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Post Covid 19 Economy in Nigeria: The Role of Law for Sustainable Economic Development

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ABSTRACT: *Covid-19 otherwise known as Corona virus has impacted negatively on global economy and it may take time for nations of the world to come out of economic depression occasioned by the pandemic. This paper qualitatively identifies the roles of laws in post covid 19 economic recoveries. Specifically, the article seeks to asses the degree with which law promotes economic sustainability in the areas of banking & Finance, dispute resolution, energy, infrastructure, insurance and transportation. It also examines the extent to which economic growth might be affected if laws are not clearly defined, made public and applied in a consisten manner. Provision and application of legal frameworks in these key areas of the economy will trigger quick recovery and stabilize it for future growth. It was recommended among others that more laws should be enacted to provide additional lending authority for certain Small and Medium Scale Enterprises (SMEs) so as to boost the post COVID-19 economy in the country; loans and advances should be given to agricultural enterprises to speed up more supply of food to the economy.*

KEYWORDS: covid 19, sustainability, economic development, law and legal framework

INTRODUCTION

Since the emergence of coronavirus also known as Covid-19 in China and the subsequent spread of the pandemic to other parts of the globe, authorities have acted to limit its spread and the antendant economic impact. Experience with similar diseases reveals that while the human costs are significant, the bulk of the economic costs are due to the preventive behavior of individuals and the transmission control policies of governments (Brahmbhatt and Dutta, 2008). Current experience is no different. As the virus spread internationally, many countries have already taken or will eventually take action to limit the spread, through social isolation policies, such as shutting educational institutions, limiting work and restricting the mobility of people.The preventive actions have had an immediate and significant impact on all economies, and through trade and tourism, on partner economies.

Though it is too early to make an assessment of the impact of the virus based on full statistical evidence, high frequency data are providing some indicators but it is hard to assess the depth and the breadth of the pandemic as it spreads, and to precisely estimate how long it will

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take countries to return to normal activity levels.

According to World Bank (2020) forecast for global economic growth, the economic recession in 2020 was estimated to be the deepest since World War II. It also estimated that the global economic recession would affect 90% of the world's economies, a percentage that is greater than what was experienced during the Great Depression. The World Bank's baseline estimate indicates that global economic growth could decline by 5.2% in 2020 and only partially recover in 2021 with a 4.2% rate of growth, assuming that the global economy can begin recovering in the second half of 2020. In contrast, the IMF forecasted a 4.9% rate of decline in 2020 and a recovery of growth to 5.4% in 2021. Similar to the OECD and the IMF forecasts, the World Bank argues that the economic impact of the global recession will fall most heavily on developing and emerging economies that rely on global trade, tourism, or remittances from abroad, and those that depend on commodity exports. In addition, the World Bank forecasted that most emerging and developing economies could experience rates of growth in 2020 that are the lowest overall since the 1960s, with 90% of such economies expected to experience contractions in per capita incomes and many millions of people falling back into poverty. The World Bank also forecasts that economic growth in advanced economies will decline by 7.0% in 2020 and recover. Based on the prediction of world bank and other relevant institutions on the woes of post Covid-19 in most nations of the world, there is need for adequate laws to be made to suatain the economy and make it functional. Hence, this paper seeks to qualitatively identify the roles of law for sustainable economic development in post covid 19 eras in Nigeria. It seeks to answer the following questions:

To what degree does law promote economic sustainability in the areas of banking & Finance, dispute resolution, energy, infrastructure, insurance and transportation? To what extent might economic growth be affected if laws are not clearly defined, made public, and applied in a consistent manner? These are the focus of this paper.

REVIEW OF RELATED LITERATURE

Law and the Economy

A modern market economy requires laws that are able to constantly redefine rights and market relationships when new forms of corporate structure emerge; to provide ever-changing determinations of contractual obligations, and extend them to new forms of financial instruments, tangible and intangible property; to redefine and enforce the rights of victims of new technologies and activities while protecting the environment from newly emerging risks. These are only some examples of the tremendous flexibility that the legal and judicial systems require in order to adapt the laws to a dynamic economic system. As Cooter (1996) states in his pioneering piece, 'if economic law is poorly adapted to the economy, expectations conflict, cooperating is difficult, and disputes consume resources. Conversely, if economic law is adapted to the economy, people cooperate with each other, harmonize their expectations, and use resources efficiently and creatively'. If public institutions are defective and political conditions too unstable, private contractual arrangements will also become riskier and negatively affect private investment. In short, the formation of larger markets and the possibility of longer-term contracts, both necessary conditions for economic growth, are hampered by an unclear or undefined system of legal rules and inconsistent application and interpretation of those rules. The application of the economic analysis of law to development issues sponsors a clear and consistent definition and enforcement of the conditions of ownership in developing countries undergoing transformations. As Orr and Ulen (1993) argue, 'a government that credibly commits itself to upholding rights of property and contract enforcement not only provides a basis whereby partners in economic transactions can trust each other; it also reinforces the hope that the government itself can be trusted to transact honorably and to meet its contractual obligations'.

The economic analysis of the law in developing countries such as Nigeria in a critical time as this represents an attempt to identify changes in laws, regulations and enforcement mechanisms that, within the legal tradition of each country, would be able to enhance economic efficiency and improve equity. Edmund Kitch (1983) argues that law and economics focuses on the study of the impact of a system of rewards and penalties that affect individual behavior. These rewards and penalties are defined by laws, regulations, doctrines, court cases, social norms, and so on. The central goal of law and economics is then to analyze the individuals' and firms' maximizing behavior within a system of rules in order to identify the effects of laws. In this sense, law and economics follows a methodology compatible with a legal realism and within an elaborate framework of analysis provided by microeconomic theory. In this context, we will analyze how legal doctrines are not hermetically sealed, self contained, or even self sustaining. we will follow a legal realism found in law and economics where the law cannot be understood apart from its social context. Thus an understanding of how to enhance a more efficient social order through legal reforms is the major focus of this paper.

Global Economic Forecast

According to the Organization for Economic Cooperation and Development(2020), an updated forecast that projects global economic growth will decline by 6.0% under a single-wave scenario and 7.6% in under a second wave scenario 2020. This forecast reflects the OECD's a high level of uncertainty about the course of the global economy over the remainder of 2020, because the pandemic is "a global public health crisis without precedent in living memory.The OECD also concluded that, "The global economy is now experiencing the deepest recession since the Great Depression of the 1930s." In addition, the OECD argued that the pandemic is fragmenting the global economy through a growing number of trade and investment restrictions and diverging policy approaches that are being implemented on a country-by-country basis.

As a result of uncertainty concerning the course of the global economy over the remainder of 2020, the OECD produced two "equally likely scenarios:" one that assumes the current containment measures are successful in curtailing infections, and another that assumes there is a second wave of rapid contagion. Under both scenarios, the OECD estimates that the global economic recovery will be slow and gradual. The OECD also estimates that the average unemployment rate among OECD countries is projected to rise to 9.2% under a single wave scenario and 10.0% under the second wave scenario. Through the first quarter of 2020, however, most OECD countries had not experienced significant increases in rates of unemployment, in part due to national income and wage maintenance programs. The main

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exceptions were the United States and Canada, where unemployment rates spiked starting at the end of the first quarter and into the second quarter of 2020. In a major difference between U.S. and EU data, in the EU, workers absent from work due to temporary lay-off are counted as employed, whereas, in the United States, they are counted as unemployed. Global trade is projected to contract by 9.5% or 11.4% in 2020 under the single or second wave scenarios, respectively.

According to OECD (2020) scenario, global economic growth is projected to fall by 6.0% in 2020, but rise by 5.2% in 2021. In contrast, the OECD's second wave scenario projects a global economic contraction of 7.6% in 2020 and a growth rate of 2.8% in 2021, delaying a return to full recovery until 2022.

The OECD forecast also indicates that economic growth among developed economies will be particularly weak in Europe, where the growth rate is projected to fall by 9.0% and 11.5% in 2020, reflecting the one and two-wave scenarios, respectively. Similarly, U.S. economic growth is projected to contract in 2020 by 7.3%, but rebound by 4.1% in 2021. Under the second wave scenario, however, U.S. economic growth is projected to fall by 8.5% in 2020, but rise by 1.9% in 2021. The UK is projected to experience a contraction in GDP growth in 2020 of 11.5%, or 14% under the second wave scenario, the largest estimated annual decline in economic growth of any OECD country in 202. Owing to the above economic forecast by OECD, there is need for adequate legal framework to be put in place to be able to speed up economic recovery.

Implications of Covid 19 on the economy and the legal actions

In the banking and finance industry, lenders and borrowers will need to consider their rights amd obligations under their facility documentation to determine how these will be impacted by the pandemic (Aelex, 2020). The pandemic will impact some borrowers' ability to meet their obligations under any application facility agreement including but not limited to their repayment obligations and financial convenants. It is therefore necessary for borrowers to seek a renegotiation of terms before an event of default occurs. The Central Bank of Nigeria (CBN) has issued policies in response to the pandemic and has granted deposit money banks leave to consider temporary and time-limited restructuring of the tenor and loan terms for business most affected by the pandemic. Some restructuring legal options include obtaining a moratorium on interest payment obligations or relaxation of certain financial convenants. As the Naira's value relative to the US dollar is being adjusted, Nigerian borrowers earning mostly in Naira but with FX loans should be particularly conscious about and seek legal advice on assessing their ability to meet their obligations and any resultant effects.

On dispute resoltuon, it is anticipated that post pandemic disputes are likely to a rise out of interpretation of contracts and force majeure clauses (Aelex, 2020). The key issue will be whether disruptions to performance of contractual provisions as if the pandemic can be classified as force majeure events. If there is no force majeure provision in a contract, the issue will be whether parties can rely on the common law principle of frustration to avoid liability for breach of contract. More so, there may be need for those whose contractual obligations have been affected by the pandemic seek to renegotiate contractual terms. Additionally, there should be established principles to which parties will be willing to consent

to a "no faults" termination of the contract where performance of the contract has been disrupted.
It is therefore important that parties in a contract seek legal advice on the extent of their liabilities for such contractual obligations and ways to mitigate such liabilities. With the Federal Government's declaration of curfew and general lock down, other issues that may be considered by parties with potential disputes include:

Filling claims within statutory time frame. Limitation laws of various states of the Federation provide strict timelines for initiating certain actions, e.g. breach of contract and torts, action aganst public officers are also required to be initiated within three months of the accrual of the cause of action. Faliure to initate these actions within the stipulated timesframe would extinguish a cause of action by effluxion of time. The question then is, where a party's right of action is to lapse within the period of the pandemic, and courts are not open to the public, what happens to the right of the aggrieved person. Although these are unprecedented times, there have been certain interpretations by the courts as to how limitation laws should be interpreted in events beyond the contemplation of an aggrieved party. Therefore, parties may be able to find some recourse. In instances where time will lapse during the period of lockdown, it is advised that an aggrieved party seeks legal advice on creative ways to navigate and/or extend the limitation timeframe.

On issues that bother on Non-compliance with procedural timelines, rules of court provide for certain procedural timelines and penalities for non-compliance. The issue would be whether parties should be penalized for being unable to meet procedural timelines in view of the curfew/lockdown. In the absence of any directive from the Judiciary, parties would be required to seek extensions of time and comply with the penalties. For alternative dispute resolution mechanisms such as arbitration, parties may be agreed to precede dispiten the lockdown. However, there may be delay in the proceedings where court intervention is required for reliefs in the aid of arbitration.

In the energy sector, the pandemic has led to curfew and recent crude oil price crash, which has necesstitated the need to re-evaluate pricing and valuation mechanisms, particularly for the acquisition of interests in OPLs and OMLs, which were benchmarked on previous crude oil price (Aelex, 2020). Other issues which should be considered in the sector include disruptions in transaction timelines for projects concerning acquisitions and divestments of oil and gas assets. Parties should consider and seek legal advice on the most effective manner to mitigate the efects of these disruptions. With respect to off-grid generation, the restrictions on importation caused by border closures may render contractors who are required to import rendewable energy generating equipnebt for off-grid projects unable to do so. The implication is that this may trigger a force majeure event, causing delay or termination of contracts. However, the ability to reply on force majeure will depend on negotiations by parties, and how well the clause is drafted.

Production cuts and recuced production expenditures will negatively impact upstream projects for oil producing companies. It is expected that oil and gas companies will be seeking ways to effectively mitigate the economic implications. It is therefore advisable that such oil and gas companies seek legal advice with respect to anticipated amendments of contract terms and delivery expectations.

To manage the impact of the pandemic on infrastructure projects, relevant parties need to consider managing disruptions to project timelines (Aelex, 2020). Parties need to assess the effect of the lockdown, movement restrictions and the associated supply chain disruptions on project milestones and timelines. The outcome of this assessment may prompt early negotiations on contract variations and project term extensions.

It is necessary to asses the effect of potential long-term restrictions on performance obligations and determine whether the pandemic would constitute a force majeure event under the applicable contract. How would the force majeure clause (or principles of frustration, impossibility and impracticability) work vis-à-vis governing law clauses and contractually agreed dispute resolution mechanisms? Such collaborative analysis may make the force majeure notification and acknowledgement process non-contentious. Also very germane is financial considerations. How does the pandemic impact on project revenues (such as tool revenues and third-party lease payments where applicable) and the project budget and valuation? Will the parties be able to meet payment obligations (such as remittances to project owners, loan repayments and interest paynents)? Is there a need to engage the project financiers on payment term extensions or other concessions? Do the parties need to approach the government for guarantees or relief provided for under the economic stimulus legislation?

These are all issues which adequate legal advice will deal with while mitigating the risk and the impact of the pandemic on infrastructure projects.

In the insurance industry, the pandemic has had significant impact on businesses which are expected to fall back on insurance policies to mitigate the resulting losses (Aelex, 2020). The pandemic is likely to generate claims across several lines of business, especially in life and health insurance, travel policies and event cancellation. Important questions to be raised by businesses at this time should include. Whether the terms of existing policies accommodate losses arising from the pandemic. Businesses are of course advised to obtain professional advice on this, including whether an 'epidemics' cover will be sufficient. It is also important that businesses consider negotiating future insurance, contracts with epidemics and pandemics in mind.

More so, if the risks coverage of the policies includes epidemics and pandemics, then an insured should be aware of the timeline for making claims and ascertain if there is a prescribed mode of intiating such claims. While it is expected that an email should suffice, there is the possibility of any other mode being impacted by the current state of affairs, i.e., business suspensions and movement restrictions. In any event, professional legal advice should be sought by businesses to determine the scope of their insurance cover, what options are available for claims recovery and the mitigation ofany potentially negative impact.

According to the International Labour Organization (ILO), the outbreak of the pandemic is a major labour market and economic crisis, which could lead to the loss of up to 25 million jobs. The ILO says "the effects will be far reaching, pushing millions of peple into

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unemployment, underemployment and working povert." Employers, whose businesses have been negatively impacted, are considering whether to declare redundancy, while also looking into possible alternatives to retain and keep staff. Aside from a declaration of redundancy, some of the key issues being considered in Nigeria by employers include:

- Whether the pandemic can be interpreted as a force majeure event absolving the employer from its employment obligations or whether the employer can rely on the doctrine of frustration to avoid such obligations.
- Compulsory leave and non-payment/reduction of salaries for an extended period despite the provisions of the Nigerian Labour Act.
- The involvenet of the Federal Ministry of Labour & Productivity with respect to negotiations with some clases of employees.
- Regulations for remote and the extent of employer's vicarious liability.
- Government palliative for retrenched employees.
- The likelihood of courts' interpretation of renegotiated employment terms as being unfair clauses and being unenforceable.

In order to mitigate risks and liabilities that may be associated with dealing with these labour & employment issues, it will be necessary to seek legal advice as to the best course of action for an employer in these unprecedented times. The toll of covid 19 is highly noticeable in the transportation industry. In view of the restrictions on travelling, the global transportation sector has taken a massive hit with the pandemic. CAPA center for aviation warned that most aviation companies may be bankrupt by May 2020, if the pandemic continues to spread. Airports, shipyards and land borders have closed which translate to loss of revenue to the industry due to staled ships, grounded airline fleets and closed airports. Considering the pressure the pandemic puts on the transportation industry, who bears the cost of storage fees and demurrage? What happens to statutory payments to the regulators? To remain profitable operators would have to seek legal advice and explore various interventions including tax concessions and bailouts.

In the transportation sctor which is also very key to the economy, there have been disruptions in the supply chain (Aelex, 2020). Due to Covid 19, manufacturers of aircraft are unable to meet their obligations to manufacture aircraft resulting from the lack of supply of the components for the assembly line, leading to a reduction in productivity and a breach of the terms of their contracts. While in the medium to the long term, the pandemic would lead to a decrease in and even cancellation of orders for new aircraft. Parties to a contract wwould therefore need to renegotiate contracts and consider the effect of pandemic on delivery timelines.

In view of the above, there is need to mitigate the potential disruptions to the terms of lease and rental payments under existing lease agreements with third parties, which may have a dominant effect on the obligations of the operators under security agreements. Airlines and shipping companies, therefore, have to seek legal advice in order to pursue creative legal solutions in this circumatance.

CONCLUSION

The outbreak of the pandemic is a major labour market and economic crisis, which could lead to the loss of up to 25 million jobs and at the same time affect virtually every part of the economy. We have approached law and economics of development in this paper by covering the main theoretical and empirical scholarly work identifying the substantive sources of efficiency-enhancing legal doctrines capable of revamping the post Covid-19 economy of Nigeria. Our discussion in this paper focused on five areas (banking & Finance, dispute resolution, energy, infrastructure, Insurance and transportation). The main legal procedures requirements needed to sustain an economy were also suggested.

Recommendations

To further strengthen the post covid 19 economy, legal efforts should be made to revamp the economy by injecting reasonable amount of money to small business, health care providers, and infrastrustures. In particular, the law should be made to:

- provides additional lending authority for certain Small and Medium Scale Enterprises (SMEs) so as to boost the post COVID-19 economy in the country.Such loans and advances should include agricultural enterprises.
- Public Health and Social Services Emergency Fund should be provided to reimburse health care providers for health care related expenses or lost revenues that are attributable to the coronavirus outbreak; and for expenses to research, develop, validate, manufacture, purchase, administer, and expand capacity for COVID-19 tests to effectively monitor and suppress COVID-19.
- Resoanable amount of money should be allocated to states, localities, territories, and tribes to assist in the five critical areas outlined in this paper

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