlawful actions, actions going beyond government's legal capacities. (Raz 1979: 212) Accordingly, Raz writes that "government by law and not by men is not a tautology if 'law' means general, open, and relatively
stable law." (Raz 1979:203)

[6]The New Webster's Dictionary of the English Language, international Edition, P. 560

[7]For example, the Universal Declaration of Human Rights of 1948 declared that ***"It is essential if man is not to have recourse as a last resort, to rebellion against tyranny and oppression, that human rights inshould be protected by the Rule of Law."***

touchstone separate from the potential for populist tyranny as existed in early Athenian culture. Law was not even seen as an ideal but merely a substitute for the weaknesses of men, who could not handle the arbitration of rules in a rational manner. This sort of theme was very uniform in pre-enlightenment dialogues on the structures of the state, it is extremely difficult to grasp but the rule of law had nothing to do with fairness and egalitarianism as it does in modern society, it has purely to do with putting the sovereign of a society within a normative legal system. The reason for this was to guarantee a minimum of security for those in society. The prime example for this is Magna Carta, where the Barons were concerned with keeping their wealth and land and forced King John to agree to their demands.

However, around the beginning of the 18th century when scientific advances in western society led people to question the precepts of divine law and rule, was when we started to see the conception of the rule of law that was most commonly espoused by legal writers, judges and a vast majority of modern rulers. It is in this more modern conception where we see the various liberal and modernist agenda's take up the rule of law and attach to it various other meanings.

Positivistic dialogues talk about the rule of law in terms of their fears of discretionary abuse of power. They see the Rule of Law as providing constancy and reliability in a legal system. This is why the positivist places such an emphasis on the formal nature of law. HLA Hart gave the best definition of the rule of law in positivism when he stated:

'A legal system is a 'closed logical system' in which correct legal decisions can be deduced...from predetermined rules'

This is therefore separate from the rule of law in pre-enlightenment terms, as it deals with how law can achieve the liberal aim of

securing the autonomy of individual citizens to 'pursue our own good in our own way'. This is the classical liberal-positivist conception of the rule of law and the one that is most-oft attacked by dialogues in the latter half of the 20th century, it is typified most prominently by Hayek's work on Constitutional Law, that drew on early liberalist ideas as propounded by Locke and Montesquieu and clearly stated that the rule of law was in place to define legal liberty'.[8]

As earlier stated in this paper, although credit for popularizing the expression "the rule of law" in modern times is usually given to A. V. ***Dicey***,[9] development of the legal concept can be traced through history as far back as Ancient Greece. The rule of law is an ancient ideal, and was discussed by Ancient Greek philosophers such as Plato and Aristotle around 350 BC. Plato wrote:

'Where the law is subject to some other authority and has none of its own, the collapse of the state, in my view, is not far off; but if law is the master of the government and the government is its slave,

then the situation is full of promise and men enjoy all the blessings that the gods shower on a state.'[10]

Likewise, Aristotle endorsed the rule of law, writing that: "law should govern", and those in power should be servants of the laws.[11]

Cicero wrote:

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[8]Proclaiming the importance of the concept of the "rule of law" is just a modern form of unjustifiable idolatry.
Do you agree? http://www.law-essays-uk.com.

[9] Bingham Thomas The Rule of Low, page 3 (Penguin 2010).

[10]Cooper, John et al. *Complete Works By Plato*, page 1402 (Hackett Publishing, 1997).

[11] "Aristotle, Politics 3.16: "it is more proper that law should govem than any one of the citizens: upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians, and the servants of the laws."

"We are all servants of the laws in order that we may be free. "12
During the republic, controversial magistrates might be put on trial when their terms of office expired. Under the empire, the sovereign was personally immune (legibus solutus), but those with grievances could sue the treasury.
SCOPE OF THE RULE OF LAW:
The concept of the rule of law has been discussed by different scholars and organisations. As used by the World Justice Project a non-profit organization committed to advancing the rule of law around the world- the rule of law

refers to a rules-based system in which the following four universal principles are upheld:

1. The government and its officials and agents are accountable under the law;
2. . The laws are clear, publicized, stable, fair, and protect fundamental rights, including the security of persons and property;
3. The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient;
4. Access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives, and judicial officers who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.

A. ***V. Dicey*** popularized the phrase "rule of law" in 1885.13 Dicey emphasized three aspects of the rule of law:

(1) No one can be punished or made to suffer except for a breach of law proved in an ordinary court;

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[12] In Latin, Omnes legum servi sumus ut liberi esse possumus.

[13] Dicey, Albert. An Introduction to the Study of the Low of the Constitution (1885).

(2) No one is above the law and everyone is equal before the law regardless of social, economic, or political status; [14]and

(3) The rule of law includes the results of judicial decisions determining the rights of private persons.

In 1977, the influential political theorist Joseph Raz identified several principles that may be associated with the rule of law in some (but not all) societies. Raz's principles encompass the requirements of guiding the individual's behaviour and minimizing the danger that results from the exercise of discretionary power in an arbitrary fashion, and in this last respect he shares common ground with the constitutional theorists ***A. V. Dicey, Friedrich Hayek*** and ***E. P. Thompson.*** Some of ***Raz's*** principles are as follows:

- That law should be ***prospective*** rather than ***retroactive.***
- Laws should be stable and not changed too frequently, as lack of awareness of the law prevents one from being guided by it.
- There should be clear rules and procedures for making laws.
- The ***independence of the judiciary*** has to be guaranteed.
- The principles of ***natural justice*** should be observed,particularly those concerning the right to a ***fair hearing***.
- The courts should have the power of ***judicial review*** over the

way in which the other principles are implemented.

- The courts should be accessible; no man may be denied justice.
- The ***discretion*** of law enforcement and crime prevention

agencies should not be allowed to pervert the law.

According to ***Raz***, the validity of these principles depends upon the particular circumstances of different societies, whereas the rule of law generally is not to be confused with democracy, justice,

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[14]it is not in accordance with the sacred principles of the rule of law for a citizen to be sent to jail for stealing N50,000 while another citizen of the same country is found guilty of embezzling billions of naira but is negotiated to plead guilty in sexchange for freedom to keep half or more of the pilfered maney. This represents of the highest form of inequality, The situation in the country ought to be as encapsulated in the words of Lord Dening in Goutist: ***"Be ye ever so high, the lour is above thee".***

equality (before the law or otherwise), human rights of any kind or respect for persons or for the dignity of man". [15]

At least two principal conceptions of the rule of law can be identified: a formalist or "thin" and a substantive or "thick" definition of the rule of law. Formalist definitions of the rule of law do not make a judgment about the "justness" of law itself, but define specific procedural attributes that a legal framework must have in order to be in compliance with the rule of law. Substantive conceptions of the rule of law go beyond this and include certain substantive rights that are said to be based on, or derived from, the rule of law[16].

WHAT IS ECONOMIC DEVELOPMENT?

Economic Development is essentially improving the economic wellbeing of a community, through efforts focused on investment attraction and job creation leading to improvement in quality of life.

Economic development generally refers to the sustained, concerted actions of policymakers and communities that promote the standard of living and economic health of a specific area. Economic development can also be referred to as the quantitative and qualitative changes in the economy. Such actions can involve multiple areas including development of human capital, critical infrastructure, regional onal competitiveness, environmental sustainability, social inclusion, health, safety, literacy, and other initiatives.

Economic development differs from economic growth. Whereas economic development is a policy intervention endeavor with aims of economic and social well-being of people, economic growth is a phenomenon of market productivity and rise in GDP. Consequently,

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[15]Raz, Joseph. "The Rule of Law and It's Virtue", The Low Quarterly Review, volume 93, page 195 (1977); reprinted by Culver, Keith. *Reading in the Philosophy of Law*, page 13 (Broadview Press, 1999)

[16]Craig, Paul P. (1997). "Formal and substantive conceptions of the rule of law: an analytical framework". Public Law: 467

as economist Amartya Sen points out: "economic growth is one aspect of the process of economic development."[17]

HISTORY OF ECONOMIC DEVELOPMENT

Economic development originated in the post war period of reconstruction initiated by the US. During his 1949 inaugural speech President Harry Truman identified the development of undeveloped areas as a priority for the west:

"More than half the people of the world are living in conditions approaching misery. Their food is inadequate, they are victims of disease. Their economic life is primitive and stagnant. Their poverty is a handicap and a threat both to them and to more prosperous areas. For the first time in history humanity possesses the knowledge and the skill to relieve the suffering of these people... I believe that we should make available to peace-loving peoples the benefits of our store of technical knowledge in order to help them realize their aspirations for a better life... What we envisage is a program of development based on the concepts of democratic fair dealing... Greater production is the key to prosperity and peace. And the key to greater production is a wider and more vigorous application of modem scientific and technical knowledge"[18]

There have been several major phases of development theory since 1945. From the 1940s to the 1960s the state played a large role in promoting industrialization in developing countries, following the idea of modernization theory. This period was followed by a brief period of basic needs development focusing on human capital

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[17] Sen, A. (1983). Development, Which Way Now? Economic Journal, Vol. 93 Issue 372 Pp. 745-762

[18] pp.5. 150N 978-0-691-00102-9.

development and redistribution in the 1970s. Neo-liberalism emerged in the 1980s pushing an agenda of free trade and Import Substitution Industrialization (ISI), emphasizing comparative advantage. 19 More recently post-development theory has emerged to challenge the ideas of western-based development by arguing against reductionism, universalism, and euro centricity. Post- Development Theory is rooted in the experiences of Latin America, Africa, and India. [20]

HISTORY OF ECONOMIC DEVELOPMENT IN NIGERIA

The Nigerian economy has had a truncated history. In the period 1960-70, the Gross Domestic Product (GDP) recorded 3.1 per cent growth annually. During the oil boom era, roughly 1970-78, QDP grew positively by 6.2 per cent annually a remarkable growth. However, in the 1980s, GDP had negative growth rates. In the period 1988-1997 which constitutes the period of structural adjustment and economic liberalisation, the QDP responded to economic adjustment policies and grew at a positive rate of 4.0. In the years after independence, industry and manufacturing sectors had positive growth rates except for the period 1980-1988 where industry and manufacturing grew negatively by 3.2 per cent and - 2.9 per cent respectively. The growth of agriculture for the periods 1960-70 and 1970-78 was unsatisfactory. In the early 1960s, the agricultural sector suffered from low commodity prices while the oil boom contributed to the negative growth of agriculture in the 1970s. The boom in the oil sector lured labour away from the rural sector to urban centres.

The contribution of agriculture to GDP, which was 63 percent in 1960, declined to 34 per cent in 1988, not because the industrial sector increased its share but due to neglect of the agricultural sec tor. It was therefore not surprising that by 1975, the economy had

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[19]Kiely, R. (1999) The Last Refuge of the Noble Savage? A Critical Assessment of Post-Development Theary" European Journal Of Development Research 11 (3)

[20] Ahorro, Joseph "The Waves of Post-Development Theory and a Consideration of the Philippine". Retrieved 4 February 2012.

become a net importer of basic food items. The apparent increase in industry and manufacturing from 1978 to 1988, was due to activities in the mining sub-sector, especially petroleum. Capital formation in the economy has not been satisfactory, Gross domestic investment as a percentage of GDP, which was 16.3 per cent and 22.8 per cent in the periods 1965-73 and 1973-80 respectively, decreased to almost 14 per cent in 1980-88 and increased to 18.2 per cent in 1991-98. Gross National Saving has been low and consists mostly of public savings especially during the period 1973- 80. The current account balances before official transfers are negative for 1965-73,1980-88 and 1991-98.

The economy never experienced double-digit inflation during the 1960s. By 1976, however, the inflation rate stood at 23 per cent. It decreased to 11.8 per cent in 1979 and jumped to 41 percent and 72,8 per cent in 1989 and 1995, respectively. By 1998, the inflation rate had, however, reduced to 9.5 per cent from 29.0 per cent in 1996.[21]

THE NIGERIAN ECONOMY IN THE 21ST CENTURY

The challenges confronting the Nigerian economy in the 21 Century are diverse and enormous. The unacceptable state of Nigeria's economy is most galling given Nigeria's enormous endowments of natural and human resources. This is more so given the fact that Asian countries, such as Singapore and Malaysia, with similar colonial heritage and attributes attendant thereto, and similar natural resource endowments, have recorded significant successes in the development of their economies since 1965 when they were at par or even behind Nigeria.

Singapore, some 30 years later had a per capita income of some US $10,000; whilst that of Nigeria was US $300. Nigeria's economic decline, especially during the last 20 years is illustrated by the fact that per capita income, which was US $1000 in 1965 had declined

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[21]//www.onlinegaria.com/economics/

to US $300 by 1998. Within some 18 years, Nigeria had declined from being a low middle income country and amongst the fifty richest countries in the world to one of the 30 poorest.

Over the years the Nigerian economy has grown at an average of about 7 per cent, but it has been paper growth without favourable impact on the level of unemployment which is estimated to be about 29 percent of the working population [22].

The major causes of the decline in Nigeria's economic fortunes have been political instability and bad governance, most especially in the 1990s. Military rule in Nigeria, as has been the case in most other countries with prolonged military rule, led to economic and social stagnation and decline. Similarly, the advent of an elected government at the dawn of the 21st Century after almost three decades of military rule should afford Nigeria the opportunity to arrest the decline in her socio-economic development and embark on economic revival.[23]

THE RELATIONSHIP BETWEEN THE RULE OF LAW AND ECONOMIC DEVELOPMENT

It has been argued that countries adhering to common law generally have the strongest legal protection for investors, followed by countries adhering to civil law adopted from the German and Scandinavian legal traditions; countries rooted in French civil law offer the weakest legal protection. A notable difference between these two legal systems is that common law, which is of English origin, gives priority to jurisprudence over codified doctrine, while the opposite holds for civil law, which originates from ancient Rome. Legal systems that provide strong legal protection for investors have permitted the development of sophisticated financial markets, which enhances the economy's ability to bear risk. This ability to spread risk over a multitude of investors is critical for entrepreneurship and economic development.

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[22] 3 per cent unemployment is the accepted norm in developed countries.

[23] BJSt Matthew Danial http://www.onlinenigeria.com/economics/?blurb-498

The under listed have been identified as the core causal mechanisms through which the rule of law has been associated with economic growth.

- Security of property and
- Enforcement of contract;
- Checks on government; and
- Checks on corruption.

Security of property

For the early contract theorists, but most notably for Hobbes, the state of nature was characterized by continuing and ongoing threats to personal security as well as property. The rule of law meant, in the first instance, the provision of security. There is a deep logic in this view; it makes little sense to talk about security of property or the integrity of contract if the economic agents engaging in these activities are themselves not secure.[24]

Unfortunately, the breakdown of central authority and the emergence of civil conflict and criminality are very much with us. Civil conflict not only destroys infrastructure, private property and life directly, but diverts resources from the provision of public goods and productive private activity into violence. Even in the absence of full-blown civil war or state failure, societies may still suffer from their inability to provide personal security. A growing concern is the effect of crime of various sorts on the course of economic development. [25]

Enforcement of Contract

The link from property rights to economic development runs through the incentives individuals have to invest and trade when such rights are secure. The capacity to contract is equally fundamental. Some trade can take place in the form of barter or

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[24]Narayan at a 2000, Mark et al. 2000, Bellon 2005

[25] Ares 1998 B & Moren 1999

"spot" exchanges but more complex inter-temporal transactions require the ability to make and receive promises about future actions. This is particularly true of financial transactions, which from a legal point of view are primarily contracts; not surprisingly, a major strand of the law and economic development literature has dealt with financial development. [26]

A number of studies have found that more robust property rights protection is associated with better long-run economic performance. [27]

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. [28]

There are also unwritten rules that allow economic agents to trust one another. Trust is critical where matters are too complex to be written into law or where enforcing these laws is too costly. In fact, many contracts in the business world are implicit (and, hence, not enforceable) rather than explicit. Yet, the contracting parties abide by these implied agreements because reputation is valuable. In a recent speech about corporate governance and financial market malfeasance, Federal Reserve Chairman Alan Greenspan argued that trust and reputation were so valuable to 19th century bankers and companies that the penalties for breaking this trust were severe enough to make economic commerce, to a large extent, self- regulating.[29]

Checks on Government

An important theoretical contribution to the debate on the rule of law and economic development has come from the joining of

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[26]La Porta et al 1998, jankov et al. 2002

[27] Knack & Keefer 1995, Scully 1988 Barm 1997, Claque et al. 1906, 1990, Zak & Knack 3001&ack 2002: Keefer 2007, Ason 2008.

[29] Rule of Law and Economic Growth International Econumls Trends August 2004. http://research.atlouisfed.org/publications/let/20040801 Alan Greenspas

(2004) "Capitalizing Reputation," http://www.federalreserve.gov/boarddocs/speeches/2004/20080456/ellhom

arguments about property rights and contracting to the long standing tradition about the significance of institutional checks and balances. Legal scholars have also associated the rule of law with restraints on the state, including through an independent judiciary.[30]

Institutional checks and balances are economically important because governments not only have the power to renege on their commitments but powerful incentives to do so. Given these incentives, the rule of law cannot be credible, and the purported gains from property rights and enforcement of contract not fully realized, unless there are effective limits on executive discretion.

Sovereigns can choose either to respect citizens' rights or to transgress them. In making this choice, the ruler faces two constraints. The first is economic. For economic growth to occur the sovereign or government must not merely establish the relevant set of rights, but make credible commitments to them. This constraint alone can provide incentives for autocrats to exercise restraint and provide public goods, since the autocrat's own returns, in the form of taxes, will rise accordingly.[31]

Sovereigns must also consider political constraints on the exercise of their discretion. Although citizens face coordination challenges, they can ultimately rise up and attempt to dispose of the sovereign. Even autocrats make institutional, legal, and policy concessions to guard against this threat.
I will like to conclude this sub-head with a quotation from page 8 of the November 5, 2012 Edition of the TELL Magazine on the attitude of the Government to the Rule of Law:

'We are thus concerned, indeed alarmed, at the increasing observance in the breach of court orders and the lack of respect for agreements willingly entered into by

[30] Hayek 1978, Dicey 1982, Cass 2001
[31]1993, McGaire & Olson 1996.

the government. In the past, the country has suffered from violated agreement such as the much-needed metro line project of the Lateef Jakande civilian government in Lagos State, Ajaokuta Steel Company revival project, and many of the public-Private Projects in the energy and oil and gas sectors.'

Checks on Corruption

The principle of equal treatment and procedural fairness seems central to our conception of the rule of law: whatever law exists should be consistently applied across similar cases and not be vulnerable to bias introduced as a result of corruption.

There are a number of plausible channels through which the violation of the norm of procedural fairness through corruption can have an adverse effect on economic activity. First, if individuals cannot be confident of equal treatment by the judicial system, then the courts cease to be a dependable institution for dispute resolution, Parties are forced back on the costly alternative of private enforcement, and investment and trade suffer accordingly. Second, rent-seeking and corruption raise costs for producers and consumers by diverting resources into the rent-seeking process. Third and most importantly, corruption and rent-seeking introduce policy distortions that constitute barriers to long-run growth: monopolies, restrictions on entry, protectionism, misallocation of government spending, and private expropriation of assets through managerial malfeasance. [32]

THE NEGATIVE EFFECTS ASSOCIATED WITH WEAK RULE OF LAW THAT CAN ADVERSELY IMPACT ECONOMIC DEVELOPMENT

Though the factors that may affect and hinder business development are multi-fold, there is no denying that the private sector is most vulnerable in countries with a weak rule of law;

[32]Kreuger 1974, Bhagat 1982, Sefer & 1998

➤ There is often widespread corruption at all levels of government and among private entrepreneurs themselves, which generates substantial additional costs for businesses and can therefore become a serious financial burden;

➤ Business leaders must grapple with unpredictable or ever- changing laws and regulations and may also find it particularly hard to develop their activity;

➤ Likewise, an ineffective or corrupt judicial system failing to rule fairly, objectively and in a timely fashion on business disputes can directly jeopardize the viability of the private sector[33]

MEANS OF ENSURING ECONOMIC DEVELOPMENT THROUGH THE LAW

1. ***Certainty of Regulations:*** Legal certainty is a principle in national and international law which holds that the law must provide those subject to it with the ability to regulate their conduct. Legal certainty is internationally recognised as a central requirement for the rule of law. Many agree that there is a place for, and a need for, effective regulations that help protect the environment, ensure workplace and consumer safety, and enhance our security. But when not crafted carefully, regulations can impose significant burdens, and significant costs, on the regulated community. The cumulative effect of multiple regulations can be to stifle economic growth and kill jobs. Regulations have an impact on companies of all sizes, but well-established data show that regulation imposes a disproportionate impact on small- and medium-sized businesses.

The Regulators should clarify what constitutes a breach of regulations especially new ones. Uncertainty of laws might produce very different interpretations by individual economic

[33] http://www.wjp-fisrum.org/2011/content/economic development-business-growth-and-rule-law

inspectors on a business-to-business basis. Certainty of law. being one of the indices of the rule of law, it would be inappropriate for authorities to make laws that are prone to breach as a result of lack of clarity. Granted that we need effective laws governing our economy and for these laws to be monitored, however, a situation where breaches are being analysed in anything other than a standardised way is not acceptable.

2. ***Conducive Operating Environment:*** An environment conducive to the creation and growth or transformation of enterprises on a sustainable basis is one that combines the legitimate quest for profit one of the key drivers of economie growth with the need for development that respects human dignity, environmental sustainability and decent work. [34]

The International Labour Organisation supports governments, employers' and workers' organizations to establish policies and regulations which contribute to an environment conducive to the creation and growth of sustainable enterprises, including cooperatives, by:

I. developing information resources, methodologies to support enterprises improving productivity as well as compliance with labour standards;
II. providing guidance on ways that policies and regulations can support improved working conditions, enabling business environment, and the formalization of economic units; an
III. gathering and disseminating information on the relationship between policies responding to cross- cutting social issues, such as gender and the need to empower women, and the development of sustainable enterprises;

[34]Conclusions concerning the Promotion of Sustainable Enterprise Development International Labour
Conference 2007

iv. providing support to employers' and workers organizations to expand their representational hase, improve their capacity to analyse the dynamics of their business and labour environment, and influence public policies;
v. Providing technical assistance to support start-ups, micro- and small and medium-sized enterprises to become sustainable through, for example, upgrading regional and global value chains and clusters. [35]
3. ***Certainty of Dispute Resolution:*** An improved investment climate is essential to economic growth and the eradication of poverty. The nature of the legal system is a key factor in assessing the country's investment climate. Foreign businesses as well as local investors are concerned about the legal environment in which they will be operating. An investor is concerned about the security of the investment and the possible effects or impact of disputes. An investor wants to be assured that the available dispute resolution mechanism in the investor country is effective. Is it readily available? Is it affordable? Is it transparent, stable and predictable and would any eventual award or judgment be enforced without delay?[36]

Conflicts are inevitable in business relationships. Foreign investors are however reluctant to submit to the courts of investor countries. Concerns are raised about the independence of the judiciary, the delays associated with judicial proceedings, unfamiliarity with the local law, and anxiety on how to relate within an unfamiliar legal system and culture. Concerns could also arise on the effect of the doctrine of sovereign immunity particularly as in most developing

[35]http://www.ilo.org/empent/areas/conducive m/index.hom ment-for-sustainable enterprise including compulang- [36]ARBITRATION AND ALTERNATIVE DISPUTE RESOLUTION AS INSTRUMENTS FOR ECONOMIC REFORM BY ADEDOYIN RHODES VIVOUR (MRS LLB, LLM, MA, (London) FCArb Chartered Arbitrator

countries a large proportion of the larger contracts would be with the states either directly or indirectly.[37] Consequently Arbitration and Alternative Dispute Resolution mechanisms have grown to be the preferred means of international dispute resolution. Any country serious about its reform process must strive to bring the law and practice pertaining to same in line with international standards.

The availability of alternative means of dispute resolution other than litigation before an investor country court encourages foreign direct investment. Quite apart from the role in attracting foreign direct investment arbitration and alternative means of dispute resolution encourage and sustain high levels of local private sector led investment. The procedures expand the options for dispute settlement and promote healthy competition capable of provoking improvements The procedures attract invisible earnings that are quite valuable. An improvement in the current legal framework and practice of arbitration and alternative dispute resolution in our beloved country offers the possibility and hope of a new economic order. [38]

CONCLUSION

In this paper, we have looked at the link between the rule of law and economic development, how legal certainty and efficiency and a conducive operating environment can contribute to corporate stability and lead to economic development and how to guarantee expeditious adjudication of business cases on the national and international levels, among others.

[37]See AA Asouzl, International Commercial Arbitration and African States (Cambridge University London 1999) Chapter 7-ICSID Arbitration and

Cornicillation: The African Experience. See also Yves Derains, "Soverign Immunity and Financial obligations" (2000) Business Law International issue No. 3. 141. Delaume, "Sovereign Immunity and Transnational arbitration" (1987) 3 Arbitration international 28 at 43. See also A G. Rhodes Visour, "Sovereign Immunity and Arbitral Proceedings" (2003) Journal of the Nigerian Branch CIArb Vol.1 No 4

[38] Ibid

Business in the 21st century is a quintessentially global activity thus a globalized economy calls for a "global rule of law". Mechanisms of the law must be put in place to ensure that businesses, too, abide by the law and make a positive contribution to their communities, especially when it comes to the enforcement of human rights standards.

The paper has also tried to highlight and underscore the danger that the cancer of corruption, especially the hydra headed type of corruption that our nation faces, to the attainment of a regime of true rule of law and the attendant negative consequences on the economic well being of the nation and her people. For Nigeria, if we can reduce corruption by 70 percent, this country will become an economic eldorado.

The issues discussed in this paper, I believe, suffice to demonstrate the importance of strengthening the rule of law in order to build a more favourable business environment and, ultimately, help our nation to prosper. As business continues to globalize, special attention must also be paid to international business laws and regulations, as well as to the different international business dispute resolution mechanisms that have recently emerged.

Lastly, while this paper has focused primarily on the role of the rule of law in spurring economic development and business growth, it may also be appropriate to end by stating the importance of the role of businesses as an

important social actor, which can in turn be held responsible for upholding and reinforcing certain standards, in particular with respect to human rights.

Thank you for listening.