

## IMPACT OF THE JUDICIARY ON THE NIGERIAN SOCIAL AND ECONOMIC DEVELOPMENT<sup>1</sup>

### *Abstract*

*There is universal agreement that judiciary has and is playing a role in realm of social and economic development as an independent arbiter particularly in the enforcement of rights. Consequently, creating accountable and impartial court systems that will be responsive to public needs is not enough but must also be efficient and accurate to ensure government is responsive to its constitutional obligations, secure property rights, reduce uncertainty, and promote social and economic development. Incidentally, in this new democracy, Nigeria has extends the areas of economic and social development to creative applications of the law. This is because economic and social development depends on an effective legislation and judicial system. Against this background, this article attempts to discuss linkage and impact of judicial experience in economic development.*

**Keywords:** *Judiciary, Democracy, Arbiter, Right, Socio-economic, Rule of Law*

### **1. Introduction**

Modern nation-state functions through a set of institutions. The legislature, the judiciary, the executive apparatus such as bureaucracy and the police, and the formal structures of union –state relations as well as the electoral system are the set of institutions constituted by the idea of constitutionalism.<sup>2</sup> Their arrangements, dependencies and inter-dependencies are directly shaped by the meta-politico-legal document- i.e., Constitution. However, in the Nigerian scheme of governance, judiciary has consistently remained independent and strong, safeguarding the interests of the citizens by not allowing the other organs to go beyond the Constitution. It acts, as checker against legislative and executive arbitrariness and unconstitutional conduct. Without prejudice to recent allegation of corruption against the judiciary, it still enjoys confidence of Nigerian citizen as the last hope for citizen to ventilate violation of their rights. As final arbiter resolution of disputes and interpreting constitutional/statute, the judiciary<sup>3</sup> is in fact the guardian and conscience keeper of the normative values that are ‘authoritatively allocated by the state.’ This has places the judiciary in pre-eminent position in the scheme of governance.

The judiciary is the branch of government that deals with interpretation of a nation’s laws, resolution of legal conflicts, and judgments for violations of the law and is composed of judges and courts.<sup>4</sup> It thus not out place to concede that this adjudicatory stratum of government remain indispensable and deliberately kept independent of internal and external interference even from the legislative body, which has the constitutional power to create amend or abolish laws and the executive who implement the laws as part of democratic arrangement. This explains why judiciary has a role to play in social and economic development of Nigeria and against the background of which this write up posits to explore.<sup>5</sup> Arguably, while laws are enacted or established by a constitution or other similar documents created to regulate and provide for governance, the

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<sup>2</sup> Bruce Achermen, *The New Separation of Powers* (2002) Harvard Law Review

<sup>3</sup> A. O. Popoola, *Enforcing the Principle of Separation of Powers: A Review of the 1999 Constitution*, (2000) Seminar paper presented at International Commission of Jurists, Legal Research Institute and Resource Development Centre, Abuja

<sup>4</sup>S. L. David, ‘A Theory of Judicial Power and Judicial Review’ (2009), 97, *The George Town Law Journal*

<sup>5</sup> *ibid*

judiciary is responsible to determine if these laws and implementations are, in fact, true to the intent of the constitution. For this reason, judges must be extremely well versed in the laws of the nation.

Social and economic development of Nigeria as obtainable in developed and developing countries cannot be propelled without effective developmental programme, efficient agencies to drive it as well as enabling environment for all to participate. Laws and policies must be such that provide reasonable benefits for investments, attract local and foreign investors in the economy, especially from agreements made with others. Therefore, in exploring the determinants of a country's socio-economic development's performance, it is critical to understand which mechanisms fostered expectations among investors and among those making agreements. This view shows that economic development demands a legal order offering stable and predictable rights in business transactions and effective judicial system to ventilate disputes arising thereto. It is my considered opinion that development of robust justice system is essential to changes which allow broader scope for different types of social-economic agents, economic activities, and supportive activities, stimulating the investors' interest in the economy. In essence, the relationship between judiciary and socio-economic development can be described as bidirectional – a co-evolutionary process.

The author's argument is that judicial interaction with economic sectors generally sets the stage for an examination of its role within spheres of socio-economic activities i.e. property rights, agreements to trade in goods and services, and corporate governance and the obligations of government under chapter II of the Nigerian constitution 1999. The questions then are; does the judicial interaction with socio-economic development ensure that individual rights are secure? At what stage or matter in transactions is the judiciary relevant? Or the rights of citizen under chapter II of the constitution are enforceable? To this end the paper explicates the importance of judiciary in connection with individual rights in business transaction, enforcement of contractual agreement and enforcing government compliance and implementation of its obligations under chapter II of the Constitution. It is instructive to note that socio-economic rights do not form part of the enumerated rights stipulated in Bill of Rights in most written constitutions around the world. Interestingly however, the global commitment to international and regional treaties on transnational trades as well as protocols on Human Rights have moved to a wider recognition that both sets of rights (civil and political rights and social and economic rights) are inextricably linked.<sup>6</sup> The goal being the efforts geared by nations to provide access and to achieve all human rights civil, cultural, economic, political and social rights for all people. Thus, access to business, entrepreneurial activities, to food, basic education, health care, shelter and employment are as critical to human freedom and development.<sup>7</sup> Against this background, the paper also explores the complex relationship between socio-economic development and human rights. It is clearly on this underline fact that human rights are not, as may be contended, a reward for socio-economic development but critical to achieving it.

This is especially in connection with the freedom to participate in the economy and protection against abuse and disagreement arising from any contractual relations. It is only when socio-economic and political freedoms for all men and women to participate equally in society are achieved that people can genuinely take advantage of economic freedoms. In this vein the most important step towards economic development requires commitment to international and regional treaties on economic freedom by generating the kind of economic and social growth that assure equal participation and realization.

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<sup>6</sup>C. Sunstein, 'Against Positive Rights: Why Social and Economic Rights Don't Belong in the New Constitutions of Post-Communist Europe', 2, 1, (1993), *East European Constitutional Review*, pp. 35-38

<sup>7</sup>C. O'Conneide., 'A Modest Proposal: Destitution, State Responsibility and the European Convention on Human Rights', 5 (2008), *European Human Rights Law Review*, pp. 583-605

## 2. Judicial Role in Social Economic Developmental System

Economic and social development is not propelled or constraint merely because a country is contending with political instability, corruption, insecurity such as, ethnic violence, militia (Niger Delta), insurgency (Boko Haram), Cattle Rustlers and or Fulani Herdsmen and farmer clashes across the country or the absence of any form of war as being experience in Nigeria, but rather the presence of rule of law as well as efficient justice system propelled by an independent judicial institution in society. Instructively, the significance of the judicial role in the modern Nigeria democracy towards ensuring peace, social and economic development as well as political stability perhaps more than ever cannot be overemphasised.<sup>8</sup> Invariably, the extension of robust justice system reflects the dynamism in the advancements of economic and social development in the world today.

Be that as it may, the notion of interdependence of socio-economic development of a nation with the judiciary is not new. This can be underscored from the development in the European Union particularly with the launch of Network of Judicial Councils which is a natural outgrowth of that effort of the union. Consequently, this notion of interdependence is not new at the World Bank which sees a link between the judiciary, and more broadly the rule of law, and socio-economic development.<sup>9</sup> Irrespective of the above propositions socio-economic development does not merely represent government ability or disability to directly or indirectly stimulate social and economic development through provision of employment to the teeming unemployed youths, provide accessible and affordable healthcare, ensure peace and security provide good roads, balance of payments. However, it is more about the rule of law with existence of an effective and efficient independent judiciary to enforcement government compliance for the achievement of these essential socio-economic indices of development. In event the interconnectivity of judiciary and economic development will transcend:

1. Judicial responsibility that ensures transparency, fairness and predictability in decision;
2. Judicial synergy in creating an enabling environment where contract and contractual relationships are enforceable, thus promoting business;
3. Government efforts that ensures there is peace and security; personal safety, protection of property as well propriety right and an independent judiciary that safeguard them
4. Create free and equal access to justice without fear of favouritism or undue external influence; that means concrete ways to invoke judicial remedy that protect individual rights.

The contention here is that if government is under constitutional obligation to fulfill socio-economy development rights of citizens, provide enabling environment for investor (national and international), then there should be in turn a need for the observance of the rule of law and independent judicial to sanction violations. From a cursory view of the Nigeria current financial crisis (recession), it could be fathomed that a positive economic situation sometimes masks the need to upgrade substantive laws to avoid weakening legal institutions. This is particularly relevant in view of the devastating effect of corruption on the Nigeria polity and government efforts to combat the menace appearing to be unattainable. Arguably, despite the Nigerian acclaimed progress so far experienced in economic development since 2015, the country still find itself in series of crisis that are antithesis to economic and social development. Though many have pointed accusing finger on the failure of the last government (2011-2015), especial the level corruption that permeate every facet of the country polity, insecurity and the lack of the rule of law as the main causes. It is not a gainsaying therefore that promoting rule of law and effective administration of justice becomes more incumbent for socio-economic development. This is due to the fact that financial crisis in Nigeria as a biggest economy in Africa, has spell financial problems in many others African countries. Arguably, when one view the impact globalization generally, it may be contended that put the country's economic and social

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<sup>8</sup> O. E. Wahab, *The Place of Judiciary in Sustenance of Democracy*; in H. A. Saliu, (ed) *Democracy and Development in Nigeria* (John Archers Publishers Limited, Ibadan, 2006)

<sup>9</sup> N. Jheelan, 'the Enforceability of Socio-economic Rights', (2007), 2, *European HLR*, 146 – 157

development in proper pedestrian, then the quest for rule of law and a transparent judicial system becomes absolutely paramount.

The above proposition is grounded on the fact that as the rules governing globalization continues to unfold and spurred economic development; its benefits have been uneven, affecting different segments of society.<sup>10</sup> There are still more than one billion people Nigeria who live abject poverty. The poor continue to lack legal rights that empower them to take advantage of opportunities and provide them with security against arbitrary and inequitable treatment. Discriminatory or arbitrarily enforced laws deprive people of their individual and property rights, raise barriers to justice and keep the vulnerable, less privilege and poor people poorer. Against this background the author posited that an effective judiciary is critical and on this basis the role expected of the judiciary in achieving stable and robust economic and social paradigm of development in Nigeria constitute the fulcrum of this investigation. As regionalism and globalization continues, and it will continue, there will be more and more harmonization of laws and judiciaries. There is also an increased need for greater cooperation among judiciaries (especially courts of coordinate jurisdiction) whether it is for arrest warrants or enforcement of judgments. As interdependence grows so does the need for greater exchange whether it is on judicial training, standards of quality, or case management systems. In this new world of the law where its reach extends to areas of economic and social development and more, as countries come across profound and creative applications for the law, so socio-economic development depends on an effective legal and judicial system.

### **3. Judicial Enforcement of Contractual Propriety Right for Socio-Economic Development**

An effective judiciary is generally considered to be a key factor that contributes to social and economic development, but the theory underlying this proposition is however ambiguous. Arguably, however, measuring the impact of judiciary on social and economic development may not be as easy because it is not within the prerogative of the judiciary to plan budget, appropriate fund for development and or executed budget. In general, the idea that judicial independence facilitates economic growth can be underscored for instance from its role in enforcement contracts and protection property rights. In this perspective encourage the investment that is crucial for socio-economic development. Even economic growth often starts without a strong courts system, and efforts to improve the quality of the judiciary are often the consequence, rather than the cause, of economic development. Independence is, of course, only one aspect of a judicial system though it is relatively easy to measure other indices of court quality. It thus serves as a rough proxy for the quality of legal infrastructure. Be that as it may there is some evidence that judicial independence is associated with social and economic development, but that evidence is mixed and causation is unclear. For example economic development requires many kinds of investment, time and effort because growth is impossible if people are unwilling to work hard. Similarly investment in human capital is also essential, because an educated, skilled population is a prerequisite to the production of all but the most basic goods and services. In the most general sense, investment means spending now in return for future gain and social and economic development requires sacrifice today for the sake of tomorrow. Without investment, there can be no social and economic development. This investment most often comes from both domestic sources and foreign investment playing an important role and investment will only occur if investors are confident that they will profit. Thus, investment is undermined if the government or a private party expropriates the investment or the profits or relationship-specific investments are undermined if the purchaser does not pay. In this paradigm a constitutional guaranteed and powerful judicial system will reduce the risk of expropriation, prevents the government from seizing property without compensation, reinforces the confidence of investors and in turn promote social and economic development. The courts through its power of dispute settlement process and inherent interpretative power contribute to the economic development of

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<sup>10</sup> L. Stewart, 'Adjudicating Socio-Economic Rights Under a Transformative Constitution', (2010), 28(3), *Penn State International LR*, 489-491

Nigeria by putting gloss on the bare text of the contractual obligations between individual, corporation or even government.

#### 4. Judicial Enforcement of Chapter II of the Constitution

An important feature of the Nigerian judicial system is that of an institution turning the law into socio-economic reality. However they remain weak and have low status in the political system. This proposition can be underscored from the section 6 (6) (c) of the Nigerian Constitution which renders chapter II thereto non-justiceable. The section of the Nigerian Constitution which excludes the judicial power of review, as it explicitly provides that;

The judicial powers vested in accordance with the provision of this section shall not, except otherwise provided by this Constitution, extend to any issues or questions as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in chapter II of this Constitution.<sup>11</sup>

Very often, government and its agencies may abdicate their roles with respect to the implementation of chapter II, but it has been argued that even judicial enforcement may be ignored with impunity. Notwithstanding courts remains not a source of overarching authority, but simply one bureaucracy among many. Courts have their own particular sphere of competence and jurisdiction, but it cannot be assumed that any particular law contemplates court involvement in case of violation, or that court involvement would be effective even if contemplated. The application of this principle to the court system illustrates vividly the relative importance of the courts in the economic, social political structure of Nigeria. Socio-economic rights do not form part of the enumerated rights stipulated in Bill of Rights in most written constitutions around the world. However, the global commitment to international and regional treaties and protocols on Human Rights have moved to a wider recognition that both sets of rights (civil and political rights and social and economic rights) are inextricably linked. The goal being the efforts geared by nations to provide access and to achieve all human rights civil, cultural, economic, political and social rights for all people. Thus, access to food, basic education, health care, shelter and employment are as critical to human freedom as political and civil rights are.

The quest for socio-economic rights as legally enforceable right has an evident of political colorations. The enforceability of the rights could provide the judicial arm of government with enhanced powers, proving a potential threat to and instigate the legislative and executive commitments.<sup>12</sup> The question then is what is or are the argument against the justiciability of social and economic rights? The most famous point of reference is Article 4 of the ICESCR, which provides that parties may, in certain circumstances, limit some rights enshrined in the Covenant. However, such limitations must be determined by law, compatible with the nature of the rights included in the Convention and imposed to promote the general welfare in a democratic society.<sup>13</sup> In the same paradigm, in keeping with article 2(1) of ICESCR, countries that are parties to the covenant are obliged to undertake steps, in accordance with the maximum available resources within their reach to progressively achieve the full realization of the rights contained in the ICESCR.

Today rights enumerated in core of the covenants and conventions on civil, political, economic, social and cultural rights have each been ratified by few countries globally. Notwithstanding, the growth in global interdependence of countries supporting a new era of complex political and economic interactions, coupled with the rise of powerful new actors opening new opportunities for commitment to social and economic rights.<sup>14</sup> It may be argued that for proper implementation and commitment of countries to this right there must be a more visionary institutional building, the laws and enabling economic environment to secure fundamental freedoms for all human rights and for all people in universally. Individuals, governments, non-governmental organizations (NGOs), corporations, policymakers and multilateral organizations have a role to play in transforming the potential of global resources and the promise of technology knowhow and

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<sup>11</sup> See section 6(6) (c) of the Nigerian Constitution 1999; see also Article 111 of the Zambian Constitution.

<sup>12</sup>D. Landau, 'The Reality of Social Rights Enforcement', (2012), 53(1), *Harvard International Law Journal*, 408-411,

<sup>13</sup> *ibid*

<sup>14</sup>J. King, 'Constitutional Rights and Social Welfare: A Comment on the Canadian Chaoulli Health Care Decision', 69, 4, (2006) *Modern Law Review*, pp. 631-643.

networking into social arrangements that must truly promote fundamental freedoms everywhere, rather than just pay lip service to them.<sup>15</sup> South Africa, since ending apartheid, has put human rights at the core of its development strategy, with the government establishing one of the world's most forward-looking structures of rights.<sup>16</sup> In India, the world's largest democracy, the Supreme Court has insisted on the rights of all citizens to free education and basic health care.<sup>17</sup>

It is this paper's argument that the judiciary must be proactive in order to contribute to social economic development of Nigeria. This is supported by the position of Supreme Court in the case of *Attorney-General of Ondo State v Attorney-General of the Federation*,<sup>18</sup> per Uwaifo JSC held that:

The foregoing sections (12, 13, and 14 of the 1999 Constitution) does not only impose a solemn duty to observe the mandate contained in Chapter two on all organs of government and all authorities and persons exercising legislative, executive or judicial powers, but also on private individuals as well. The court rejected the argument that the section applies only to government officials and held that the argument "does not take account of the undeniable fact that those organs do not operate entirely within their official cocoons. They do not, in performance of their duties act in isolation of the public."<sup>19</sup>

It is therefore argued that judicial activism and public interest litigation in this paradigm may contribute to socio-economic development. This is achievable both directly and indirectly under through legislation as can be seen form some countries constitution and the direct way which can be distilled from the Nigerian Constitution in section 12 thereof and the case of *Abacha v Fawehinmi*<sup>20</sup> which affirmed the domestication of the African Charter on Human and Peoples' Rights as part of the Nigerian Law. In the Namibian Constitution Article 144 provides<sup>21</sup> that: Unless otherwise provided for by this Constitution or Act of Parliament, the general rules of public international law and international agreements binding upon Namibia under this Constitution shall form part of the law of Namibia.<sup>22</sup> Applying these constitutional provisions to the enforceability of social and economic rights means that the judicial intervention in promoting and protecting individual rights under the Covenant as ratified by Parliament/National Assembly can be achieved. This is because it has become part of the corpus of law of the countries. This presupposes that the provisos and entitlements of the ICESCR have direct and immediate application within the countries legal systems, thereby enabling individuals to seek enforcement of their internationally recognised ESC rights in their courts.

Notwithstanding the different conceptions of judicial activism this paper argues in favour of judicial function in promoting, protecting and enforcing social economic development policies by providing a liberal and purposeful interpretation that achieve:

- i. Equal opportunity for citizen to ventilate disputes arising from business transaction and laws regulating same

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<sup>15</sup>S. Liebenberg, *The Protection of Economic and Social Rights in Domestic Legal Systems*, A. Eide,, C. Krause,, and R. Alan, (eds.), *Economic, Social and Cultural Rights: A Textbook*, 2<sup>nd</sup> ed. Martinus Nijhoff, 2001

<sup>16</sup>C. Scott and M. Patrick, 'Constitutional Ropes of Sand or Justiciable Guarantees: Social Rights in a New South African Constitution', 141, 1, (1992), *University of Pennsylvania Law Review*, pp. 1-148. The approach employed by the South African Constitutional Court on the concept of reasonableness though under criticism, as being subjective, deferent and inadequate, has been transplanted into a minimalistic judicial concept, perfectly harmonised with the separation of powers and polycentricism; it appears to be a more sensible long-term solution.

<sup>17</sup>Justice Bhagwati, P., 'Judicial Activism and Public Interest Litigation', 23, (1984-1985), *Columbia Journal of Transnational Law*, pp. 561-578

<sup>18</sup>(2009) 9 NWLR (pt 772) 222 at p. 381

<sup>19</sup>Ibid, emphasis mine

<sup>20</sup>*Abacha v Fawehinmi* (2002) 2 NSCQR 489 at 549,

<sup>21</sup>Namibia ratifies the IESC rights and it entered into force for Namibia on 28 February 1995.

<sup>22</sup>For example, in *Kuaesa v Minister of Home Affairs & Others*, Case No A 125/94, unreported, pp 78-9 the court held that the African Charter on Human and Peoples' Rights had become binding on Namibia and formed part of the law of Namibia and, therefore, had to be given effect in Namibia. See generally Liebenberg, S., *The Protection of Economic, Social and Cultural Rights in Domestic Legal Systems*. (2001), *The Hague: Global Law International*, pp 57-78

- ii. Encouragement of the executive and legislative to take proper action within the constitutional limits to promote, protect and enforce socio-economic and comply with international and regional covenant on the rights;
- iii. The extension of the constitutionally enumerated human rights in the constitution for promotion, protection and enforcement of socio-economic rights; and
- iv. The liberal and purposeful interpretation to Bill of Rights in a manner consistent with the spirit and intent of the maker and promote, protect and enforce socio-economic rights.
- v. The provision of enabling environment to citizen for ventilation of the violation of socio-economic rights reading into or providing the linkage between civil and political rights with socio-economic rights rather than rejecting the rights merely on the ground of justiciability.

### **5. How can the Courts Contribute to Social and Economic Development?**

It an established fact that the clear definitive enforcement rights either in commerce (economic sphere) or promoting the enforceability of socio-economic rights are important elements in development. The experience in economies demonstrates that secure rights play an major role in developmental policies generally especially, market economies. Arguably well-articulated legislations and regulations are sufficient for promotion and protection rights without an institution that will enforce those rights and settle disputes, and forum for such dispute resolution is the judicial system. Consequently a well-functioning judicial system is essential for social and economic growth. Following this perspective though judicial independence is non-negotiable and truly judges need to be protected from unnecessary interference disputes must be resolved and decisions must be rendered in a timely manner if they are to provide and promote development. Therefore, a judicial system must not only be impartial but:

1. There must be the existence of the rule of law that provides stability which undoubtedly encourages investment from internal and external sources because there is the expectation that the investor will be protected by an independent judiciary applying laws that ensure fairness.
2. Equally, the very existence of the rule of law should provide every citizen with an expectation of fairness that potentially fuels his belief in lasting self-betterment through education, work, wealth and liberty that cannot unfairly be taken away.
3. In the broadest sense, the existence of the rule of law should provide the vital reassurance and motivation needed by individuals, businesses and investors to stimulate economic growth. Judicial intervention will curb the possibility of an arbitrary invasion of by government on citizens' right. Thus the court must provide room for a safe and fair access for redress.

Therefore, to maintain/sustain public confidence and promote investment in the economy, judiciary must not only be fair and impartial in administering justice, but also in the resolution of disputes. More so in judicial adjudication of cases, the importance of court timely dispensation of justice is significant both for accountability and also on accuracy.

### **6. Conclusion**

Laws alone cannot guarantee economic development there is need for institutions to support the legal process needed as is a culture of social norms and ethics to reinforce the legal structures, not threaten them. An enabling environment for social economic development is essential, too. Many groups in society, as well as governments, can strengthen all economic arrangements. Therefore, recognition under the law lends legal weight to the moral imperative of social and economic development and mobilized the legal system for enforcement. Unless people's claim to equal treatment in business environment is legally recognized and enforced, they cannot demand a remedy against breach of agreement and or discrimination as to right to engage in economic activities. The rule of law is both a condition and a consequence of social development. The law cannot stand still, obvious areas such as regulation of the internet and the management of financial institutions must keep pace with social development if a country is to continue to grow. In facilitating growth politicians and other decision-makers need to appreciate that the rule of law including an independent judiciary is for the benefit of, and to protect, both business and the community. The rule of law is, and will continue to be, the social and economic backbone of every society. A backbone that enables countries to fully evolve, and irrespective of size, stand shoulder to shoulder when it comes to the international collaboration needed to fuel economic growth.