

JAYEOBA

RECESSION OF THE RULE OF LAW AND DECLINE OF DEVELOPMENT IN  
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### Recession of the Rule of Law and Decline of Development in Nigeria

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Ayodeji Jayeoba\*

#### Abstract

*Development is generally conceived in such narrow terms that its very essence is misrepresented. More often than not development has been reduced to no more than economic development and expectedly, factors affecting development have also been restrictively conceived. This paper attempts to show that there is a direct linkage between the rule of law and development by analyzing how the presence or absence of the elements and components of the rule of law facilitates or impedes development respectively in Nigeria. The methodology adopted for the study is both doctrinal and analytical. The paper concludes that decline of rule of law in Nigeria is one of the major causes of her underdevelopment.*

**Keywords:** Development, Rule of Law, Security, Economic Growth

## Introduction

Development is generally conceived in such narrow terms that its very essence is misrepresented. More often than not development has been reduced to no more than economic development and expectedly, factors affecting development have also been restrictively conceived. A conception of a possible link between the rule of law and development is obviously one of the victims of this narrow thought about what development is. The UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence expressed his surprise over the “timidity” and “diffidence” with which discussions on how justice and protections of rights affect development and about the “lack of conviction about the ways in which justice and rights can contribute to development”.<sup>1</sup> Thus, in line with the traditional thinking of the immediate past generation of development practitioners and scholars, the UNDP which is the UN lead development agency and therefore the global flagship in development research and practice<sup>2</sup> did not assign any significant role to the rule of law in the design and execution of its developmental agenda. It is the uneven success of the MDGs program that prompted UNDP’s search for the missing components of development in the program<sup>3</sup>. Therefore,

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<sup>1</sup> United Nations, ‘Report of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence’ (2013) (59) (“SR report”) UN Doc. A/68/345 <<http://www.legal-tools.org/doc/089e70/pdf/>> accessed 23 September 2019

<sup>2</sup> The United Nations Development Program, ‘What are the Sustainable Development Goals?’ <<https://www.undp.org/content/undp/en/home/sustainable-development-goals.html>> accessed 11 May 2019

<sup>3</sup> See The United Nations, ‘The Millennium Development Goals Report 2015’ (United Nations, New York 2015) 4; The United Nations Development Program, ‘What are the Sustainable Development Goals?’ (n 2); Martin Sandbu, ‘Critics question success of UN’s Millennium Development Goals’ *Financial Times* (London, 15 September 2015, <<https://www.ft.com/content/51d1c0aa-5085-11e5-8642-453585f2cfcd>> accessed 11 May 2019

it is only until very recently and after the review of the success of the UNDP's Millennial Development Goals (MDGs) programs have deep thoughts and reflections been poured on how the rule of law or lack of it affects development<sup>4</sup>. This review has prompted the need for development research to pay more attention on the link between the rule of law and development for the purpose of crafting sustainable development programs. The need to look beyond the narrow prism of economics has equally been aptly captured as follows in a Thematic Think Piece of the Office of the United Nations High Commissioner for Human Rights:

Millennium Development Goal success stories since 2000 are now sites of mass protest decrying widespread deprivation, repression and inequalities masked by the narrow models of economic approaches that have characterized development approaches in the pre-2015 period. Their message is clear: economic growth is not an adequate measure of development. Rather, equality matters, the environment matters and human rights matter. The real test, to a growing global population demanding a life of dignity, is the degree to which they are able to enjoy freedom from fear and want, without discrimination.<sup>5</sup>

The aim of this paper is therefore to understand the nature of the relationship between development and the rule of law in Nigeria. Thus, the first part of this paper begins with a review of the concepts of development and rule of law. Rule of law having not

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<sup>4</sup> Robin Sully, 'Rule of Law and the Post-2015 Sustainable Development Agenda – It's About Justice!' (2014) <[http://www.icjcanada.org/images/documents/tarnopolsky-winners/Robin\\_Sully\\_2014\\_Rule\\_of\\_Law\\_Paper.pdf](http://www.icjcanada.org/images/documents/tarnopolsky-winners/Robin_Sully_2014_Rule_of_Law_Paper.pdf)> accessed 10 April 2019

<sup>5</sup> UN System Task-Team on the Post-2015 UN Development Agenda, Office of the United Nations High Commissioner for Human Rights, 'Towards Freedom from Fear and Want: Human Rights in the Post-2015 Agenda: Thematic Think Piece' (2012) <[https://www.un.org/millenniumgoals/pdf/Think%20Pieces/9\\_human\\_rights.pdf](https://www.un.org/millenniumgoals/pdf/Think%20Pieces/9_human_rights.pdf)> accessed 11 May 2019

lent itself to a universally accepted definition, the author must make clear the depth and breadth of the conception of rule of law he intends to relate with development. To do this we argue that there are some key principles from both the minimalist and maximalist conception of the rule of law that are very basic for the concept to have any valid and useful meaning. The paper does not nurse the faintest hope of any universal agreement on the validity of the author's aggregation of these key principles, the aggregation however appears valid as a working tool for the overall design of this research.

For any national assessment about the relationship between development and rule of law in the Nigerian state to stand up to scrutiny, it is perceived that the assessment must first be grounded in both theoretical and empirical findings on the interactions between the two concepts. Can development be measured? What about measuring rule of law? The enterprise of Part II of this paper will be an analysis of the general proven linkage between the two concepts. This Part will attempt to shed light on the interplay between factors of development and rule of law using both factual and legal analysis in the field of development and will also analyze causes of underdevelopment in Nigeria and how the rule of law is or is not responsible.

Part III will be devoted to the task of assessing the levels of development in Nigeria and to equally pinpoint the level of adherence to the principles of the rule of law in Nigeria. The focus of this section will equally be an analysis of the measuring indices in the fields of development study and rule of law promotion. The Part contains the Regression Analysis of Nigeria's performances in the rule of law and development using global, regional and income bracket ratings. The outcome of the regression analysis will be tested against the broad theoretical and empirical analysis of the link between the two concepts already earlier undertaken in Part II

to draw legitimate conclusions and recommendations on the link between rule of law and development in Nigeria. Part IV looks at the challenges to the rule of law in Nigeria while Part V, which is the last section of the paper, consists of the conclusion and recommendations.

### **PART I: The Concepts of Development and the Rule of Law?**

According to Sen, “An adequate conception of development must go much beyond the accumulation of wealth and the growth of national product and other income-related variables, without ignoring the importance of economic growth, we must look well beyond it”<sup>6</sup>. Development is an advancement or improvement in the quality of life of the median number of a given population. It is a positive forward limping or leaping towards the attainment or realization of social goods or happiness of a median number of a given population. This include improved environment for this realization, decrease in factors and circumstances that hinders this attainment, eradication of or depletion in the acuteness of status or state or condition that serves as barrier to the realization of these social goods or state of social, psychological and economic freedoms. Development must be situated within “broader indicators of well-being”<sup>7</sup> and this will not only include economic freedoms but also social, mental, physical, psychological and religious freedoms. Development should therefore be seen as the development of the total man. Development can no longer be seen within a very narrow prism of economics<sup>8</sup>. It is a bundle of values that diminish all forms of pains and enhances quality of life. Development is not a standalone concept. It is a multi-wired state of being. Therefore, it is wrong to view development only in terms of

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<sup>6</sup>Amartya Sen, *Development as Freedom* (2nd edn, Oxford University Press 2001).

<sup>7</sup>United Nations, ‘Report of the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence’, (n 1).

<sup>8</sup>World Bank, *World Development Report 2011, Conflict, Security, and Development* (World Bank 2011), chaps.2 and 3.

economic growth since economic growth itself is dependent on development itself. Development means freedom. It means absence of ‘unfreedoms’<sup>9</sup>.

There is no universally accepted definition of the rule of law. The task of defining the rule of law has always been approached from two different perspectives. One view which is the minimalist view, understands the rule of law to be a framework for ensuring adherence to procedures of lawmaking and equal, non-retroactive application of the law to the generality of the members of the society. The other perspective, shared by the ‘thick’ theorists of the rule of law rejected the minimalists’ thin definition of the rule of law. The maximalist’s theorists defined the rule of law as a requirement of governance that ensures that lawmaking does not only conform to procedural requirements but also that the substantive contents of the resulting laws provide for what is fair, just and equitable.<sup>10</sup>

At the heart of disagreements on the definition or description of the rule of law is the insistence on one hand by some scholars including Hart, Bentham and Hayek that in determining whether a legal system is according to the rule of law what is most important is to find out whether there is legality and procedural compliance in passing a law.<sup>11</sup> They argued, and correctly so, that procedural validity is essential for predictability of behavioural or choice’s consequences, intelligible awareness and clarity of the law, lack of retroactivity and the need that the law should apply generally and

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<sup>9</sup>AmartyaSen, *Development as Freedom* (n 6).

<sup>10</sup> Michael J. Trebilcock and Ronald J. Daniels, *Rule of Law Reform and Development: Charting the Fragile Path of Progress* (Edward Elgar 2008)

<sup>11</sup>Jeremy Waldron, ‘The Rule of Law’, *The Stanford Encyclopaedia of Philosophy* Edward N. Zalta (ed.) (Fall 2016 edn) <<https://plato.stanford.edu/archives/fall2016/entries/rule-of-law/>> accessed 10 April, 2019.

that all these are needed foundation for an individual's liberty and they enhance his power of self-determination.

On the other hand, scholars like Bingham, Locke and Chaskalson<sup>12</sup> argue that a description or definition of rule of law must consider the substance or content and its ability to include and protect property rights and other fundamental freedoms and liberties within its scope. This is the 'thick' definition of the rule of law which the 'thin' theorists ridicule as capable of robbing the rule of law of its essential functionalities of predictability, generality, and clarity and in fact will ultimately reduce the term rule of law to a state of confusion with nobody being sure of what the term actually means. The problem with the thin view of the rule of law however, is that when the validity of law rests only on formalistic or systematic compliance there is the tendency to ignore or underestimate the need for ensuring that the law protects the essential values of social cohesiveness, social justice, fundamental liberties and dignity of human person and his properties which are necessary to ensure justice, fairness in relationships. Procedural due process or legality without substantive constraints is susceptible to misuse by an authoritarian regime. This much is asserted by Mark Ellis as follows:

The problem with a strictly formal definition of the rule of law is that it provides no guidance vis-à-vis regimes that establish clear legal rules yet commit egregious human rights violations and flout international obligations. For example, Zimbabwe might well be characterized as a rule of law state; it has a clear and transparent

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<sup>12</sup> Mark Ellis, 'Toward a Common Ground Definition of the Rule of Law Incorporating Substantive Principles of Justice' [2010] (72) *University of Pittsburgh Law Review* 191; Jeremy Waldron, 'The Rule of Law and the Measure of Property: Unravelling the Form and Substance of Property' *The Hamlyn Lectures* 2011 <[https://www.law.nyu.edu/sites/default/files/ECM\\_PRO\\_068939.pdf](https://www.law.nyu.edu/sites/default/files/ECM_PRO_068939.pdf)> accessed 12 April 2019; Jeremy Waldron, 'The Rule of Law' (n 12).

legislative base supported by a judiciary that, although ineffective, could be seen as independent. It has an elected legislative branch. However, legislative edicts have authorized the murder, displacement, and torture of thousands of people, in violation of virtually every international human rights instrument in existence.<sup>13</sup> The maximalists would therefore argue that a conceptualization of the rule of law should be preoccupied with including in every legal framework both the means and institutions for assuring fairness and justice to every members of the society for protection of liberties and property.<sup>14</sup> Thus, far from the perspective of the minimalist theorists of the rule of law, the concept must be viewed as requiring the legal system to assertively intervene in both the political, social and economic arrangements and institutions to ensure social, political and economic inclusion, protect the citizens from unjust, abusive and rights-restricting will and desire of tyrant rulers and powerful elites. The definition of the rule of law should therefore embrace the protection of human rights, the means of attaining justice, equity and fairness for, as Bingham contended a legal framework that permits certain sections of the society to be abusively treated and repressed cannot be regarded as complying with the rule of law even though these actions are approved by laws that are duly enacted, meticulously observed and laying out detailed provisions about the diminished status of these sections of the society. The proponents of the thick theory of the rule of law therefore argue that it is their sort of conceptualization of the rule of law that can provide ultimate safeguards against slavery, apartheid and Holocaust and the only means of fashioning an impregnable legal framework of protection for the negligible minority ethnics and races, the poor and the vulnerable and persons with disabilities.

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<sup>13</sup> Mark Ellis (n 13).

<sup>14</sup> See Ronald Cass, *The Rule of Law in America* (Johns Hopkins University Press 2001); Ronald Cass, "Property Rights Systems and the Rule of Law" in E. Colombatto (ed.) *The Elgar Companion to the Economics of Property Right* (Edward Elgar Publications 2004) 131–63; Mark Ellis (n 13).

A faction of the thick definition school of the rule of law opines that the end of the rule of law is justice. The rule-of-law-as-justice theory therefore concerns itself with just distribution of social goods while recognizing fundamental differences within a group or polity.<sup>15</sup> Under this school, justice's other definitions include 'equality of resources',<sup>16</sup> fairness in the distribution of 'primary goods'<sup>17</sup> and creating a system where people have equal 'capabilities to function'.<sup>18</sup> According to Louis-Alexandre Berg and Desail the rule of law "expresses and enables a society's conception of social and economic justice, and more specifically attitudes to extreme poverty and deprivation. It frames wealth, resource and power (re)distribution".<sup>19</sup>

The advocates of the minimalist view of the concept of the rule of law however think that the law is incapable of achieving the 'definitive ends' of justice, fairness and equity assigned to the law by the thick definition of the rule of law.<sup>20</sup> Waldron warned that the many and varied expectations with which the law is burdened by subjecting its validity to the assessment of its substantive dimension will lead to a sort of competition in which everyone clamours to have their favourite political ideal incorporated as a substantive

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<sup>15</sup> See the perspectives of Nancy Fraser, 'From Redistribution to Recognition? Dilemmas of Justice in a 'Post-Socialist' Age' <<http://bibliopreta.com.br/wp-content/uploads/2018/01/Fraser-Redistribution-Recognition-Dilemma-1.pdf>> accessed 11 April 2019.

<sup>16</sup> Ronald Dworkin, 'What is Equality? Part 2: Equality of Resources' [1981] (10) (4) *Philosophy and Public Affairs*

<sup>17</sup> John Rawls, *A Theory of Justice* (Harvard University Press 1971)

<sup>18</sup> Amartya Sen, *Commodities and Capabilities* (North-Holland 1985)

<sup>19</sup> Louis-Alexandre Berg and Deval Desail, 'Background Paper: Overview on the Rule of Law and Sustainable Development for the Global Dialogue on Rule of Law and the Post-2015 Development Agenda (Draft, 2013) 1 <<https://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Global%20Dialogue%20Background%20Paper%20-%20Rule%20of%20Law%20and%20Sustainable%20Developme....pdf>> accessed 10 April 2019]

<sup>20</sup> Bruce P. Frohnen and George W. Carey, *Constitutional Morality and the Rise of Quasi Law* (Harvard University Press 2016) 20

dimension of the Rule of Law. Those who favour property rights and market economy will scramble to privilege their favourite values in this regard. But so will those who favour human rights, or those who favour democratic participation, or those who favour civil liberties or social justice. The result is likely to be a general decline in political articulacy, as people struggle to use the same term to express disparate ideals.<sup>21</sup>

The maximalists' argument that formality and conformity with settled lawmaking procedures and population-wide model of enforcement is intrinsically deficient at safeguarding liberty and property rights is countered by minimalist theorists who argued that the rule of law consists of procedural requirements or abiding by procedural standards of lawmaking and enforcement. It is argued that little chance of abuse or authoritarianism exists when laws are passed openly, following due process and in general terms by the appropriate institution and not targeted at particular individuals.<sup>22</sup> Frohnen and Carey argue that the desire and power of rulers are subdued by the established procedural formality of lawmaking process and enforcement, "thereby providing citizens with knowledge of what they are required and forbidden to do" and that "[t]his knowledge enables people to predict official responses to their actions and plan their lives accordingly."<sup>23</sup> Hayek likewise maintained that the minimalist formal procedural requirements (which include clarity and prospectivity) possess the intrinsic ability to provide predictability.<sup>24</sup> Frohnen and Carey joined Hayek in echoing the assurance that predictability gives freedom to citizens.<sup>25</sup> Very importantly Frohnen and Carey argued that the ruler who

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<sup>21</sup>Jeremy Waldron, 'The Rule of Law' (n 12).

<sup>22</sup> Lon Fuller, 'Positivism and Fidelity to Law: A Reply to Hart'[1958] (71) (4) *Harvard Law Review* 630-72; Lon Fuller, *The Morality of Law* (Yale University Press 1964).

<sup>23</sup> Bruce P. Frohnen and George W. Carey (n 21)

<sup>24</sup> Friedrich Hayek, *The Constitution of Liberty* (University of Chicago Press 1960).

<sup>25</sup>Bruce P. Frohnen and George W. Carey (n 21)23.

chooses to ignore the formality requirements of lawmaking and prospectively of the law risks the erosion of his legitimacy (acceptability) which may eventually cost him his government through rebellion of the citizens. Thus the thin theory of the law is not wanting in its sufficiency and ability to maintain liberty and ensure order – which is a fundamental social good – “without which any decent, let alone any free society can long exist.”<sup>26</sup>

The idea that law lacks “capacity to direct and define virtue – including the virtue of justice”<sup>27</sup> may not be incontestable. Law is an instrument of social control.<sup>28</sup> Even though it may be limited in its capacity to enforce virtues that are extremely external to a polity, nonetheless its capability to enforce certain shared values among members of the society and ability to constrain behaviour to achieve certain social end should not be undermined.<sup>29</sup> Law must have an end beyond predictability; and legality cannot be an end in itself. It is an assumption that certainty and predictability and compliance with other formalistic requirements of the law is capable in itself to deter a vicious psychopathic leader from doing evil or subdue a legal system from being employed as a tool for systematic oppression of the citizens. The World Justice Project quoted Arthur Chaskalson to have made the following remarks to drive home the point that the minimalists’ conception of the rule of law is capable of engendering inequality, discrimination and injustice:

[t]he apartheid government, its officers and agents were accountable in accordance with the laws; the laws were clear; publicized and stable, and were upheld by law enforcement officials and judges.

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<sup>26</sup>ibid 23.

<sup>27</sup>ibid23.

<sup>28</sup>Lon L. Fuller, ‘Law as an Instrument of Social Control and Law as a Facilitation of Human Interaction’ [1975] (89)*Brigham Young University Law Review*.

<sup>29</sup> The works of Lon Fuller, Hayek, Raz, Dworking, Rawls, Hart and Bentham abundantly make it clear that these great thinkers do not doubt the ability of the law to influence behavior.

What was missing was the substantive component of the rule of law. The process by which the laws were made was not fair (only whites, a minority of the population, had the vote). And the laws themselves were not fair. They institutionalised discrimination, vested broad discretionary powers in the executive and failed to protect fundamental rights. Without a substantive content there would be no answer to the criticism, sometimes voiced, that the rule of law is an empty vessel into which any law could be poured.<sup>30</sup>

To attain its purpose in the society, a legal system must therefore be evaluated vis-à-vis its ability to ensure social justice and procedural due process. I therefore see the rule of law as a conceptual model of governance that encompasses principles and practices that make quality of life better and richer for the citizenry. These principles and practices are built on certain foundational concepts from which many others are derived. These foundational concepts are as follows:

- i. That the major objective of every government should be to secure the maximum liberty of every citizen and means of pursuit of human development by every individual while upholding the equality of all persons in the pursuit of human development;<sup>31</sup>

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<sup>30</sup>Mark David Agrast, Juan Carlos Botero and Alejandro Ponce, *WJP Rule of Law Index 2011*(The World Justice Project 2011) 9. Arthur Chaskalson, former Chief Justice of South Africa made the remarks at the World Justice Forum I held in Vienna on July 2-5, 2008.

<sup>31</sup> The phrase “upholding the equality of all persons in the pursuit of human development” is meant to refer to creating equal opportunity for all members of the society. Equal opportunity as a political ideal does not seek to eradicate hierarchy or discrimination in the society but it is opposed to hierarchy rooted in a caste system or arbitrarily created discrimination. Creating equal opportunity is giving effect to an individual’s agency to attain specified goals by not placing arbitrary hindrances on the path to attaining the specified goal(s). By mentioning equality here, we are in the same frame of mind with Annerson Richard who explains that “formal equality of opportunity requires that positions and posts that confer superior advantages should be open to all applicants. Applications are assessed on their merits, and the applicant deemed most qualified according to appropriate criteria is offered the position. Alternatively, applicants are winnowed

- ii. That government is only allowed to exercise such level of power and control over individuals that is both reasonably and practically necessary to secure the overall objective of governance stated in (i) above;
- iii. That it is necessary for institutions – such as the courts, Congress, executive councils, Civil Society Organisations and other pressure groups in the society, a free press amongst others – to be established and protected for checking the excessiveness of the government in order to realize (ii) above;
- iv. That citizens as groups or individuals have the rights to interrogate all actions or inactions of their government that affect their lives and be provided with effective means of seeking both protection from and redress against every governmental excessiveness.

Transparency, predictability, general and equal application of law, accountability, due process and fair access to justice, protection of property and fundamental freedoms are core components of rule of law.

The minimalist view of the rule of law places much trust in adherence to forms and formalities to order transparency in the conduct of government affairs. Lon Fuller's eight requirements of a good law<sup>32</sup> and other formal validities of the law requires that law are passed and executed following known procedures and leaving no room for darkness, uncertainty and lack of knowledge about the

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by fair competition, and the winner or winners get the superior advantages." See Arneson Richard, "Equality of Opportunity" in Edward N. Zalta (ed.) *The Stanford Encyclopedia of Philosophy* (Summer 2015 Edn) <<https://plato.stanford.edu/archives/sum2015/entries/equal-opportunity/>> accessed 11 April 2019. It is also within our meaning of the concept of providing equal opportunity that the legal system should also proactively improve facilities, environment and resources that enhances individual ability to effectively compete.

<sup>32</sup> Lon Fuller, 'Positivism and Fidelity to Law: A Reply to Hart' (n 23)

legal system. Since the procedures for lawmaking and its execution are settled, the requirement for compliance with the settled procedures brings transparency which is a foundation for accountability in governance. Being constantly under legality sunshine, Lon Fuller argued, “even in the most perverted regimes there is a certain hesitancy to about writing cruelties, intolerances, and inhumanities into law.”<sup>33</sup>

The maximalist theorists of the rule of law would however not leave the virtue of transparency to be only realizable as a flowing outcome from adherence to forms and formality. It is very important for the protection of citizens’ liberty and property that rulers are charged to be transparent in their dealings with the liberties and properties of the citizens and therefore the requirement of transparency must be positively included in the substantive content of the law. By this, transparency will not only be a virtue on its own, it will also serve as a means to attaining accountable and responsible governance.

It is the ability of the rule of law to constrain rulers to a settled system of governance that makes the rule of law sturdy in its ability to foster predictability and when the rulers consistently act in such manners that erode predictability, the people would react in disapproval, which may bring down the ruler. Predictability does not only assure freedom but also serves as tool for accountability. A legal system ought to be impersonal and its making and implementation should likewise be. General and equal application of the law means that all are subject to the same law and no one is arbitrarily discriminated against. The law should not discriminate arbitrarily against a section of the society while unduly favouring another group of the society just by the virtue of their birth or their relational position to power or influence. Equal application

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<sup>33</sup> Lon Fuller, ‘Positivism and Fidelity to Law: A Reply to Hart’ (n 23)

requirement of the rule of law however goes beyond formal equality which may inject inequity in the legal system. The same law may not necessarily be for the eagle and the sheep. Formal equality before the law may reinforce the hierarchy that general application is sought to extinguish and thus the minimal conception of general and equal application should be rejected because of its technical absurdity.<sup>34</sup> Judgement about the generality or otherwise of a law is rooted in substantive and normative scrutiny.<sup>35</sup> Gowder analysis of which of the different types of taxes (progressive, proportional and head taxation methods) is general drives home the point that the impacts of different laws on different classes of people could only be effectively assessed by reference to the substance of the law. He therefore argued, drawing strength from Finnis and Rawls, that for a law to be general, for purposes of the rule of law, it must be justifiable by public reasons, understood as an expressive idea... To be justifiable by public reasons is to be justifiable by reasons that each person affected by the law can reasonably accept, conceiving of him or herself as an equal member of the political community.<sup>36</sup> Substantive equality therefore includes inclusive justice where different social factors are taken into consideration in lawmaking and enforcement for the purpose of closing up the arbitrary gaps created by gender, race, economic inequalities and other social outcomes of past lawlessness and consistent wrongful application of law in order to improve the resources, environment and chances of the marginalized section of the society to effectively compete. This point also forms an area of disagreement between the minimalist and maximalist theory of the rule of law.

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<sup>34</sup> Paul Gowder, 'Equal Law in an Unequal World' [2014] (99)*Iowa Law Review*, 1021

<sup>35</sup> *ibid*

<sup>36</sup> *ibid*; Paul Gowder, 'The Rule of Law and Equality' [2013] (32)*LAW & PHILOSOPHY* 565, 603–04

The due process of law as a component of the rule of law is championed by the thick definition of the rule of law school. Due process of law is the substantive provisions in the law to curb arbitrariness, unfair application of the law and deprivation of lives, liberties and properties without following the laid down procedure. Due process are provisions in law containing certain prohibitions against infringing on “privileges and immunities”<sup>37</sup> and it is its requirement that trials must be public, laws must be clear and non-retroactive. It is a tool to constrain misuse of power in order to protect individuals’ liberty and rights to property.

As has been discussed earlier both the minimalists and the maximalists agree that the essence of the rule of law is to secure the protection of citizens’ property and fundamental freedoms by placing both procedural and substantive restraints on the whims and caprices of the ruler.

## **PART II: Intersections between Factors of Development and the Rule of Law**

Discussing the relationship between the rule of law and development, Berg and Desail conceive the rule of law as consisting of a normative structure and a set of institutions with processes designed to advance or achieve certain development outcomes. They specifically opined that rule of law as matter of its designed objectives, has some core development functions which they listed to include enabling “economic development, citizenship and social and economic justice, preventing, mitigating and deterring conflict, crime and violence, strengthening accountability and checks on power, and reducing corruption.”<sup>38</sup> The institution, used as a term of art in this sense, consists of normative declarations and a system of

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<sup>37</sup>See Justice Stephen J. Field’s dissenting opinion in the US *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1873) which later came to be the adopted position of the law.

<sup>38</sup> Louis-Alexandre Berg and DevalDesail (n 20)

ensuring compliance with these normative declarations in order to “constraint the behaviour of individuals in the interests of maximizing the wealth or utility of principals”.<sup>39</sup> A number of other scholars have canvassed that the rule of law enhances development through human security and property rights protection,<sup>40</sup> effective system of contract enforcement, fair market practices, entry and exit that will allow equal participating opportunities for all.<sup>41</sup>

Development as has been discussed above is a measurement of the quality of the human life of the average members of a society. Economic growth or development is a condition that affects the quality of human life but it is not the sole determinant of it. States that enjoy economic development have successfully created durable legal systems that protect property rights and the sanctity of enforcement of contracts.<sup>42</sup> The protection of property rights is a derivative of the legal condition that guarantees a safe physical and social environment, predictability of government actions in relations to both public and private economic investments and activities, clarity of the rules guiding business environment, equal and indiscriminate application of the rules guiding doing of business and effective antitrust regime.

The degree of security of property rights and of certainty of enforcement of contract is proportional to the volume of investment in an economy. This is more succinctly put by Stephen Haggard, Andrew MacIntyre and Lydia Tiede in the following words “Secure

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<sup>39</sup>Douglass C. North, *Structure and Change in Economic History* (W. W. Norton & Co. 1981) cited in Stephen Haggard and Andrew MacIntyre and Lydia Tiede, ‘The Rule of Law and Economic Development’ [2008] (11) *Annual Review of Political Science* 207

<sup>40</sup>Stephen Haggard and Lydia Tiede, ‘The Rule of Law and Economic Growth: Where are We?’ [2011] (39) *World Development* 673

<sup>41</sup> M. Stephens, ‘The Commission on Legal Empowerment of the Poor: An Opportunity Missed’ [2009] (1) *Hague Journal on the Rule of Law* 132-157

<sup>42</sup>Micheal Ogwezy, ‘The Applications of the Rule of Law Approach to Economic Development’ [2010] (22) *Sri Lanka Journal of International Law* 191; Stephen Haggard and Andrew MacIntyre and Lydia Tiede (n 39) 206.

property rights and the capacity to contract overtime and space also permit trade and corresponding increase in the efficiency of resource allocation, including through the development of the financial system”<sup>43</sup>

Lack of assurance of security and guarantees of private ownership of investment against government and forceful acquisition hinders economic development. An efficient criminal justice sector that ensures fair and timely trial of criminal charges bordering on breaches of security of private ownership of property (stealing, malicious damage, intellectual property theft) and contractual obligations (fraud and cheating) is an indispensable legal utility for securing the sanctity of property rights and thereby boosting investors’ confidence to invest in an economy. A just, fair and speedy disposal of commercial disputes through the judicial process and alternative dispute resolution mechanisms provides assurance of predictability and certainty in the legal system which empirically is the core components of conducive investment climates.<sup>44</sup>

Land as a factor of production places heavy expectation on the land tenure system not to repress economic growth. Economic growth is therefore equally dependent on a coordinated system of land acquisition and tenure that makes the process open, easier, faster and accessible to all and demands as well the eradication of land holding system/tenure that hoards land while they lie unused<sup>45</sup>.

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<sup>43</sup>Stephen Haggard and Andrew MacIntyre and Lydia Tiede (n 39) 214.

<sup>44</sup> Joseph L. Staats and Glen Biglase, ‘The Effects of Judicial Strength and Rule of Law on Portfolio Investment in the Developing World’ [2011] (92) (3)*Social Science Quarterly*610; MichealOgwezzy (n 42); Stephen Haggard and Andrew MacIntyre and Lydia Tiede (n 39); Tor Krever ‘The Legal Turn in Late Development Theory: The Rule of Law and the World Bank’s Development Model’ [2011] (52) (1)*Harvard International Law Journal*.

<sup>45</sup> J. Edgardo Campo and Donald Lien and Sanjay Pradhan, ‘The Impact of Corruption on Investment: Predictability Matters’ [1999] (27) (6)*World Development*1059-1067; Elizabeth Asiedu and James A. Freeman, ‘The Effect of Corruption on Investment Growth: Evidence from Firms in Latin America, Sub-Saharan Africa, and Transition Countries’ [2009] (13) (2)*Review of Development Economics* 200-214.

Corruption is a great disincentive of investment. Corrupt practices hinder citizens from contributing their obligations to nation-building, festers a phenomenon of waste and poor quality services, increase costs of business and exacerbate lack of equal access to participate in growing the economy. Corruption does not only discourage investment, it kills development.

It is to be observed that our discussion on the factors of development opens with the mention of protection of property rights, predictability of government action, the sanctity of enforcement of contractual agreements and equality of opportunities to compete with others in the economic activities of the society. Following through how all these underpin development and how they are all guarantees of or functions of the rule of law as discussed above, it can be safely proposed that the rule of law is a condition for development.

### **Equal Justice as the Handmaid of the Rule of Law for Enhancing the Quality of the Human Life**

Looking at the other components of development which include the social, physical, cultural and political quality of human life, *apriori*, the condition of protection of citizens' fundamental freedoms, civil and political rights comes off as a requirement for enhancing the quality of human lives. Reflecting further deeply on the socio-political conditions for initiating and sustaining investment growth, the parcels of social and economic justice also appear as necessary tools for creating environment that is conducive for investment growth. Enhancing the social, cultural and physical quality of life requires the protection against maltreatment, abusive government and arbitrary discrimination. This entails both the declarative positive rights and the prohibiting negative rights.

The task of the concept of general and equal application of the law derives from the need to enhance the quality of the human life by ensuring equality of opportunities to effectively compete for

improved quality of life within the society. As have been said above, following Gowder analysis, inclusive justice does a better job at ensuring substantive equality. It is therefore arguable that the core aim of the rule of law is to facilitate justice. Justice is the fulfilment of that reasonable expectation that a legal system will deliver to one what the law has ceded or assigned to one or has permitted to be delivered to one. One definitive end of the law is justice<sup>46</sup>. This meets the rule of law constitutive requirements of predictability, general and equal application of the law, cognizance of retroactive application of law, protection of property and fundamental freedoms as recognized by the two competing schools of thought in the rule of law scholarship.

Reflected upon from this conception, it would not be too difficult to come to terms with the assertion that the following concepts are key to any practical and utilizable conception of the rule of law: consumable access to justice-dispensing institutions and processes, consumable measures and institutions of personal and property security, accountable social, legal and commercial institutions within the polity, resilient measures, processes and institutions for combating corruption and impunity and crimes. These are all needed to ensure justice – that very fulfilment of the reasonable expectation that you will in no way be denied what the law has carved out as your entitlement against every other member with whom you share social, legal, religious and commercial space. Coursing through the above analysis it is submitted alongside, Robin Sully, that the rule of law can be an enabler “in fighting inequalities, ensuring inclusion of women and children; in facilitating equitable economic growth through private sector

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<sup>46</sup>Frohnen and Carey had however argued that it is too much an expectation from the law to saddle it with the task of attaining the definitive end of justice. We are however convinced that scholars such as Finnis, Rawls, Fuller, Dworking and Hart do not doubt the ability of the law to influence behavior and to restraint behavior towards the achievement of particular goes. See Note 21above.

regulation, fair employment opportunities and labour practices, transparent and enforceable investment and property regimes, sustainable natural resource development; and in protecting the environment.”<sup>47</sup> There is a causal linkage between economic growth, social justice, enhancing safety and security, equal opportunity to partake in social resources and economic activities,<sup>48</sup> absence of corruption and good health. Economic growth is dependent on each and every one of these.

All the above conditions would not happen as a matter of course in any human society – it takes a particular ordering of a polity<sup>49</sup>. Economic growth is dependent on the interplay of market forces and when the regulated interplay of the market forces is disrupted, the overall economic growth is negatively impacted at the detriment of powerless members of the society.<sup>50</sup> Rule of law is needed to lock off the chances of this happening. Scholars have therefore concluded that the rule of law is a tool for development outcomes. Robin Sully quoted Nelson Mandela as saying that “overcoming poverty is not an act of charity; it is an act of justice” and thus concluded that the function of the rule of law in facilitating development is another way of getting justice for the poor and the vulnerable.<sup>51</sup> Louis-Alexandre Berg and Desail wrote that international bodies committed to development in the developing Asian and African countries have thrown their weight on the idea of rule of law as catalyst for development<sup>52</sup>.

Discriminatory and unfair labour practices against poor workers are both an example of unequal recognition of members of the society where the powerful capitalist has no legal restrictions from

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<sup>47</sup> Robin Sully (n 4).

<sup>48</sup> Louis-Alexandre Berg and DevalDesail (n 20).

<sup>49</sup> *ibid.*

<sup>50</sup> *Ibid.*

<sup>51</sup> Robin Sully (n 4).

<sup>52</sup> Louis-Alexandre Berg and DevalDesail (n 20).

exploiting his workers or subjecting them to forced labour. These practices deepen inequality and stagnate opportunities for equitable growth. These practices are also a fruit of a legal system that fails to protect property rights. Wages are in two forms and both are protectable properties. One is salary and the other is termed “royalties.” Salary is the reward for physical labour and services while royalties, generally used here is the reward for commercially viable outcomes or products of exertion of intellectual power. A system that does not quantify physical labour and services and does not insist on general enforcement fails the test of the rule of law and will not stimulate development.

Access to both formal and informal system of conflict resolution is essential for business and economic relationships. Impartiality of this system is core to ensure upholding of equal treatment. This will ensure security of property rights and will boost confidence in investment and this will engender in the long run wider participation in the market system. Equal access to legal information needed for doing business, public record services and utilities are essential to break monopolies and are in furtherance of the principle of legal recognition of individual members of the society. All these require active social inclusion policies and legal framework and it is the creation and maintenance of a system as this that Sen referred to as social and economic justice which creates equal capabilities for individual to participate in wealth creation.

### **The Corrosive Effect of Poverty on Development, and the Redemptive Role of the Rule of Law**

The institutions of property rights and security of contract function as a tool of ordering the society. Certainty and prospectivity of laws is a bulwark against losing of already held property while the concept of substantive justice might find it necessary to create a legal system of goods redistribution to seek fairness, inclusion and as the only tool to fight the horrifying menace of the dehumanizing

poverty. The latter argument has reached a crescendo where the foundation for the realization of any law-donated liberty and freedom rests on unshackling citizens from the stranglehold of poverty.

Poverty and inequalities (social, cultural, economic and political) are major corrosion of human development.<sup>53</sup> Poverty kills capacity to form developmental thoughts. Rational human beings aspire within the realm of feasibility. Thus the poor is hindered by the constant sting of his awareness of the limitation of his resources. The poverty-ridden minds have been conditioned to “subscribe to norms whose social effect is to further diminish their dignity, exacerbate their inequality, and deepen their lack of access to material goods and services”.<sup>54</sup> Poverty and fundamental rights abuses have a common tool of underdevelopment – psychological and material sapping of self-confidence and strength.

The UN Special Rapporteur found that “both poverty and victimization weaken the capacity to aspire; they diminish people’s expectations”.<sup>55</sup>

Development is perceived here as essentially dismantling the structure of systemic poverty.<sup>56</sup> In 2012 the HighLevel Meeting of the General Assembly on the Rule of Law at the National and

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<sup>53</sup>AshaverTeryima, ‘Poverty, Inequality and Underdevelopment in Third World Countries: Bad State Policies or Bad Global Rules?’ [2013] (15 (16))*IOSR Journal of Humanities And Social Science* (IOSR-JHSS) <<https://pdfs.semanticscholar.org/48be/085f7f1bb123d3d4a4d56259469f8308b780.pdf>> accessed 12 May 2019; Joan M. Nelson, ‘Poverty, Inequality, and Conflict in Developing Countries’ (1998) (New York: Rockefeller Brothers Fund, Inc.)<[https://www.rbf.org/sites/default/files/attachments/proverty\\_inequality\\_-\\_conflict\\_in\\_developing\\_countries.pdf](https://www.rbf.org/sites/default/files/attachments/proverty_inequality_-_conflict_in_developing_countries.pdf)>accessed 12 May 2019.

<sup>54</sup>ArjunAppadurai, ‘The Capacity to Aspire: Culture and the Terms of Recognition’ in VijayendraRao and Michael Walton (eds.) *Culture and Public Action*, (Palo Alto, California: Stanford University Press, 2004).

<sup>55</sup>United Nations (n 1).

<sup>56</sup>Alvaro Santos, ‘The World Bank’s Use of the ‘Rule of Law’ Promise in Economic Development’ in David M. Trubek and Alvaro Santos (eds),*The New Law and Economic Development: A Critical Appraisal* (Cambridge University Press 2006).

International Levels conclude as follows: “The advancement of the rule of law at the national and international levels is essential for sustained and inclusive economic growth, sustainable development, the eradication of poverty and hunger and the full realization of all human rights and fundamental freedoms, including the right to development, all of which in turn reinforce the rule of law.”

### **The Rule of Law, Economic Justice and Development**

The rule of law as social and economic justice, according to Sen is a pursuit of justice that creates equal capabilities for individual to participate in wealth creation. Economic justice is the instrumentality of the law designed for giving an identity to individual members of the society, recognizing each as equal to another and allocating to each, without discrimination, bundles of political, economic and social rights that will enable them to participate in wealth creation without discrimination. Berg and Desai found an evidence-based link between “equitable growth, equitable delivery of public services, and the possibility of more effective redistribution”.<sup>57</sup> In countries of Africa including Nigeria, the practice of denial of legal recognition to women which serves as the foundation for the discriminatory exclusion of women from customary inheritance system and deprivation of capabilities to own properties has been blamed as one of the causes of underdevelopment<sup>58</sup> in Nigeria and other traditional societies as this, one will argue negate “equitable growth, equitable delivery of public services, and the possibility of more effective redistribution”.

### **Development, Order and Security and the Rule of Law**

Peace, order and security are necessary conditions for productive human activities. According to Charles T. Call, security refers

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<sup>57</sup>Louis-Alexandre Berg and Deval Desai (n 20).

<sup>58</sup>See Mary Hallward-Driemeyer and Tazeen Hassan, *Empowering Women: Legal Rights and Economic Opportunities in Africa* (World Bank 2013)

“principally to the safety of individual citizens, social groups, and the state from physical violence.”<sup>59</sup> Security is the absence of worry or apprehension about the imminence or possibility of loss of life or property or harm to one's personhood, property, value and status. It is the absence of danger to one's life, liberty and property. Civil wars, violence of whatever shades and forms hinder economic activities, creates unfavourable atmosphere for investment and occasions destructions of both lives and properties and reduces capabilities to create wealth through several problematic medical and health conditions that are fallouts of violence. Wars increase dependents and diminish wealth creators and burden the health system. It diverts the available scarce resources from further development enterprises to rehabilitation and reconstruction efforts<sup>60</sup>. The foundation for lack of order, peace and security is usually in absence of rule of law. The functioning of the various institutions and processes of the rule of law is designed to diminish incidents of violence and it thus has strong correlation with development.<sup>61</sup> Effective justice system - both criminal and civil - is an insurance against violence and self-help. As its core functions, the rule of law promotes peace, orderliness and security in the society. Nigeria's history of recurring internecine ethnic and religious violence has therefore contributed in no small measure to the underdevelopment of the country. The root cause of these destructive crises has been linked with failure of justice. Crime rate

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<sup>59</sup> Charles T. Call, 'What We Know and Don't Know About Postconflict Justice and Security Sector Reform' in Charles T. Call (ed), *Constructing Justice and Security after War* (United States Institute of Peace Press)

<sup>60</sup> Paul Collier, 'On the Economic Consequences of Civil War'[1999] (51) *Oxford Economic Papers* 168-83; Mayra Buvinc and Andrew Morrison, 'Violence as an Obstacle in Development'[1999] *Inter American Development Bank* <<https://publications.iadb.org/en/publication/11628/violence-obstacle-development>> accessed 23 September 2019; Robert L. Ayres, *Crime and Violence as Development Issues in Latin America and the Caribbean*(The World Bank 1998) all cited in Louis-Alexandre Berg and Deval Desail (n 20).

<sup>60</sup> *ibid.*

<sup>61</sup> Stephen Haggard and Lydia Tiede (n 40).

in Nigeria is very high painting the country as a negative destination of foreign investment. Domestic investment has also recorded abysmal growth because of insecurity of property occasioned generally by armed violence.

### **Corruption, Development and the Rule of Law**

The rule of law is an institution in governance designed not to give impunity a space in the polity. A system of zero tolerance for corruption protects the rule of law itself as it ensures that there are consequences for every transgressions of the law. By this the rule of law cannot be undermined; it cannot be weakened. It insists that every abuse of office or misuse of power is punished; without accountability that serves as a system of checks and balances in the polity, a systemic corruption that transforms public power and resources to private wealth and consequently defeat development. This accounts for why corruption and underdevelopment are prevalent in countries with no adherence to rule of law. It may not be far from the truth to assert that the essential role of rule of law is to tackle corruption and reduce its effects in the polity. Corruption has very serious link with development. Acts of endemic bribery, nepotism, clientelism, sales of marks in schools and colleges amongst others have very serious effects on development. They affect the quality and quantity of social goods, public and private services.

Bribery diverts funds from developmental services and projects and creation of public goods they are meant for, thereby affecting the quality and quantity of these services and social goods. Nepotism, clientelism and all forms of favouritism and infidelity to standard of qualifications by schools and institutions sacrifice merits in employment, procurements bids and contract awarding processes. A collective name for the outcomes of all these is incompetence. All these have immediate and looping effects on underdevelopment.

Failure of quality control manifested in use of substandard materials construction industries, counterfeit drugs and medical equipment, presence of quacks in legal, medical, engineering and pharmaceutical professions are in most of the cases not unconnected with corruption and they have occasioned loss of manpower through death and physical and mental incapacitation, and destruction of both public and private infrastructures. These also account for poor quality of public service and infrastructure that ultimately and to waste and bring both economic and social prosperity to their knees. The culture of corruption throws up culture of mediocrity and discourages aspiration for excellence and ingenious production of goods and services to meet the need of a local people. Corruption destroys healthy competition in accessing social goods and public assets in manner that create inequality of access against other members of the society in favour of a small class. Corruption breaks the moral will of the society to initiate, continue and/or sustain members' commitment to performing their obligations towards social and political prosperity of the community because it shatters trust, faith and confidence in the system. When trust in both the political and legal structure is broken, members become more individualistic and are sectarian in their thinking, actions and pursuit. This often leads to fierce and brutal competitions for access to the scarcely available social goods and services. The consequences of the fierce competitions include decline in observance of the age-long obligation of being one's brother's keeper and other moral values of the society. This leads to a more deepened culture of corruption and the loops continue up to the point of justice and security sector being overwhelmed and ineffective. The next casualty in the spectrum of the loop is security of lives, property and protection of liberty and certainty of enforcement of contract. Corruption undermines the entire structure of rule of law.

**Equitable Distribution of Natural Resources, Development and the Rule of Law**

Access to exploitation of natural resources and the distribution of its finished outcomes are germane to development in three important ways. Number one point is in terms of sustainability, another is fair and equal access to partake in exploitation and equity in distribution of finished products and the third point is justice to persons aggrieved. When all these are lacking environmental quality and liveability is put at risk, inequality gap is widened and absence of justice to remedy unjust and inequitable exploitation and distribution of natural assets leads to incessant violence. The rule of law is essential for avoiding these crises. Host communities of natural resources needed to be given special considerations because in many instances they suffer the side effects of environmental exploitations in terms of inconveniences and environmental degradations.

Ethnic violence is corrosive to development, unregulated exploitation of natural resources put development in jeopardy as it creates various environmental and health issues. Sustainable exploitation of resources connotes a regulated maximization of natural resources potentials in the least harmful way and in manner that assures availability or preservation for future generations' use. The mechanism for enforcing sustainable exploitation and for accessing justice over claims of unfair treatment in relations to natural resources' exploitation, distribution and consumption is through the framework of the rule of law. Countries have codified best practices for sustainable natural resources exploitation, others have income from natural resources sharing formula in their constitutions and various rights to clean and healthy environment has been made part of bundles of economic and social human rights. Far from this rule of law ensures that the law is enforced generally and predictably. Justice ensures that every player in

environmental fact is responsible for his action and government and institutions are held accountable to the biding spirit of these various laws and constitutional provisions. The rule of law ensures that justice is both a consumable and deliverable social asset in the polity.

### **Part III: Measuring Nigeria's Level of Development and Compliance with the Rule of Law**

The Human Development Index (HDI) is a tool designed by the United Nation Development Programme for tracking development globally. In the 2018 HDI Nigeria ranked 157 out of 189 countries, putting the country in the low human development category.<sup>62</sup> Around June 2018 the World Poverty Clock by the World Data's Lab Poverty Clock which monitors progress against ending Extreme Poverty reported that Nigeria has overtaken India as the world's poverty capital with over 90 million people (about half of her population) living in extreme poverty.<sup>63</sup> In the 2019 Hanke's Annual Misery Index: The World's Saddest (And Happiest) Countries which measures the quality of human lives, Nigeria ranked the six most miserable place to live in the world.<sup>64</sup> The 2019 Global Report on Food Crises: Joint Analysis for Better Decisions: Acute Food Insecurity Global Estimates in 2018 includes Nigeria as one of the six countries worst hit by food crisis. In World Economic Forum Travels & Tours Competitiveness Index 2019 Overall Rankings covering 140 economies, "[which] measures the set of

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<sup>62</sup>United Nation Development Programme, 'Human Development Report: Nigeria's Human Development Indicators' available at <http://hdr.undp.org/en/countries/profiles/NGA>> accessed 12 May 2019

<sup>63</sup> World Economic Forum, 'Three things Nigeria Must Do to End Extreme Poverty' available at <https://www.weforum.org/agenda/2019/03/90-million-nigerians-live-in-extreme-poverty-here-are-3-ways-to-bring-them-out/>> accessed 23 September 2019; visit also <https://worldpoverty.io/>> accessed 23 September 2019.

<sup>64</sup> Steve Hanke, 'Hanke's Annual Misery Index 2018: The World's Saddest (And Happiest) Countries' *Forbes* (Jersey City, 28 March 2019) <https://www.forbes.com/sites/stevehanke/2018/02/28/hankes-annual-misery-index-the-worlds-saddest-and-happiest-countries/#255fd39c6657>> accessed 23 September 2019.

factors and policies that enable the sustainable development of the travel and tourism sector, which contributes to the development and competitiveness of a country” Nigeria ranks 129.<sup>65</sup> The 2019 edition of the Global Peace Index (GPI) which ranks 163 independent states and territories according to their level of peacefulness using very comprehensive data-driven analysis to date on peace and its economic value ranks Nigeria 148 out of 163.<sup>66</sup>

The World Justice Project Rule of Law Index measures how the rule of law is experienced and perceived by the general public in 126 countries and jurisdictions worldwide.<sup>67</sup> Nigeria ranked 106 out of 126, indicating that rule of law is not adhered to at all in Nigeria. *Freedom in the World* is the global flagship in annual assessment of the condition of political rights and civil liberties around the world<sup>68</sup>. Nigeria scored 50 out of possible 100 and ranking as just partly free. The Heritage Foundation publishes the Index of Economic Freedom. The Index measures the impact of liberty and free markets around the globe and the relationship between economic freedom and progress. Nigeria ranks 111 as mostly unfree out of 180 countries.<sup>69</sup>

One key finding that could not be missed in regressing the performances of individual countries in the various rule of law ranking indices and tools against their performances in development

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<sup>65</sup>Lauren Uppink Calderwood and Maksim Soshkin, *The Travel & Tourism Competitiveness Report 2019: Travel and Tourism at a Tipping Point* (The World Economic Forum 2019) <[http://www3.weforum.org/docs/WEF\\_TTCR\\_2019.pdf](http://www3.weforum.org/docs/WEF_TTCR_2019.pdf)> accessed 23 September 2019.

<sup>66</sup>Institute for Economics & Peace, *Global Peace Index 2019: Measuring Peace in a Complex World* (Institute for Economics & Peace 2019) 9 <<http://visionofhumanity.org/reports>> accessed 23 September 2019.

<sup>67</sup>The World Justice Project, *The Rule of Law Index 2019* (The World Justice Project 2019) <<https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019>> accessed 23 September 2019.

<sup>68</sup>Freedom House, *Freedom in the World 2019* (Freedom House 2019) <<https://freedomhouse.org/report-types/freedom-world>> accessed 23 September 2019.

<sup>69</sup>The Heritage Foundation, ‘2019 Index of Economic Freedom: Country Rankings’ <<https://www.heritage.org/index/ranking>> accessed 23 September 2019.

measurements is the correlation in performances in both areas. In another words, countries that rank high in one rank high in the other and the reverse is also true. When a country scores higher in the Rule of Law Ranking, it will be rated higher in terms of development ranking and vice versa. These findings therefore support the thesis that the rule of law affects development. It is obvious that Nigeria's performances in different rankings measuring development and rule of law are abysmal.

#### **Part IV: Challenges to Development and Respect for the Rule of Law in Nigeria**

First, it is obvious from our analysis so far that the scant regard for the rule of law is a challenge to development in Nigeria, for respect for the rule of law is a necessary precondition for development outcomes. What then are the challenges to the observance of the core requirements of the rule of law in Nigeria? Adeosun listed illiteracy and ignorance, poverty, corruption, inefficient justice system, absence of true separation of powers, defiance to court orders and inefficient and corrupt police system as some of the inhibitions to respect for the rule of law in Nigeria.<sup>70</sup> According to Olawale, a system of delegated legislation which gives wide discretionary powers to the executive arm of government, immunity, high level of corruption in government, absence of real separation of powers, a broken justice system, poverty and favouritism are inhibitions to the flourishing of the rule of law in Nigeria<sup>71</sup>. Electoral frauds<sup>72</sup>, prolonged military dictatorship,

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<sup>70</sup>Oluwafemi Adeosun, '10 Problems of the Rule of Law in Nigeria' *InfoGuideNigeria*(Nigeria, 16 May 2018) <<https://infoguidenigeria.com/problems-rule-law-inigeria/>> accessed 08 October 2019.

<sup>71</sup>Johnson Olawale, 'Challenges Facing the Rule of Law in Nigeria' *Legit* (Nigeria, 08 October 2017) <<https://www.legit.ng/1114491-challenges-facing-rule-law-nigeria.html>> accessed 08 October 2019.

<sup>72</sup>See Dieu-Donné Wedi Djamba, 'Challenges to the Rule of Law' *Pambazuka News: Voices for Freedom and Justice* (Oxon, 03 June, 2008)

terrorism, banditry and other violent activities of non-state actors, weak judicial institutions<sup>73</sup> have equally undermined the rule of law in Nigeria. Strong justice institutions including the police and the judiciary are required to tackle and tame lawlessness and executive rascality, oppressions and endemic corruption.

### **Part V: Conclusion and Recommendations**

Flowing from the body of this paper, it is evident, on one hand, that institutionalization of the rule of law is a necessary precondition for human development which include socioeconomic freedoms, political and civil liberties, safety and security, happiness and other forms of human flourishing. On the other hand, this paper also finds a correlation between lack of peace and stunted economic growth in Nigeria and scant regard for the rule of law in the country as shown by Rule of Law Index 2019, Freedom in the World Ranking 2019 and the 2019 Index of Economic Freedom. From both the doctrinal and regression analysis conducted in this paper the outcome is that Nigeria performs very poorly both in terms of development measurements and rule of law rating. This paper therefore concludes that non-enforcement of the core components of the rule of law in Nigeria, as articulated above, is a major source of the country's underdevelopment and also that both the judiciary and political decisionmakers must as a matter of necessity accord the rule of law constitutional and practical pre-eminence in governance in order to engender development.

For Nigeria to have a strong system of rule law and thereby be set on the pathway to development the following practical recommendations are suggested:

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<<https://www.pambazuka.org/governance/challenges-rule-law>>accessed 08 October 2019.

<sup>73</sup>See International Institute for Democracy and Electoral Assistance, *Challenges to the Rule of Law in Africa* (IDEA 2016) 14.

- i. A fearless, independent and professional judiciary as an arbiter between the government and citizens and between citizens is necessary and should be institutionalized for effective protection of citizens' fundamental freedoms and economic liberties through fair, fast and efficient resolution of disputes and conflicts.
- ii. The creation of an effective and impersonally administered civil justice system should be vigorously pursued and politically sustained to promote and preserve the sanctity of the contract enforcement system in order to boost both local and foreign investors' confidence in the nation's investment climate.
- iii. To ensure safety of lives and security of properties, an effective and equally impersonally administered criminal justice system should be planted and diligently nurtured to a sturdy form to preserve individual's bodily wellness and secure his properties and liberties through handing down of assured, prompt and adequate punishments in forms of incapacitation and deterrence to offenders.
- iv. Corruption is a cancer against development; therefore decisive, impartial and non-selective judicial, political and legislative actions must be taken to stamp it out or reduce it to a non-injurious minimum.
- v. Delegated Legislations should be strictly and constantly assessed by both the delegating legislative bodies and the judiciary to ensure that they are not *ultra vires* and the enactment process should be open, involving mandatory procedure for public participation and comments as it is the practice in the United States and they should not be made to operate retroactively.
- vi. Adequate attention must be paid to the substantive contents of laws, regulations and policies to ensure that they are fair, just, non-discriminatory and inclusive where necessary, and

are rights-respecting as against insistence on only procedural compliance.