

**LAW AS A VEHICLE FOR SOCIOECONOMIC  
CHANGE**

**A PAPER PRESENTED**

**BY**

**HON. JUSTICE PETER A. AKHIHIERO**

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## **LAW AS A VEHICLE FOR SOCIOECONOMIC CHANGE**

### **1. INTRODUCTION:**

The theme of this 13<sup>th</sup> edition of the Legal Symposium organised by the Students Union Government is: ***NATIONAL GROWTH AND DEVELOPMENT: THE ROLE OF THE LAW, GOOD GOVERNANCE AND THE MASSES***. This theme appears quite appropriate for consideration at this period of our national history. My presentation on ***LAW AS A VEHICLE FOR SOCIOECONOMIC CHANGE*** is obviously in tandem with the theme.

I am conscious of the fact that I am addressing an audience of scholars from diverse academic disciplines. Since not all the members of the audience are legal scholars, I will try as much as possible to simplify my presentation and avoid much technical legalese. I will commence with an elementary definition of the subject of Law.

In his immortal commentary, the English Legal Scholar, ***William Blackstone*** defined law as “***a rule of action which is applied indiscriminately to all kinds of action whether animate or inanimate or rational or irrational.***”

***Prof. Salmond*** defines law as ***the body of principles recognised and applied by the sovereign in the administration of Justice***. According to ***John Austin*** law is ***a command of the sovereign backed by sanction***.

From the sum total of these definitions, Law may be described as a normative science that is a science which lays down norms and standards for human behaviour in a specified situation or situation enforceable through the sanction of the state.<sup>1</sup>

Law is generally understood to be a mirror of society — a reflection of its customs and morals — that functions to maintain social order. The function of law is that of social engineering and this perception has been accepted by all the civilized countries of the world including Nigeria. The concern of law as an instrument of enhancing economic and Social Justice has widened to the extent that there has been a growth of a variety of laws touching almost every aspect of human life. Law, is considered not as an end in itself, but as a means to an end. The end is securing of social justice. Almost all theorists agree that law is an instrument of securing justice.

***Roscoe Pound*** attributed four major functions of law, namely: ***(1) maintenance of law and order in society; (2) to maintain status quo in society;***

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<sup>1</sup> <https://www.legalbites.in/nature-purpose-function-law/>

***(3) to ensure maximum freedom of individuals; and (4) to satisfy the basic needs of the people. He regards law as a species of social engineering.***

In this presentation, I will try to highlight the influence of law on the society at large, the impact of law in the socio-economic sphere and I will conclude with an assessment of the effect of law as a vehicle of socioeconomic change in Nigeria.

## **2.0 LAW AND THE SOCIETY:**

Law and Society emerges from the belief that legal regulations and decisions must be understood in its context. Both law and the society have common understanding. They are never autonomous in their context. In other words, law is deeply embedded within a society. It therefore implies that law is socially and historically constructed to become legally recognized procedures and institutions and besides that, law needs a society for its effectiveness and usefulness.<sup>2</sup>

The *origin of Law dates back to the creation of man in the Garden of Eden*. From the Biblical account, as soon as God created man and placed him in the Garden of Eden, the almighty God, the Sovereign of the entire universe commenced the process of legislation by promulgating laws to regulate life even in the Garden of Eden. In *Genesis 2:15-17*, the Scriptures stated as follows:

***“15 And the LORD God took the man, and put him into the Garden of Eden to dress it and to keep it.***

***16 And the LORD God commanded the man, saying, of every tree of the garden thou mayest freely eat:***

***17 But of the tree of the knowledge of good and evil, thou shalt not eat of it: for in the day that thou eatest thereof thou shalt surely die.”( KJV)***

In this unique passage, the Lord almighty commanded the man, who stood now as a public person, the father and representative of all mankind, to receive law, so that man might know that there was a Sovereign Lord above him, to whom he owed his allegiance and obedience. Some Bible scholars and commentators have boldly asserted that ***there was nothing inherently evil in the prohibited tree of the knowledge of good and evil***, for no reason was given for the prohibition, but a sentence of death was stipulated as the punishment for disobedience.

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<sup>2</sup> Samson Esudu: The Relationship Between Law And Society Today <https://www.grin.com/document/453478>

According to the great Bible Commentator, the *Reverend Matthew Henry*, the fruit of that tree *was evil only because it was forbidden*.<sup>3</sup> It is widely believed that the positive command was given by the Sovereign God *simply to test their fidelity and loyalty*.<sup>4</sup>

As society progressed, the process of law making became a *sine qua non* to ensure tranquillity in the system. With human interactions, conflicts are bound to arise hence the need for a system of mediation and resolution of disputes. This is where Law plays a significant role in the day to day affairs of society. The absence of law would invariably plunge the society into what *Thomas Hobbes* called *a state of nature where everyone would be against everyone*.<sup>5</sup>

The stark reality is that today's society is a heterogeneous mix of all kinds of people who try to destabilize the balance of the natural society and this is where the law find its strength in restoring the balance in society to enable people to co-exist in harmony.

There are different branches of the Law which govern the society at all different levels. I will highlight some of them.

### **2.1 PUBLIC LAW:**

Public law is the part of law that governs relations between legal persons and the government, between different institutions within a state, between different branches of governments, and relationships between persons that are of direct concern to society. Public law comprises constitutional law, administrative law, tax law and criminal law, as well as all procedural laws.<sup>6</sup>

### **2.2 PRIVATE LAW:**

Private law is that part of a civil law legal system that regulates the relationships between individuals, such as the law of contracts and torts, it is sometimes referred to as the common law. In general terms, private law involves interactions between private individuals, whereas public law involves interrelations between the state and the general population.<sup>7</sup>

### **2.3 CONSTITUTIONAL LAW:**

Constitutional law is a body of law which defines the role, powers, and structure of different entities within a state, namely, the executive, the legislature, and the judiciary; as well as the basic rights of citizens and, in federal countries such as the United States and Canada and Nigeria, the relationship between the

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<sup>3</sup> Gen.2:16 – Matthew Henry's Commentary on the Whole Bible.

<sup>4</sup> Gen.2:17 – Adam Clarke's Commentary.

<sup>5</sup> Thomas Hobbes: Leviathan (1651).

<sup>6</sup> [https://en.wikipedia.org/wiki/Public\\_law](https://en.wikipedia.org/wiki/Public_law)

<sup>7</sup> [https://en.wikipedia.org/wiki/Private\\_law](https://en.wikipedia.org/wiki/Private_law)

central government and state, provincial, or Local governments. Constitutional law is one of the branches of law in the society which sets up governments with its different branches of work like Ministries and Departments, stipulating how they are elected or appointed and the division of powers with responsibilities between them.<sup>8</sup>

#### **2.4 CRIMINAL LAW:**

Criminal law is the body of law that relates to crime. It proscribes conduct perceived as threatening, harmful, or otherwise endangering to the property, health, safety, and moral welfare of people inclusive of one's self. Most criminal law is established by statute, which is to say that the laws are enacted by a legislature. Criminal law includes the punishment and rehabilitation of people who violate such laws.<sup>9</sup>

#### **2.5 ADMINISTRATIVE LAW:**

Administrative law is the division of law that governs the activities of administrative agencies of government. Government agency action can include rule making, adjudication, or the enforcement of a specific regulatory agenda. Administrative law is considered a branch of public law.

#### **3.0 LAW AND SOCIAL CHANGE:**

Social change has been defined as the way human interactions and relationships transform cultural and social institutions over time, having a profound impact on the society.<sup>10</sup>

Social change is a concept many of us take for granted or don't really even understand. No society has ever remained the same. Change is always happening.

Sociologists define social change as changes in human interactions and relationships that transform cultural and social institutions. These changes occur over time and often have profound and long-term consequences for society. Well known examples of such change have resulted from social movements in civil rights, women's rights, and LBGTQ (Lesbians, Gay, Bisexual, Transgender and Queer) rights, to name just a few. Relationships have changed, institutions have changed, and cultural norms have changed as a result of these social change movements.

Throughout the historical development of their discipline, *sociologists have borrowed models of social change from other academic fields*. In the late 19th century, when *evolution became the predominant model for understanding*

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<sup>8</sup> [https://en.wikipedia.org/wiki/Constitutional\\_law](https://en.wikipedia.org/wiki/Constitutional_law)

<sup>9</sup> [https://en.wikipedia.org/wiki/Criminal\\_law](https://en.wikipedia.org/wiki/Criminal_law)

<sup>10</sup> Theo Spanos Dunfey: What is Social Change and Why Should We Care? <https://www.snhu.edu/about-us/newsroom/2017/11/what-is-social-change>.

*biological change, ideas of social change took on an evolutionary cast*, and, though other models have refined modern notions of social change, evolution persists as an underlying principle.

Other *sociological models created analogies between social change and the West's technological progress*. Various theoretical schools have emphasized different aspects of change. *Marxist theory suggests that changes in modes of production can lead to changes in class systems*, which can prompt other new forms of change or incite class conflict.

Social change can evolve from a number of different sources, including *contact with other societies (diffusion), widespread disease such as the Covid 19 pandemic* which has radically changed our lifestyles introducing the practice of social distancing, the wearing of face masks or face shields, restrictions in public gatherings, the predominant use of technologies for holding virtual meetings and the emergence of the new norm. Social changes have also been facilitated by ideological, economic, and political movements.<sup>11</sup>

There are two dimensions to the concept of Law as an instrument for social change to wit: The *laws bringing in a change in society*; and the *society bringing in a change in the law*.

With regards to the society bringing about a change in the law, this is a common phenomenon. Naturally, the Society would facilitate changes in the law, as the need arise. Laws are made by the society according to its requirement by its democratic institution i.e. the Legislature. One of our revered jurists, *Hon. Justice Chukwudifu Oputa, JSC (Rtd.)* of blessed memory observed thus:

*“We in the third world countries are faced with all the staggering problems of change – change in our general level of education, change in our standard of living, change for the better in our economy and our industries, an appreciable change in our health delivery services, a positive change in our level of political awareness and in our understanding of the true tenets of democracy and the inner spirit of tolerance which is the strength of that institution, change in practically all and every department of life in our country. Law must adapt itself to the demand for change and in the process of change, act as a catalyst. And it is the Nigerian lawyer who should feel the compelling need for these changes. The lawyer should be part of the society and should feel the compelling need for these changes. Our law must ensure more justice for the poor and underprivileged members of our society.”*<sup>12</sup>

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<sup>11</sup> William Form: Social Change <https://www.britannica.com/topic/social-change>

<sup>12</sup> Oputa: The 21st Century Lawyer And The Changing Law.

With regards to the aspect of the *law bringing in a change in the society*, we see a situation where the society is compelled to change or adjust its behavioural patterns to comply with the provisions of the law.

For example, in the present Covid 19 era, different levels of government have introduced some stringent legislative measures in the form of regulations and guidelines to curtail the wave of the pandemic. Members of the public have gradually changed their lifestyle to adjust to the dictates of these regulations. In some cases, people have become used to extreme measures such as lock downs, restriction on movements, restrictions on gatherings and social activities etc., etc. This is what we now regard as *the New Normal*.

In the not too distant past, some military regimes in this country passed some legislations to instil a high sense of discipline in the society. The *War Against Indiscipline (WAI)* introduced by the *Buhari/Idiagbon Military Junta* introduced us to the culture of queuing in public places on the basis of first come, first serve. There were also stringent sanitary measures enforced with stiff sanctions. There was a time when it was rare to see anyone disposing of refuse in unauthorised places. All these measures were introduced through the instrumentality of the law. The repeal and the non-enforcement of some of these laws resulted in the moral quagmire which we now find ourselves.

It must be observed that the Law by itself cannot bring about social change without the support of the law enforcement agents and the courts. In the recent case of *Ukeje v. Ukeje*<sup>13</sup>, in an attempt to redress the problems of gender discrimination of women's right to inheritance under Igbo customary law, the Supreme Court held that the Igbo Native law and custom which prohibits women from inheriting their deceased's father's estate is void as it conflicts with *Section 42(1) & (2) of the 1999 Constitution as amended*. A similar decision was reached in the earlier case of *AUGUSTINE NWAFOR MOJEKWU v. MRS. THERESA IWUCHUKWU (2004) LPELR-1903(SC)*.

However, notwithstanding the landmark decisions of the apex Court in the above named suits declaring women's right to inheritance, women must make conscious efforts to pursue this right irrespective of the various challenges that are connected with the realization of the right. It has been suggested that there should be continuous enlightenment through concerted efforts in rural areas where the application of such customary practices which derogates the rights of women within their community is rampant. Also that the Government should put

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<sup>13</sup> (2014) LPELR-22724(SC)

in place such programmes that would sensitise the women folks on the available means and remedies in realising their rights.<sup>14</sup>

### **3.1 THE SOCIAL FUNCTION OF LAW:**

The social function of law is responsible for peaceful change and larger morality. The major function of law is described in terms of the ultimate motto and goal, which is social control. The major goal of the law is maintaining peace, harmony and order.

The *ancient Greek Philosopher Plato* states that *law functions for the maintenance of social harmony*. Likewise, another Greek philosopher *Aristotle (384-322 BC)* emphasised on *distributive and corrective justice to human life*. The American philosopher *Lon L. Fuller (1902-1978)* posited that *law is the enterprise of subjecting human conduct to the governance of rules*.

Many Jurists and philosophers agree that law and its broader social functions are *for the betterment of human society*. British Philosopher *Jeremy Bentham (1748-1832)* emphasised that the function of Law is to provide “*the greatest happiness for the greatest number of the people*”. According to his *utilitarian philosophy*, the four functions of law are: *to favour equality and maintain security; to provide abundance; to provide subsistence; and to produce abundance*.

Furthermore, British philosophers like *Thomas Hobbes (1588-1679)* and *John Locke (1632-1704)* focussed on political sovereignty for the better security of the people. According to John Locke, the function of law is to protect human life, liberty and property of all individuals. The American human rights activist, *Thomas Pane (1737-1809)* posited that the function of law is basically to protect the life of people, liberty and the pursuit of happiness. His concept was applied in the political change of the United States’ independence in 1776.

The French political pioneer *Jean Jack Rousseau (1712-1778)* emphasised maximum individual freedom and liberty for human beings. He maintained that *man is born free but everywhere, he is in chains*. *Immanuel Kant (1724-1804)* also expounded on individual freedom and liberty. Similarly, the German philosopher *Rudolf Stammler (1856-1938)* advocated that the function of law is to ensure respect and participation of all in harmony. The

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<sup>14</sup> Ajigboye Oyeniya: THE PROTECTION OF WOMEN’S RIGHTS IN NIGERIA: AN APPRAISAL OF JUDICIAL INTERVENTION ON WOMEN AND INHERITANCE - [https://www.researchgate.net/publication/287218117\\_THE\\_PROTECTION\\_OF\\_WOMEN%27S\\_RIGHTS\\_IN\\_NIGERIA\\_AN\\_APPRAISAL\\_OF\\_JUDICIAL\\_INTERVENTION\\_ON\\_WOMEN\\_AND\\_INHERITANCE](https://www.researchgate.net/publication/287218117_THE_PROTECTION_OF_WOMEN%27S_RIGHTS_IN_NIGERIA_AN_APPRAISAL_OF_JUDICIAL_INTERVENTION_ON_WOMEN_AND_INHERITANCE)

American Sociologist **Roscoe Pound** (1870-1964) emphasized on the concept of the balancing of conflicting interest as the social function of law.

Modern American political Philosopher **John Rawls** (1921-2002) was a pioneer in the field of *equality and justice*. His book "*A Theory of Justice*" (1971) emphasised that the main aim of the law is to achieve justice and the maximization of liberty.

In a more radical postulation, the German philosopher **Karl Marx** (1818-1883) posited that law is the tool of exploitation of aristocrats. He further explained that the law only protected and promoted the interest of the capitalist and ruling class.

However, on the whole, many philosophers and jurists emphasised that the function of law is to promote and safeguard human life, liberty, freedom, security and property. But some have denied the social function of law.

In the modern times, law and society are correlated phenomena. Law is all about the protection and promotion of rights of human beings in the society. Society comprises of people with different ideas and beliefs. The Law is meant to strike a rational balance in the midst of these conflicting beliefs and interests.

The American jurist **Karl Llewellyn** (1893-1962) argued that society changes faster than law. That's why the law must maintain social harmony, peace, security, justice and individual freedom.

Basically, the social function of law is concerned with primary and secondary objectives. The primary function of law is concerned with individual behaviour and phenomena and prevents the undesirable behaviour of individuals in society. It regulates criminal and anti-social behaviour in the society and facilitates business and commercial activities in society.

However, the secondary function of law is concerned with the larger interest of society. It involves the systematic operation of the legal system in the settlement of disputes and the enforcement of legal provisions and court judgments.

It must be understood that the social function of law and society are vast concepts and philosophies regarding these ideas always spark debate and controversy among scholars all around the globe.<sup>15</sup>

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<sup>15</sup> Prem Raj Silwal: Social Function of Law and Society <https://risingnepaldaily.com/detour/social-function-of-law-and-society>.

#### **4.0 LAW AND ECONOMIC CHANGE:**

The Japanese scholar *Hiroshi Matsuo* writing on the subject: *The Rule of Law and Economic Development* observed that the rule of law can be regarded as the basic condition for economic development because it protects the rights of individuals and provides the people with predictability of the actions of contractual parties as well as those of the government.

Law and Business are not mutually exclusive sub-sets. Neither of them can be practiced in isolation. However, the interplay of law and economic growth has always been an intriguing subject for legal researchers and those associated with the legal sector. With an increase in the number of opportunities available for growth, especially in developing economies, businesses look to explore the latest dynamics and trends that have a positive impact on them. They also need to examine these and other issues within the limits of what the law permits. The technical knowledge of lawyers, and their ability to practically apply legal knowledge to draw an outline of what is legally permissible, makes a robust contribution to the range of the skills that are needed to augment development of commercial activities.

It is vital to understand that lawyers contribute every single day not only to making businesses sustainable, but to helping them flourish. By completing business and contractual obligations and commercial transactions, resolving disputes, facilitating the flow of funds and investments, encouraging innovation through the protection of intellectual property rights, and advising entrepreneurs on viable business solutions, lawyers are able to positively impact the growth of the economy.

Another key factor that needs to be outlined here is *the role of the Judiciary*. While political machinery is at the forefront in driving an economy, the uncertainties surrounding new and upcoming laws in growing economies are often settled through the Judiciary. The Judiciary plays a key role on how the laws that are enacted are implemented and applied. A stable institutional set-up, backed by the legal sector, is the key facilitator of economic development through the promotion of more sophisticated economic activity.<sup>16</sup>

In this aspect of the presentation, I will focus on the subject of *revenue law, economic crimes and the role of the judiciary to facilitate economic development*.

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<sup>16</sup> Bithika Anand: The Role of the Law in the Growth of an Economy, with a Special Focus on Developing Economies <https://www.edge.ai/2018/11/the-role-of-the-law-in-the-growth-of-an-economy-with-a-special-focus-on-developing-economies/>

#### **4.1 REVENUE LAW:**

Revenue law is an area of legal study in which public authorities, such as Federal, State and Local Governments use a body of rules and procedures to assess and collect taxes in a legal context. The rates and merits of the various taxes, imposed by the authorities, are attained via the political process inherent in these bodies of power.

Revenue law is part of public law. It covers the application of existing tax laws on individuals, entities and corporations, in areas where tax revenue is derived or levied, e.g. income tax, estate tax, business tax, employment/payroll tax, property tax, gift tax and exports/imports tax.

There are four principal ways by which a government can raise fund to carry out its functions. These are: *(i) by printing money; (b) by raising loans; (c) by charging for services and (d) by taxation.*<sup>17</sup> Revenue Law therefore encompasses the legal and administrative framework for raising funds through the foregoing sources, among others.

Taxation, which is the focal point here, is a device to provide government with regular, dependable and continuous source of revenue by transferring money from private hands into government treasury in order to finance the public sector. Taxation has been surprisingly neglected in Nigeria as a source of government revenue. However as a result of the dwindling oil prices, the agitation of oil-producing states for 'resource control' and the need to diversify the base of the nation's economy, taxation is beginning to attract more attention from the government.

About 90 per cent of the foreign exchange earning of Nigeria is derived from sale the of petroleum products and petroleum profits tax. The reduction of petroleum revenue invariably means less revenue for all the levels of government. This is because Nigeria operates a centralised revenue account system called the "*Federation Account*" into which all main 'federal' revenues are paid and later shared among all the three levels of government. See generally *section 162 of the Constitution of the Federal Republic of Nigeria, 1999*.

Hence, the three levels of government are now constrained to revitalise their tax systems either by modifying the existing laws or introducing new

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<sup>17</sup> See O. Akanle, "The Government, The Constitution and The Taxpayer." In Tax Law and Tax Administration in Nigeria, ed. M.A. Ajomo, NIALS, 1991, p. 1

ones. These developments will impact greatly on companies, charitable organisations, the ordinary citizens, inter-governmental fiscal relations and, to some extent, the economic health of the country. Consequently, an increasing number of legal practitioners, other professionals and ordinary citizens, are now faced with more tax-related issues than they probably could have imagined a decade ago.<sup>18</sup>

It is quite obvious that public services such as maintenance of national security, provision of good roads, health care system, electricity, housing, education, to mention but a few are necessary for the social and economic well-being of the people of a given society. It is also quite obvious that the discharge of these responsibilities requires funding, otherwise their provision cannot be reasonably guaranteed on a sustainable basis. In essence, there are certain public services that have to be jointly provided and financed for the overall welfare and security of everyone in the society. This is where taxation becomes paramount.

One of the features of a well-run country is an efficient tax administration system which means in basic terms – *easy to understand tax laws, simple registration/collection process, and an efficient tax adjudication system*. Several research findings have revealed that the government is not collecting enough taxes in relation to the size of the economy.<sup>19</sup> It is seriously suggested that the three tiers of government should put necessary machinery in place to expand their revenue generation base by bringing all eligible tax payers within their tax net. Relevant tax laws should be revised and revamped to cover lucrative sources of taxation such as *entertainment tax, property tax, consumption tax, taxes on ostentatious and luxurious lifestyles etc., etc.*

The Judiciary can support the tax drive of the various tiers of government through the establishment of *Revenue Courts, Fast Track Courts and Small Claims Courts*. *Presently, in Edo State, such Courts are on ground to facilitate the quick dispensation of justice in respect of commercial litigations in our courts.*

#### **4.2. ECONOMIC CRIMES:**

There is no gainsaying the fact that corruption has corroded the moral fabric of Nigeria as a nation. This is not a recent phenomenon. For a long time,

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<sup>18</sup> See: Abiola Sanni- Revenue Law

<https://ir.unilag.edu.ng/bitstream/handle/123456789/8364/REVENUE%20LAW.pdf?sequence=1&isAllowed=y>

<sup>19</sup> Chukwuebuka Uyanwa; Steps Nigeria Should Take to Increase its Tax Revenue

<https://www.linkedin.com/pulse/10-steps-nigeria-should-take-increase-its-tax-revenue-uyanwa/>.

corruption has been acknowledged as the single most important obstacle to economic progress and democracy in Nigeria.<sup>20</sup>

The first major step in the renewed offensive in the war against corruption was the enactment of the *Corrupt Practices and Other Related Offences Act in June 2000* and the establishment of the *Independent Corrupt Practices and Other related Offences Commission (ICPC)* in September of the same year.

The creation of the ICPC marked a veritable watershed in the prosecution of the anti-corruption war. Ever since, the story has never been the same.

In a decisive bid to strengthen the war against corruption, the Federal Government enacted the *Economic and Financial Crimes Commission (Establishment) Act, 2004*. The Act established the *Economic and Financial Crimes Commission*. The Commission is charged with the responsibilities *inter alia*, to prevent, detect, investigate and prosecute all cases of economic and financial crimes in Nigeria.

The term Economic Crime is not defined by any Nigerian statute. But the hybrid term Economic and Financial Crimes is defined under *section 46 of the Economic and Financial Crimes (Establishment) Act, 2004*, to mean “*the non-violent criminal and illicit activity committed with the objectives of earning wealth illegally either individually, or in a group or organized manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil bunkering and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods, etc.*”

Thus economic and financial crimes are kindred offences with an extremely thin line separating them. As we shall see in the course of this paper, all economic crimes are financial crimes, but not all financial crimes are economic crimes. By and large, economic crimes are directed at devastating the economy. On the other hand, financial crimes are committed not only with the intention of getting financial benefits but they are targeted directly on funds and

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<sup>20</sup> Akinseye Y. G. L Jurist Nigeria Correspondent

financial instruments. These include advance fee fraud, currency trafficking and counterfeiting etc.<sup>21</sup>

Some of the focal Legislations on Economic Crimes are as follows:

- (i) *The corrupt Practices and Other Related Offences Act 2003;*
- (ii) *Economic and Financial Crimes Commission (Establishment) Act 2004;*
- (iii) *Money Laundering Act 2011;*

Primarily, the Nigerian Police Force is responsible for the prevention, detection and the investigation of crimes in Nigeria. But there are certain categories of crimes, which are so technical in nature that they require some form of specialized investigation in order to unravel them. Economic crimes fall under the genus of such specialized crimes. Hence the creations of specialized agencies like the ICPC and the EFCC to carry out enforcements.

It will not be possible in a presentation of this nature to carry out a comprehensive examination of the enforcement mechanisms of each of these specialized agencies. For a more comprehensive review, I will refer us to a presentation which I made sometime in the year 2007 at the **LAW WEEK OF THE BENIN BRANCH OF THE NIGERIAN BAR ASSOCIATION**. The Paper is titled: **LEGAL DYNAMICS OF THE ENFORCEMENT OF ECONOMIC CRIMES IN NIGERIA**.<sup>22</sup>

However, it will suffice for us to note that the approach of these specialized bodies has introduced some radical and pragmatic dimensions in the system of criminal investigation and prosecution. Their approach is a major departure from the conservative, stereotyped and conventional style of investigation adopted by the Nigerian Police Force.

However, in its efforts to investigate cases of corruption and to prosecute suspects, the ICPC has faced a lot of challenges. The early endeavours of the commission to enforce the provisions of the Act were seriously resisted. In the celebrated case of **ATTORNEY GENERAL OF ONDO STATE & ORS V ATTORNEY GENERAL OF THE FEDERATION & ORS 13**<sup>23</sup>, the government of Ondo State challenged the power of the Federal Government to legislate on corruption. In a landmark judgment, the Supreme Court upheld the constitutionality of the Act. In the said judgment, the court held *inter alia* that

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<sup>21</sup> NUHU RIBADU ESQ: THE ROLE OF EFCC IN SANITISING THE NIGERIAN ECONOMIC ENVIRONMENT IN A DEMOCRATIC SETTING 9-10TH DECEMBER, 2004.

<sup>22</sup><http://www.nigerianlawguru.com/articles/criminal%20law%20and%20procedure/LEGAL%20DYNAMICS%20OF%20THE%20ENFORCEMENT%20OF%20ECONOMIC%20CRIMES%20IN%20NIGERIA.pdf>.

<sup>23</sup> 13. (2002) 9 NWLR Pt. 772, p.222; 2002. 99 LRCN p.1329.

***“the ICPC Act is an enactment for the peace, order and good government of the Federal Republic of Nigeria. Any legislation on corruption and abuse of power must be of concern to every Nigerian notwithstanding that its operation will affect property and civil rights of citizens in a State. Such an enactment like all enactments of the National Assembly will be of paramount force.”***

The EFCC has brought many sacred cows before the courts for trials. One of the landmark prosecution of the agency was that of the former Inspector General of Police ***Tafa Balogun*** who in the face of the armada of evidence against him, promptly pleaded guilty to the eight count charge of stealing and laundering funds amounting to about N17 billion. The Abuja High Court ordered Balogun’s six companies to be de-listed and their assets forfeited to the Federal Government. Some of his personal assets were also confiscated.

The EFCC also successfully prosecuted some high profile suspects such as former ***Governors Jolly Nyame of Taraba State, Orji Uzor Kalu of Abia State*** (his own conviction was set aside on a very technical ground) ***Joshua Dariye of Plateau State*** and our own ***Chief Lucky Nosakhare Igbinedion***, former governor of Edo State.

#### **4.3 REVIEW OF THE ENFORCEMENT PROCESS:**

A pragmatic review of the process of the enforcement of economic crimes in Nigeria must take cognizance of the impact of the entire exercise in the nation’s economy. Nigeria is presumably the second largest economy in Africa, with a population of over 120 million people. Oil revenue accounts for 90% of our foreign exchange earnings. There are untapped potentials in the solid minerals and agricultural sector, the tourism sector is being positioned as a great foreign exchange earner.

The capital market is one of the fastest in terms of growth. The banking sector has become fully stabilized and dependable. The telecommunications sector is no doubt one of the fastest growing in the emerging world markets. From the foregoing, it is evident that the nation’s economy has great potentials. Despite these bright prospects, the Country ranks among one of the poorest countries in the world. This is an irony. The bane of the nation’s problems has been attributed to corruption, economic mismanagement, lack of accountability and gross abuse of office. The rejuvenation of the war against economic crimes is a step in the right direction.

A pivotal issue at this stage is whether the current spirited efforts by the enforcement agencies have achieved the desired objectives to arrest the surge in the wave of economic crimes in the country.

Expectedly, support for the current efforts has not been overwhelming. There have been pockets of resistance from some groups of people who see the campaign as a live threat against their ill-gotten fortunes. Some have openly castigated the ICPC and the EFCC and branded them as political tools of the ruling government. Sometimes they have used the instrumentality of the courts to stall trials. This approach is not novel; it is a common reaction from the historical antecedents in other countries.

In *Sri Lanka*, in the 1960s, the problem of corruption reached a crisis point, the government made a bold move to tackle the problem. They appointed a special commissioner called the *Bribery Commissioner*. He was given a special mandate to investigate and prosecute matters of corruption. A *Bribery Tribunal* was set up to try such matters. The corrupt officials rose up to the challenge. They formed a coalition and mandated one of their ilk to file an action. The case was *BRIBERY COMMISSIONER V RANASINGHE*<sup>24</sup>. In a final judgment, the Privy Council dealt a fatal blow on the entire process. They declared that the Bribery Tribunal was not set up to according to the special legislative procedure stipulated by the constitution. The judgment was a major setback in the campaign against corruption in Sri Lanka.

In Nigeria, we have been a bit more fortunate. In spite of all the Legal gymnastics in several courts, our enforcement agencies have been weathering the storm. The anti-corruption agencies are still functioning. By and large, the war against corruption is still on. *The judiciaries in various states of the Federation have established special courts for the trial of economic crimes.*

However, some critics of the war against economic crimes have maintained that the agencies are political tools of the ruling government to witch hunt their political opponents. They accuse the agencies of selective prosecutions. They maintain that in so far as the President can appoint and remove the heads of these agencies, the agencies are an appendage of the Federal Government. According to critics, even the Independent Corrupt Practices Commission, is only independent in name; it is not free from the interference and control of government. But if the power of appointment being vested in the President is the determinant of the independence of these bodies, then it is doubtful if we have an independent judiciary in Nigeria. The President is the final appointor of the Chief Justice of Nigeria, the President of the Court of Appeal and the Chief Judge of the Federal High Court.<sup>25</sup>

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<sup>24</sup> 1965 A.C p.172

<sup>25</sup> See sections 231, 238 and 250 of the 1999 Constitution.

Thus, the question of independence of the agencies is a moot point.

## **5.0 CONCLUSION:**

In the course of this presentation, I have tried to trace the trajectory of Law as an instrument of social change. We started from the first piece of legislation in the Biblical Garden of Eden. We discovered that the almighty God himself was the first Law Giver. Although peace and tranquillity reigned in the Garden of Eden, the Lord almighty in His infinite wisdom and knowledge still deemed it necessary to promulgate law to regulate the conduct of man in the solicitude of the garden. This underlines the significance of law in the society.

We have explicated that the law is essentially a catalyst to facilitate socioeconomic change in the society. In the intersection of law and the society we cannot rule out the roles of men be they legislators, executors or adjudicators.

I will close with the immortal words of *His Lordship, Hon. Justice Chukwudifu Oputa JSC (Rtd.)* of blessed memory:

*“The 21st century lawyer should be thoroughly aware of the essential role of law in the social experiment. He should always remember that law has social accountability not only in terms of what it says but also in terms of what it does. It is a truism that no political programme, no social reform, no economic reconstruction can be undertaken effectively and successfully without the support of the law and the legal system. We therefore need, even now, but definitely and more certainly in the approaching century, a breed of lawyers and judges who are capable of inducting the inputs of law into development planning and the normative thrust of development into our system of law. Unless this is achieved, our law cannot become an effective instrument of sociology and development and, what may be even worse, our future lawyers cannot fulfil their social functions, nor discharge their duties to the building of a nation where no man is oppressed, and so with peace and plenty Nigeria may be blessed.”<sup>26</sup>*

Thank you for listening and God bless you all.

*Hon. Justice P.A.Akhihero*  
*High Court of Justice, Benin City*  
*www.nigerianlawguru.com.*

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<sup>26</sup> Oputa: Third Projection: The Social Function Of Law.