THE IMPERATIVENESS OF RULE OF LAW IN SUSTAINING BUSINESS ENVIRONMENT IN NIGERIA

BY

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ABSTRACT

One of the most shared and cherished value in the history of civilization is adherence to the rule of law. Global and continental bodies as well as the Federal Government of Nigeria have over the years made commitments to the enforcement of the rule of law in order to create a more orderly society and enabling business environment among others. However, the rule of law seems to have eluded our national live just as the increasing challenge of creating a sustainable business environment in Nigeria. This paper sought to examine the significance of the relationship between adherence to the rule of law and creation of sustainable business environment in Nigeria for the period 2000-2015. The research design was content analysis of secondary data from the Mo Ibrahim Foundation. The data was presented in tables and analysed using averages and percentages as well as the Pearson Correlation Coefficient to test the hypothesis. The study revealed a fair adherence to the rule of law but established a very poor business environment in Nigeria. The result of the hypothesis tested indicated that there exist a positive but very weak relationship between adherence to the rule of law and sustainable business environment in Nigeria. This means that though, the country experienced a fair adherence to the rule of law, this could not be translated to improving the business environment. The paper recommends for greater judicial independence to facilitate efficient and effective judicial processes and enforcement of property rights. Others include greater commitment to streamlining customs and procurement processes to avoid delays and increasing cost of doing business in Nigeria. The study suggests for further empirical research on the effect of insecurity and infrastructural development on sustainable business environment in Nigeria.

Keywords; *Rule of law, sustainable business environment, social contract theory.*

1.1 Introduction

One of the most shared and cherished value in the history of civilization is adherence to the rule of law. This shared value has since ancient time been propounded as a theory by A.V. Dicey in 1625. In response to this global and national governments have made concerted efforts aimed at enforcing the rule of law as provided by Resolution 66/102 of the United Nations General Assembly in 2012. Specifically, the Constitution of the Federal Republic of Nigeria 1999 in Section 13 provides that it shall be the duty and responsibility of all organs of government and of all authorities and persons exercising legislative, executive or judicial powers, to conform, observe and apply the provisions of the constitution. Section 17(2a), provides that 'every citizen shall have equality of rights,

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obligations and opportunities before the law'.[1] Similarly, Section 7(2b) states that "the sanctity of human person shall be maintained and enhanced". In addition, Section 17(2e) provides that "the independence, impartiality and integrity of courts of law and easy accessibility thereto shall be secured and maintained". The economic objectives of the state in section 16 provides that the state shall protect the right of every citizen to engage in business activities by creating an enabling environment. Thus, as Ali explains that rule of law is expected to provide a life that is nice, beneficial and safe, or disregard it and experience a life that is nasty, brutish and short.[2]

Klausen observes that although, ever since Adam Smith and Karl Max wrote their groundbreaking Classics that is, the Wealth of Nation and Das Kapital respectively, scholars have been debating the relative importance of the state and the market, the role of the state in creating an enabling environment has however, never been doubted.[3] Towards this end, the Federal Government of Nigeria in her National Economic Empowerment and Development Strategy (NEEDS) has as part of its policy thrust to increase the level of security of lives and property, reduce uncertainty and improve the level of confidence that the average Nigerian and investors have on the economy. Other areas of concern were reform of the justice system, enhancing access to justice and promotion and protection of human rights in Nigeria. The NEEDS also reiterates commitment to creating sustainable economic environment, maintaining security, ensuring macro-economic stability, fighting corruption, enhancing the quality of infrastructure, strengthening institutions, financial systems and market regulation.[4]

In spite of the commitments and reform efforts in Nigeria, there seems to be much concern about the exercise of the rule of law. Ali decried the high incidences of executive lawlessness, selective justice dispensation, increase in official corruption, poverty and reduction in life span of Nigerians.[5] Amnesty International,[6] Opkaga, Chigioke & Innocent[7] and Shehu[8] assert that personal safety and national security also

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[1] Section 13, 16 & 17 (2a, b & e) Constitution of the Federal Republic of Nigeria, 1999

[2] Ali, Y.O. Rules of Law in Nigeria, Extend, Profile and Challenges for the Bar. A Discussion of the Keynote Address delivered at the Biennial La Week of Nigerian Bar Association Ilorin Branch on 14th May, 2008.

[3] Klausen, K.K. Public Administration, New PA, NPM, NPG: What's in a Name in Tor Busch, Alexander Hechinger, Erak Johnsen, Kurt Klaud, Klausen, Alex Murdock and Jan, Ole Vanebo (eds) *Public Management in the Twenty-first century: Trends, Ideas and Practices*. Oslo, Norway Universietsforlaget, 2013 pp.46-56

[4] National Planning Commission, *Nigeria, National Economic Empowerment and Development Strategy*, Abuja, 2004

[5] Ali, Y.O. Rule of Law, Governance and Sectoral Development in Nigeria; A Paper Delivered at the Great Ife Alumni Association 21st Biennial Convocation Lecture at Great Oduduwa Hall, OAU, Ife, May, 2014

[6] Amnesty International, Nigeria; Loss of life, Insecurity and Impunity in Run-up to Nigeria's Election, 2011 Report

[7] Okpaga, A., Chijioke, U.S. and Innocent E.M., (2012) Activities of Boko-Hara and Insecurity Question in Nigeria. *Arabian Journal of Business Management Review 77*.

remain issues of public concern in Nigeria. While Akinwale, Nigeria is still suffering from infrastructural deficits especially in terms of roads and power supply.[9] The International Bank for Reconstruction and Development in their business report indicates the existence of cumbersome procedures in starting business and as high as 77.7% cost of income per capita. The report also indicates that processing construction permit takes an average of 350 days, eighteen procedures and a cost of 580% of income per capita though cheaper in the Northern part of Nigeria with only an average of seventy four days and a cost of 514%. The report also revealed that registering property in Nigeria is one of the most difficult worldwide as it requires an average of twelve procedures, eighty two days and cost 16% of property value. The report also indicates that enforcing contract takes an average of 551 days, cost 36.3% of the claim to resolve a common dispute through the courts.[10] The research question is; is there any significant relationship between adherence to the rule of law and sustainable business environment in Nigeria?

It is the objective of this study are to ascertain the level of adherence to the rule of law and the creation of sustainable business environment in Nigeria. The study also seeks to examined the significance of the relationship between adherence to the rule of law and creation of sustainable business environment in Nigeria for the period 2000-2015. The hypothesis postulated for the study states that; there is no significant relationship between adherence to the rule of law and creation of sustainable business environment in Nigeria.

1.2 Literature Review

1.2.1 The Rule of Law: Igwe observe that although, the concept of the rule of law has a universal appeal, it is however, an elusive concept. From the Dicean perspective, the rule of law connotes absolute supremacy of regular law as opposed to influence of arbitrary power. It also means equality before the law and that law governing the people must be just and equitable.[11]

Akanbi and Shehu, simply defined the concept as the absolute supremacy of ordinary law of the land over all citizens no matter how powerful. It is also an ideal that appeals for unalloyed obedience to law and strict adherence to it stipulations.[12] Golub identified four perspectives to the rule of law. These are that; "... the government itself is bound by law; every person in society is treated equally under the law; the human dignity

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[8] Shehu, A. Corruption and Conflict in Nigeria: Implications for Peace, Security and National Development, Presented at the Third Public Lectures of the Institute of Peace and Conflict Resolution at the Ministry of Foreign Affair, Abuja-Nigeria, November, 2011

[9] Akinwale, A.A. (2010) The Menace of Inadequate Infrastructure in Nigeria, *African Journal of Science, Technology* Vol.2, No.3, p.207

[10] International Bank for Reconstruction and Development, *Doing Business in Nigeria; Comparing Regulations in 36 States, Abuja FCT and 183 Economies,* Washington DC 20433, 2010

[11] Igwe, J.U.K., (2010) *Rules of Law, Democracy and Administration of justice in Nigeria: Financial Sector Reforms, Public Administration and Rule of Law in Nigeria,* Law Development Research Publications and Consulting Limited, Lagos, p.245

[12] Akanbi, M.M. and Shehu, A.T. (2012), Rule of Law in Nigeria, *Journal of Law, Policy and Globalization,* Vol.2, No.3, p.1

of each individual is recognized and protected; and justice is assessable to all"[13] these are different from Dicey's three perspectives of the rules of law.

While asserting that, there is no one sentence definition of the concept of the rule of law. Akomolede and Akomolede, operationally defines the rule of law to mean; supremacy of the law, equality before the law, separation of powers, respect for fundamental human rights and observance of due process.[14] This definition thus assumes that a system of government without separation of powers as in the case of Great Britain is not adhering to the rule of law. Similarly Stein identified the following as ideal characteristics of a society governed by the rule of law thus; the law is superior to all members of the society; the law is known and predictable and that the members of society have the right to participate in making and amending laws that regulate their behaviour. Others include that; the law is just and protects the rights and dignity of all in the society; and that judicial power is exercised independently of the other arms of government.[15] Akomolede and Akomolede reiterating the view of Mowoe summarises the rule of law to mean; supremacy of written law made by the lawmakers; certainty and regularity of law; and the absence of arbitrary powers of government. Others include; equality before the law, administration of the law by ordinary courts of the land; and the enforcement of some minimum rights. It is for this reason that rule of law is seen as a moral imperative and a principle of governance in which all persons, institutions and entities including the state itself are accountable to laws that are popularly promulgated, equally enforced and independently adjudicated consistent with international norms and standards.[16]

These definitions indicate prominence of supremacy of the law, equality before the law and the protection of the rights of the people by the ordinary courts of the land. The issue of separation or fusion of powers as an element of the rule of law and whether the laws were written or not differs from the nature of a country's constitution as the comparative study of the United States of America and the Great Britain.[17]

However, in relation to this study, the indicators of rule of law are; the extent of judicial processes and protection of property rights. Others include the degree to which constitutional mechanisms are clearly established for the orderly transfer of power from one government to the next and imposition of sanctions in conformity with the law on a state and/or governmental and/or non-governmental actors. This is similar to Berg and Desai's so called narrow view of the concept as a means of ordering society including citizen-state relations, systems of rule and regulations, the norms that infuse them and the

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[13] Golub, S., Beyond the Rule of Law orthodoxy, The Legal Empowerment Alternative, Carnage Endowment for International Peace Working Paper Number 41, 2003 October

[14] Akomolede, I.T., and Akomolede, O.B. (2012) Good Governance, Rule of Law and Constitutionalism in Nigeria, *European Journal of Business and Social Sciences,* Vol.1, No.6, p.69

[15] Stein, R. (2009) Rules of Law Symposium, Rules of Law: What it Mean, *Minnesota Journal of International Law,* Vol.18, p.293

[16] Akomolede, I.T., and Akomolede, O.B. (2012), Op.cit, p.14

[17] Principe, M.L. (2000) Albert Venn Dicey and the Principle of the Rule of: Is the Law Blind? A Comparative Analysis of the United States and Great Britain, *Loyola of Los Angeles International and Comparative Review,* Vol.6m p.356

means of adjudicating and enforcing them. The scholars however, recognized the cultural relativity of the rule of law.[18]

1.3 Sustainable Business Environment

Business environment comprise of internal and external factors that influence business operations. These are factors that are capable of either impeding or facilitating business activities in a country. It consist of such factors as improvements in technology, maintenance of law and order, provision of basic infrastructure, security of lives and property, competition, demographics and social-cultural factors.[19]

The International Bank for Reconstruction and Development "Doing Business in Nigeria Report" identified factors capable of affecting business which can be likened to business environment. These include procurement, security, macro-economic stability, and investment climate, corruption skills capacity of the population and strength of institutions. Others are quality of infrastructure, market regulations and strength of financial institutions.[20]

It is important to assert that the maintenance of law, security of lives and property, provision of infrastructure, market regulations, investment, climate, macro-economic situation and strength of institutions among others are capable of affecting the successes of business on a sustainable basis. However, the indicators of sustainable business environment as applied in this study are; investment climate, competition, bureaucracy and red-tape, customs procedures, soundness of banks and employment creation.[21] The investment climate entails the degree of economic freedom based on the level of investment capital. Competition is the degree of business regulation, the level of market based competition and the quality of the competitive bidding processes. Bureaucracy comprises the extent of delay and complexity in obtaining the appropriate documents or registration procedures to engage in business activities such as construction permits, registering property and enforcing contracts. Custom procedures have to do with the level of efficiency of customs procedures relating to the entry and exit of merchandise.

1.4 Review of Empirical Studies

Study on the relationship between the rule of law and economic performance in Africa by Kilishi, Yakubu and Yaru. The study used only democratic stability as the

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[18] Berg, L.A. and Desai, D. (2013) Background Paper; Overview of the Rule of Law and Sustainable Development for the Global Dialogue on the Rule of Law and the Past 2015 Agenda

[19] Eruemegbe, G.O., (2015) Impact of Business on Organization Performance in Nigeria, Study of Union Bank of Nigeria, *European Scientific Journal, 478,* See also Muyiwa, (2013) The Impact of Business Environment on Entrepreneurship Performance in Nigeria, *Computing Information System's Development Information and Applied Sciences, Vol.4, p.59.* See also Olarewaju, A.A. (2012) Impact of External Business Environment on Business Performance in Food and Beverages Industry, *British Journal of Arts and Social Sciences, Vol.82, p.194*

[20] International Bank for Reconstruction and Development, *Doing Business in Nigeria; Comparing Regulations in 36 States, Abuja FCT and 183 Economies,* Washington DC 20433, 2010

[21] Mo Ibrahim Foundation, *Ibrahim Index of African Governance; Summary Report,* September 2016 www.moibrahimfoundation.org

indicator of rule of law. It also used income level, net school enrolment and investment and share of the GDP as proxies for economic performance. The study used secondary data and tested the hypothesis using the Pearson Pair-wise Correlation Coefficient. The study revealed a weak correlation between human capital development (school enrolment), rule of law and investment. Though, the study was empirical and used secondary data, it perceived the rule of law in a narrower perspective.[22]

In descriptive presentation entitled; rule of law, governance and sectorial development in Nigeria, asserted that adherence to the rule of law enhances development in many dimensions. These include; creation of enabling environment, citizen trust, social and economic justice, preventing mitigating and punishing conflict, crime and violence, strengthening accountability and checks on power and reducing corruption. Others include enhancing fair allocation of services and protecting the environment and natural resources.[23] However, the presentation was merely descriptive and not empirical.

Berg and Desai saw Rule of Law as the Basis for Development, Equity and Inclusion in Kenya. Their study revealed that adherence to rule of law reduces conflict, crimes and violence which could result to high cost of doing business, drags on competition and reduces profit margins as study of Central America indicated. In addition, the study also revealed that enforcement of the rule of law facilitates equitable allocation of services as experienced in Brazil in the last decade where individuals and groups enjoyed greater medical treatment.[24]

1.5 Theoretical Framework

The theoretical framework for this study is the theory of social contract. The major proponents of the theory are Hobbes, Rousseau and Rawls.[25] The theory posits that the state is in contract with citizens with an obligation to maintain law and order, protect lives, provide security, basic infrastructure and create enabling environment for citizens to engage in business activities. The citizens in turn owe certain duties to the state. The terms of the contract are contained in Chapter II, Section 13-24 as Fundamental Objectives and Directive Principles of State Policy as provided by the Constitution of the Federal Republic of Nigeria 1999.[26]

In relation to this study, the Nigerian state is expected through the government to ensure adherence to the rule of law by ensuring judicial independence, efficient and effective judicial processes and protection of property rights. Other obligations of the government include ensuring constitutional transfer of powers and enforcement of sanctions. These obligations when met are expected to boost investment climate,

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[22] Kilishi, A.A., Yakubu, T.A., and Yaru, A.M. (2014) Rules of Law and Economic Performance in Africa, *Sokoto Journal of Social Sciences, Vol.4, p.74*

[23] Ali, Rules of Law, Governance and Sectorial Development in Nigeria. A Paper Presented at Great Ife Alumni Association 21st Biennial Convocation Lecture at Great Oduduwa Hall, OAU, Ife, May, 2014

[24] Berg, L.A. and Desai, D. (2013), Op.cit, p.18

[25] Hoffman, J. and Graham, P. (2009) Introduction to Political Theory, 2nd edition, Pearson Publishing Limited.

[26] Constitution, Federal Republic of Nigeria 1999

competition and reduce delays and complexities in obtaining appropriate authorisations. Other expected benefits of the rule of law include efficient procurement processes, sound financial system and creation of jobs.

1.6 Methodology

The research design for this study is content analysis of secondary data as published by the Mo Ibrahim Foundation from 2000-2015. The Mo Ibrahim Foundation is the most afro-centric non-governmental organization that is committed to making data freely available on the quality of governance in Africa for research purpose. The organization is also committed to promoting and rewarding good governance in Africa. The choice of this data can be justified on the ground of being the most robust, relevant, up to date and user-friendly.

The Mo Ibrahim Foundation uses the Ibrahim Index of African Governance in scoring and ranking African countries in quality of governance using four categories, fourteen sub-categories and hundred indicators.[27] The four main categories are; safety and rule of law, participation and human rights, sustainable economic opportunity and human development. The rule of law and sustainable business environment are sub-categories of the safety and rule of law and sustainable economic opportunity categories respectively. The data on these variables will be presented in tables and analysed using averages and percentages as well as the Pearson Correlation Coefficient to test the hypothesis.

1.7 Application of Data Collection and Interpretation

The independent and dependent variables for this study are rule of law and sustainable business environment respectively. The data on these variables as obtained from the Mo Ibrahim Foundation for the period 2000-2015 is presented in table 1.

Table 1: *Level of Adherence to the Rule of Law and Sustainable Business Environment in Nigeria 2000-2015*[28]

Year	Rule of Law (%)	Sustainable Business Environment (%)
2000	56.3	35.0
2001	56.3	35.0
2002	56.3	35.0
2003	56.3	35.0
2004	56.3	30.6
2005	56.3	31.0
2006	57.3	31.2
2007	60.3	34.8

[27] Mo Ibrahim Foundation, Op.cit
[28] Ibid

2008	66.6	34.6
2009	64.3	38.2
2010	50.8	33.7
2011	50.9	33.1
2012	51.0	35.2
2013	50.2	35.0
2014	50.8	36.0
2015	53.4	35.3

1.7.1 Adherence to the Rule of Law

The data in table 1 indicates seemingly fair scores for Nigeria in adherence to the rule of law. These range from the highest of 66.6% in 2008 to the lowest of 50.2% in 2013. While the scores stagnated at 56.3 from 2000-2005, the scores started rising in 2006 to 57.3% and 60.3% in 2007 and reaching the peak of 66.6% in 2008. This was however, neither maintained nor improved upon as the scores slided to 64.3% in 2009 and further to 50.8% in 2010. The average score for Nigeria was 55.84%. Contrary to the provisions of the social contract theory, the Nigerian state has been only fairly able to enforce the rule of law in Nigeria.

1.7.2 Sustainable Business Environment

Nigeria's scores in the sustainable business environment sub-category were generally poor. These range from the lowest of 30.6% in 2004 to the highest of 38.2% in 2009. The scores have not been stable but rather undulating throughout the sixteen years period. However, 2004, 2005 and 2006 recorded the lowest scores. Nigeria's highest score of 38.2% in 2009 was proceeded by the highest rule of law score of 66.6% in 2008. The country's average score in creating a sustainable economic environment was only 34.29%. Contrary to the provisions of the social contract theory as well as the Constitution of the Federal Republic of Nigeria 1999, the Nigerian state performed poorly in creating a sustainable business environment for the period 2000-2015.

1.7.3 Test of Hypothesis

The hypothesis postulated for this study states that; there is no significant relationship between adherence to the rule of law and creation of sustainable business environment in Nigeria. The result of the Pearson Correlation test is presented in table 2.

Table 2: *Pearson Correlation*[29]

		Adherence to rule of law	Sustainable Business Environment
Adherence to rule of law	Pearson Correlation	1	.173
	Sig. (2-tailed)		.537
	N	15	15
Sustainable Business Environment	Pearson Correlation	.173	1
	Sig. (2-tailed)	.537	
	N	15	15

The Pearson Correlation Coefficient value of the hypothesis tested in table 2 was .173. This indicates a positive but very weak relationship between adherence to the rule of law and creation of sustainable business environment in Nigeria. Thus the H_0 is accepted.

1.8 Conclusion

The data presented and analysed in table 1 indicated fair adherence to the rule of law in Nigeria for the period 2000-2015. However, efforts made at creating a sustainable business environment in Nigeria achieved a very poor result of only 34.29% for the period 2000-2015. These findings are contrary to the provisions of the social contract theory and the Constitution of the Federal Republic of Nigeria 1999 which requires the state to enforce the rule of law and create sustainable business environment.

The hypothesis tested as shown in table 2 indicated that there exist a positive but very weak relationship between adherence to the rule of law and creation of a sustainable business environment in Nigeria. This contradicts the study of Ali[30] and Berg and Desai[31] hat reported very significance relationship between the rule of law and sustainable development in Nigeria and Central America respectively.

In view of these findings, the study recommends for;

i. Greater judicial independence to facilitate efficient and effective judicial processes and enforcement of property rights.
ii. Strengthening of democratic processes and timely enforcement of sanctions for breaches of the laws. These are capable of boosting investment climate and competition.
iii. Reform of the ports and procurement procedures to streamline the processes involved can reduce delays and cost of doing business in Nigeria.

[29] SPSS 2010
[30] Ali, Y.O. Op.cit
[31] Berg, L.A. and Desai, D., Op.cit

Suggestion is made on the need for further research on the effect of security and infrastructural development on sustainable business environment in Nigeria.