

Law, Institutions and Nigeria's Quest to Join the First World Economy

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I: Introduction

The invitation to deliver the third annual lecture in honour of the revered Justice Eso (following the earlier two by Professors Soyinka and Nwabueze) is indeed a great honour for me, and I must thank the Vice Chancellor, the Dean, Faculty of Law and the Law Students Association. I never had the privilege of meeting or interacting with Justice Eso but I am one of the millions of Nigerians who admire and hold him with awe. Many would agree with me that Justice Eso has lived a very successful life and had a most distinguished career. He is the sort of Nigerian that we all should be celebrating, and I am particularly happy that we are celebrating him while he is still alive. Although retired from the Supreme Court, I believe he is not yet tired and this gesture will encourage him to further advance the life of service to our fatherland. Furthermore, I am excited to be back in Ife since I left after my one year national youth service at the Department of Economics in 1984/85. I was invited to deliver the Faculty of the Social Sciences lecture here last year and I regret that my schedule did not allow me to make it: maybe I will make up for the lost opportunity one day or am I killing two birds with one stone today?

The topic assigned to me for this lecture is: ***“From Third World To First World Economy”***. This is exactly the title of the 729 paged book on the Singapore story by Lee Kuan Yew. The topic seemed too obtuse for us to effectively discuss in a couple of minutes. Forgive me therefore for taking the liberty to modify the topic. In doing so, I have been guided by two principles: first, is to focus on a topic that falls largely within the scope of experience and career of the celebrant, and which also would be of interest to the audience here--- mostly students and practitioners of law. The second principle is a selfish one and derived from the first, that is: I have chosen a topic in which I am not an expert but eager to learn something about, and hence I want to take advantage of this lecture to provoke the experts here to teach me a few lessons. I understand that my topic falls within the ambit of jurisprudence--- which I know little about. If, therefore, I amuse you by the crass ignorance I exhibit in the course of my presentation, I excuse you to laugh quietly.

Disclaimer: Let me therefore start with a disclaimer. The views that I express in this lecture are my personal views as a citizen and do not necessarily represent the views of, nor should they be attributed to, the Central Bank of Nigeria or the Federal Government of Nigeria. Second, this lecture has been hurriedly written in

the last one and half days, and you should please excuse the incoherence and errors.

My approach to the lecture is to be provocative: raise more questions than provide answers. I do not get into deep conceptual and definitional issues---- as many are obvious to the audience here. The rest of the lecture is structured as follows: In the next section II, I briefly summarize the current challenges of rapid economic transformation in Nigeria as a background; Section III evaluates the role of law and institutions in overcoming the lingering challenges; in Section IV we attempt to provoke debate around some unfinished business pertaining to the legal and institutional infrastructure and also conclude the lecture.

II: Nigeria and the challenges of economic transformation

As we all know, Nigeria has been a country of paradoxes. It is a country abundantly blessed with natural and human resources but in the first four decades of its independence, the potentials remained largely untapped and even mismanaged.

With a population estimated at about 140 million, Nigeria is the largest country in Africa and one-sixth of the black population in the world. Nigeria is the 8th largest oil producer and has the 6th largest deposit of natural gas in the world. Currently, barely 40 percent of the arable land is under cultivation. With over 100 tertiary institutions producing more than 200,000 graduates per annum, the basic human capital for progress is there. There are abundant solid mineral deposits that remain largely untapped. It is estimated that over 5 million Nigerians live outside of Nigeria, with tens of thousands as world class medical doctors and other professionals. In the midst of these resources, Nigeria (on the average) stagnated over the period up to 1999. The poverty situation worsened consistently such that by 1999, the incidence of poverty was estimated at 70 percent.

A classic example to underscore the scope of our misfortune is to compare Nigeria with Indonesia and even Malaysia. By 1972 before Nigeria and Indonesia had the first oil boom, both countries were comparable in almost all counts: agrarian societies; multi-ethnic and religious societies; with comparable size of GDP; etc. Both experienced oil boom in 1973 and thereafter, but took different policy choices. The outcomes of the differences in policy regimes are such that today, while manufactures exports as percentage of total exports is about 40 percent in Indonesia, it is less than one percent in Nigeria---- where we were in the 1970s. We

hear of how Malaysia got their first palm seedlings from Nigeria in the early 1960s when oil palm produce was already a major export of Nigeria. In the 1990s, it was estimated that Malaysia's export of palm oil produce earned it more than Nigeria earned from oil exports, and Nigeria had become a net importer of palm produce. What a tragedy! In contrast, two brand names emerged in the international community to define Nigeria: 419 scams, and corruption as Transparency International consistently ranked Nigeria either number one or two most corrupt country. In international relations, Nigeria was literally a pariah state. In economic terms, the decade of the 1990s witnessed an average GDP growth rate of 2.8 percent--- just about the rate of growth of the population (2.83). This means that on a per capita basis, growth was zero during the decade of the 1990s and no wonder poverty incidence worsened to 70%. All basic infrastructure was in a state of crisis, with barely 1700MW of electricity being generated for a country that needed at least 40,000. Needless to recount the dilapidated transportation infrastructure and the nascent, albeit fragile financial system that was ill suited to the demands of socio-economic transformation. Unemployment and poverty were the twin faces of the economy. Real wages were declining precipitously since the 1970s until the wage increases in 2000 that began to reverse the trend but not yet recovered to the mid 1970s levels in real terms. The educational system was down and out as the University system was characterized more by the days of strikes rather than days in classrooms. Lawlessness prevailed at all levels, and a culture of impunity occasioned by decades of militarization of all aspects of governance and society dominated our psyche. It was indeed an environment of 'anything goes'. The people became atrophied by cynicism and mistrust for government and people in government--- a result of several years of seeing government systematically lying to its people. As the late Pius Okigbo once argued, the socio-economic environment was one beckoning for a social revolution rather than ready for an industrial revolution. This was our past, and it is important in any analysis of the future, to keep a perspective on where we are coming from. Justice Eso in the first T. O. Elias annual lecture entitled, "The Place of Law in a Democracy", quoted Soren Kierkegaard as saying that: "Life can only be understood backwards; But it must be lived forwards".

Since the new democratic dispensation in 1999, and more fundamentally since 2003, efforts have been at top gear (at the Federal Government level) to reverse the trend and lay the foundation for Nigeria to realize its potentials and join the first world economy. My sense is that not many people in Nigeria, including those in government fully appreciated the extent of system collapse. In many instances, it has been akin to rebuilding a society from the scratch. Make no mistake about it: in the old order, some people (especially rent-seekers) made a lot of money and

profited from the disorder. To make progress, this class either has to be uprooted, displaced or compensated to give way. Either way, they are not going to give up without a fight. Currently, there is a persisting clash of the old and new order, with the entrenched 'business as usual' school fighting with two hands to overturn the ongoing reforms. The unfortunate thing about the struggle is that there is almost a whole generation of the elite that knows little about enterprise and hardwork but has made wealth through rents from the state. For such people, "there is too much suffering in the land" as avenues for easy money have dried up. Nigeria is not peculiar: every society at a similar place in history has faced similar challenges.

In a nascent democracy such as ours, especially one bereft of clear ideological orientations, individuals make a lot of difference. The quality and characteristics of the leadership that emerges define the trajectory of society. Over time however, it is institutions that would sustain the changes. The person, beliefs, and commitment of President Obasanjo to the Nigerian project have been critical in defining a leadership path, and leading a successful war in laying the foundation for Nigeria's socio-economic transformation.

The national crusade for a new economy is embodied in Obasanjo's socio-economic transformation agenda entitled "National Economic Empowerment and Development Strategy" (NEEDS) with a focus on four key objectives--- poverty reduction, employment generation, wealth creation and value re-orientation. The Federal Government has also assisted the States to develop the State Economic Empowerment and Development Strategy, SEEDS and every state in Nigeria has its own reform programme. The difference in outcomes so far between the Federal programmes and some of the states lies in effective implementation. The experience under NEEDS demonstrates that where you have a robust programme and implementation is effective, you have the desired outcomes.

Space and time would not permit me to exhaustively discuss the progress made so far which is laying a solid foundation for the continuing transformation. First, several of the key institutions of the state are being re-built. The army is once more being transformed (to rid it of politicians) and to focus on its key mandate. Several corrupt judges have lost their jobs and the judiciary is gradually undergoing reforms. The establishment of the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices Commission (ICPC) and their activities have sent a sharp signal that it is not business as usual. The National Assembly has enacted some landmark legislations that are fundamentally changing the course of our economic history--- Energy Reform bill; Anti-money laundering Act; Public-private partnership in infrastructure provision; Pension reform Act; Debt

management Office Act; Privatization Act; etc, and there are several important legislations pending at the Assembly, eg the Procurement Bill; CBN/BOFIA Acts; mining reform Bill; Fiscal Responsibility Bill; etc. The federal public service is undergoing reforms, and the introduction and enforcement of the 'Due Process' in public procurement has saved government over N120 billion. There is an ongoing effort aimed at National Law reforms as most of the legal-institutional infrastructure need reforms. The ports and customs are undergoing reforms, and the maritime sector has been strengthened.

Several landmark successes that have fundamentally changed the dynamics of the economy include: the banking sector and telecommunication revolutions; the debt relief (which wiped off \$30 billion of Nigeria's external debt), the sound macroeconomic environment; the privatization programme; deregulation of the down stream oil sector; fundamental sectoral reforms in agriculture and health; stable exchange rate regime and increasing external reserves (from \$4.9 b in 1999 to about \$37 b today, after paying \$12.4 b to the Paris Club of creditors). Nigeria has been de-listed from the FATF list and even the rating on corruption has significantly improved despite the long lags in perception. End period inflation has remained at around 10% for three years and the goal is to reduce to single digit. Contrary to the growth rate of the 1990s (at 2.8%), the average growth rate since 2003 has been 7.4%, and the target is to raise and sustain it at 10% or more. The latest household survey by the National Bureau of Statistics indicates that the incidence of poverty has significantly dropped from 70% in 1999 to 54% as at 2004. As at 1998, FDI in the non-oil sector was negative as foreigners divested from Nigeria. Today, such FDI runs into billions of dollars per annum. In 2005 alone, about \$650 million flowed into the banking sector alone. The message is that Nigerian economy is changing in fundamental ways and the rest of the world is taking notice. From a perception of Nigeria as a hopeless case, the growing view now is that Nigeria is the preferred destination.

Massive investment in infrastructure has begun to show modest results. For the first time in over twenty years, there is now a huge and sustained investment in power (with national generation more than doubling relative to the level in 1999). Private investors are also participating in building power plants as well as state governments. There is a plan for rehabilitation of the rail system and the roads are not spared.

The rapid successes and solid foundation already laid in the past few years have led many analysts (including Goldman Sachs) to predict that Nigeria is likely to be among the 20 largest economies in a few decades. President Obasanjo has

articulated a vision that in 2020 Nigeria should be among the 20 largest economies in the world. This is remarkable: that in a few years, the pessimism about Nigeria is giving way to optimism about joining the league of emerging and industrial countries. Nigerians share the optimism, if only the current programme of reforms can be sustained.

But the challenges ahead are huge. Overcoming the decay of four decades and joining the elite club of advanced economies will task the energies of all Nigerians and our development partners. We still have huge infrastructure deficiencies to fix; insecurity of lives and property to be solved; deal with huge urban unemployment emanating from the demographic structure and failure of development at the lower levels of government; provide housing and mortgage system; address the educational crisis and scale up rapidly on science and technology; continue to upgrade our capacity in agriculture; promote trade and integration with the rest of the world; drastically reduce the cost of doing business and build competitive advantages. More fundamentally, we need to build a socio-economic and political system that guarantees equal opportunity and voice to all---- a competitive and equitable system where each individual has every chance of success in life. We still have challenges of ethnicity and religion to deal with, as well as agitations of ethnic militia groups. These challenges cannot be dealt with in one day: it will take concerted efforts for a few decades to build that African superpower.

But the challenges are not insurmountable. Several countries have done it before. An instructive example is Singapore. According to the leader that laid the foundation for the modern Singapore, the key success factors for Singapore can be summarized as follows:

A united and determined group of leaders, backed by a practical and hardworking people who trusted them, made it possible. Did I expect an independent Singapore, with a GDP of S\$3 billion in 1965, to grow 15 times to S\$46 billion in 1997 at 1965 dollars and to have the 8th highest per capita GNP in the world in 1997 according to the World Bank? I have often been asked this question. The answer is 'no'. How could I have foreseen that science and technology, especially breakthroughs in transportation, telecommunications, and production methods, would shrink the world? The story of Singapore's progress is a reflection of the advances of the industrial countries--- their inventions, technology, enterprise, and drive..... With each technological advance, Singapore advanced---- containers, air travel and air freight, satellite communications, intercontinental fiberoptic cables. Information technology, computers, and communications and their manifold

uses, the revolution in microbiology, gene therapy, cloning, and organ reproduction will transform people's lives. Singaporeans will have to be nimble in adopting and adapting these new discoveries to play a role in disseminating their benefits.... The future is as full of promise as it is fraught with uncertainty. The industrial society is giving way to one based on knowledge. The new divide in the world will be between those with the knowledge and those without. We must learn to be part of the knowledge-based world. That we have succeeded in the last three decades does not ensure our doing so in the future. However, we stand a better chance of not failing if we abide by the basic principles that have helped us progress: social cohesion through sharing the benefits of progress, equal opportunities for all, and meritocracy, with the best man or woman for the job, especially as leaders in government (Lee Kuan Yew, 2000: 689- 91)

From the experience of Singapore and Nigeria since 1999, there are few lessons:

- The first lesson is that basic economic theory works well in all climes. Demand curve does not slope upwards and supply curve downwards in any country. Economic agents in Nigeria also respond to incentives and sanctions--- where enforcement is effective.
- The secret of success lies in being focused on selected major ideas; do them right and keep doing them right for a sustained period of time. In the book entitled Can Africa Claim the 21st Century?, those few right things for Africa to claim the 21st century include: improving governance and resolving conflict; investing in people; increasing competitiveness and diversifying economies; and reducing aid dependence and debt and strengthening partnerships.
- No failure is final, and no success is permanent: empires and nation states also have cycles of boom and burst. Those that have endured have got a few fundamentals right and kept them right. Slippages or reversals are costly. Indeed, according to the new President of Togo in a recent public lecture in Benin City, every one year of bad leadership retards the progress of a country by ten years.
- There is no need to reinvent the wheel in several aspects of what is required to move the society forward: it only requires careful adoption and adaptation. Singapore plugged into the inventions and technology of the West and created institutions that ensured sustained prosperity.

- Institutions--- the way the society is organized, including its rules, laws and enforcement processes—matter greatly.
- What has also emerged is the new ‘Can Do’ spirit of Nigerians. There is nothing inherently inadequate about Nigerians. The Nigerian spirit is one that is determined to excel in all circumstances. The challenge is to channel that spirit into positive directions.

III: Law and Institutions in the National Transformation

You may be wondering what law and institutions have got to do with the discourse on economic transformation. As I stated above, individuals make a difference in national leadership and transformation, but for sustained progress, institutions and organizations make all the difference. The founders of America deliberately set out to craft a system based on rule of law rather than rule of men. The story of any successful transformation of society is incomplete without an understanding of the legal and institutional infrastructure that undergird it. For Nigeria, it will amount to naiveté to envision sustained prosperity without thinking through the kind of legal-institutional framework to underpin it. Douglas North as one of the leading lights of the new institutional economics has the following to say on the centrality of institutions:

The fundamental issue can be stated succinctly. Successful development policy entails an understanding of the dynamics of economic change if the policies pursued are to have the desired consequences. And a dynamic model of economic change entails as an integral part of that model analysis of the polity since it is the polity that specifies and enforces the formal rules.... Development economists have typically treated the state as either exogenous or as a benign actor in the development process. Neoclassical economists have implicitly assumed that institutions (economic as well as political) don't matter and that the static analysis embodied in allocative-efficiency models should be the guide to policy; that is, 'getting the prices right' by eliminating exchange and price controls. In fact the state can never be treated as an exogenous actor in development policy and getting the prices right only has the desired consequences when you already have in place a set of property rights and enforcement that will then produce the competitive market conditions. (North, DC: 1993: 5).

North goes ahead to define institutions as the rules of the game of a society or more formally as the humanly-devised constraints that structure human interaction.

They include formal rules (statute law, common law, regulations), informal constraints (conventions, norms of behaviour, and self imposed codes of conduct), and the enforcement characteristics of both. Organizations, on the other hand, are the players---- groups of individuals bound by a common purpose to achieve objectives and include political bodies (political parties, the legislature, city council, a regulatory agency); economic bodies (firms, trade unions, cooperatives); social bodies (churches and religious organizations, social clubs, etc); and educational bodies (schools, colleges, universities, vocational training centres).

In this lecture, we focus on institutions, enforcement mechanisms and organizations that support market transactions and allocative efficiency of the state. At the outset, we make it clear that a market economy framework, where competition and private sector drive the process of economic development is the best framework to achieve rapid transformation of the economy, create wealth and reduce poverty. We are therefore concerned about the institutions and organizations that should underpin the process in Nigeria. But institutions and organizations interact in powerful ways:

- The continuous interaction of institutions and organizations in the economic setting of scarcity and hence competition is the key to institutional change;
- Competition forces organizations to continually invest in skills and knowledge to survive. The kinds of skills and knowledge individuals and their organizations acquire will shape evolving perceptions about opportunities and hence choices that will incrementally alter institutions.
- The institutional framework dictates the kinds of skills and knowledge perceived to have the maximum pay-off.
- Perceptions are derived from the mental constructs of the players.
- The economies of scope, complementarities, and network externalities of an institutional matrix make institutional change overwhelmingly incremental and path dependent.

Given the interactive nature of both institutions and organizations, we focus more narrowly in this lecture on *institutions--- as formal rules, legal infrastructure, informal constraints, and enforcement mechanisms that constrain or shape behaviour in the process of market-based economic transformation*. Such institutions help to transmit information to economic agents, enforce property rights and contracts, manage competition in all markets and shape the allocative efficiency of the state.

A market economy framework requires a different legal-institutional system than a non-market economy. From a legal-institutional perspective, the supreme institution of a country is the Constitution, which is supplemented by the other enactments of the legislature and pronouncements of the courts. The Constitution among other things spells out the allocative powers in terms of who allocates economic resources in a society--- the state or the market. It should also spell out the economic relations embodied in property rights and rule of law. As the supreme institution, the Constitution in many cases prescribes the procedural aspects in terms of how law is promulgated and enforced and includes the functioning of the necessary legal and administrative institutions. The content and context of these institutional provisions and their enforcement make a fundamental difference in the speed and character of transformation of an economy. The system evolved by the framers of the American constitution based upon 'rule of law rather than rule of men' and unlocking human potentials by fashioning a society based on individual freedoms, competition, and private enterprise helped to unleash the progress of that society. On the contrary, the system of maximum controls by men over others as practiced in the communist countries showed in an experimental manner what the outcomes could be depending on the different systems of laws. With the experiments under communism and capitalism at the global scale, or even the systems of feudalism and republicanism in different parts of Nigeria and the outcomes for poverty and wealth creation, one can hypothesize that institutional arrangements make all the difference. Institutions drive human progress, and while some unleash, others inhibit human progress. As a layman, it is evident from all over the world that wherever the rule of law prevails and property rights and contract enforcements are more effective, progress has been faster than otherwise.

In Nigeria, examples abound as to how alternative legal-institutional infrastructure emasculated development. The constant changes or suspension of aspects of the Constitution during military rule created uncertainties. There was also unpredictability in the laws governing the society as specific laws could be enacted overnight and with retroactive effects. Such uncertainties were inimical to investment and property rights, and hence retarded growth. One is not sure whether the Indigenization Decrees did not retard the process of industrialization and private enterprise in Nigeria. It is possible that the action could have created uncertainties regarding foreign ownership of production in Nigeria and hence retarded FDI which we are later to seek after. A legal system that conferred powers of monopolies to the state over telecommunications, power, and some infrastructure obviously retarded private investment in these areas. An institutional framework (a legal system a la the Constitution) which has proliferated states and assured them of unconditional access to 'statutory allocation of revenues from the

centre' destroys the known basis of human progress--- competition. A constitutional provision that allocates such resources to states with powers to spend without any strong oversight institution has created a rentier system and perpetuated a culture of 'cake sharing' without any attention to 'cake baking' especially at some of the lower tiers of government. It has also destroyed the fundamental umbilical cord between the state and business. The relationship between state and business is a strategic and mutually beneficial one: states depend on businesses to create jobs and to pay taxes to the state; in turn states provide the enabling environment to help businesses thrive. The dependence on 'statutory allocation' has destroyed that relationship in most cases to the extent that many states hardly pay attention to enterprise development. If they can get all the money they need from 'allocation', why care about businesses whose taxes amount to pittance? Today, not many states care about creating an environment conducive for enterprises to locate in their states or aggressively marketing their states for investment. This Constitutional provision in Nigeria is one example of how a legal-institutional framework can create perverse incentive system and hence retard the process of economic transformation.

On the other hand, there are several new laws and institutions which have unleashed the momentum for progress. A few examples suffice:

- A programme of economic liberalization and deregulation which has enlarged the domain of businesses that private sector can get into, and see how it has unleashed progress in the airline industry, banking and finance, telecommunications sector, private universities, etc.
- Energy Reform Act and now private sector investment in building power plants
- The 'Due Process' in procurement system which has promoted competition and transparency in public procurement, and saved the federal government over N120 billion in money that would have been wasted or frittered away into private pockets
- The new Pension Act with potentials for shoring up Nigeria's capital market, and offering new incentive structure for workers
- The monetization programme and asset distribution programme thereby empowering workers and minimizing waste by government
- The privatization programme helping hitherto dead public enterprises to resurrect and survive under competition and also significantly altering the incentive system for politics as much of the expected 'cake' to be shared in the public sector will now reside with the private sector.

This anecdotal evidence from Nigeria corroborates evidence from the rest of the world that institutional quality and character significantly impact on economic development. Empirically, countries that have better institutional quality (however defined) grow much faster and enjoy better standards of living than countries with weaker institutions. Even the political and legal institutions define the incentive system under which policymakers operate, and determine whether government facilitates or inhibits economic development.

Empirically, the issue is no longer whether institutions matter; to a large extent also, it is not even about which institutions matter (at least the most critical ones that promote property rights, foster competition, enforce contracts, and make markets and allocation of resources more efficient and equitable can be identified). There is one fundamental question that needs serious analytical attention namely; **how to design and introduce effective and efficient institutions.**

Law circumscribes behaviour: it regulates and also creates new behavioural relationships. The dynamics is also important: do laws and institutions follow developments in the economy or can they be supplied ahead of demand for them? Do you merely transplant the institutions from one society to another (revolutionary or radical change), or is there path dependence (where initial conditions in society's evolution play a dominant role), and hence the process of institution creation is adaptive and evolutionary. This is a question for our eminent legal luminaries and institutional economists to address, and the jury is still out on these questions. Often, one hears Nigerians swing to either of the pendulums depending on the convenience. In one case, people will argue that it took the first world economies hundreds of years to evolve the institutions and legal infrastructure that have propelled them to their present state. The conclusion from this line of thinking is that Nigeria is trying to run too fast and we should adopt laws and institutions that 'suit our culture or environment' --- whatever that means. For these people, culture and environment are constant, and one needs only to search for appropriate laws and institutions to fit. On the other hand, people try to compare Nigeria with America, Japan, Malaysia, etc and wonder why our leaders cannot give us a society like those. Put differently, it is akin to the debate about the nature of leadership and society: some argue that a society gets the leadership it deserves (leadership as endogenous) while others argue that leadership emerges to propel a society to a path it could otherwise not evolve on its own (exogenous). In other words, does Nigeria have the kind of institutions it deserves given its culture and level of development or should we actively and creatively design new institutions that would propel us to achieve the vision of being one of the largest economies in the next two decades? What should those institutions be?

My view is that it is not an issue of either of the two polar positions of either evolution or revolution. We need both. Nigeria cannot and should not wait for another hundreds of years to ‘evolve’ the right kinds of institutions. We need rapid institutional adaptation: in most cases, we don’t need to re-invent the wheel as it were. Ingenious adaptation and innovation in ways that reflect both our local conditions and our shared vision of the future are what we need. In others, we need to create the systems from our collective experience. We must not be afraid of trying or experimenting with new ideas or institutions: only those who dare can accomplish! Recall the institutional re-engineering we undertook in respect of the banking industry and the outcomes for the economy today.

As a template to ensure effective institutions, the World Bank (2002: 4-5) suggested the following principles:

- *Design them to complement what exists---* in terms of other supporting institutions, human capabilities, and available technologies.
- *Innovate to design institutions that work----* and drop those initiatives that do not. Even in countries with similar incomes and capacities, innovation can create stronger institutions because of differences in local conditions--- differences ranging from social norms to geography. Experimentation, which has some costs that must be recognized, can nevertheless help identify new and more effective structures.
- *Connect communities of market players through open information flows and open trade.*
- *Promote competition among jurisdictions, firms, and individuals.* Greater competition modifies the effectiveness of existing institutions, changes people’s incentives and behavior, and creates demand for new institutions. Developing country actors may face too little competition, often because of current institutional structures. Changing this will improve the quality of other institutions. Competition among jurisdictions--- for example, among different states within a country or between countries --- highlights successful institutions and promotes demand for them. Competition among firms and individuals does the same.

In this section, we have made the case that the legal – institutional framework is the key to economic transformation. We know also that it can be adapted or created to fit the peculiar circumstances of a society. So, where do we go from here?

IV: Towards an Effective Legal and Institutional Framework for Nigeria's Economic Transformation: Selected Illustrations

It is almost impossible to win any game without having an enforceable set of rules to guide it. So also is the game of economic transformation. Institutions as rules of the game need to be clear and enforceable. Of course, like life itself, institutions are dynamic and will continue to evolve or lead the continuously changing economic circumstances. Institutional development is an interminable process. So far, we have made progress in building and strengthening some key institutions. We also know that there is still a long way to go.

For Nigeria to make rapid progress in the quest to join the first world economy, it has to run at extraordinary speed in the creation, adaptation and enforcement of relevant institutions. To start with, it needs to re-examine and possibly reconstruct the basic institutions of the state (political- legal and administrative arrangements as embodied in the Constitution) to enhance allocative and operational efficiency of the state. Second, institutions for ensuring the security of lives and property, secure property rights and enforcement of contracts need strengthening. Third, we need institutions that enlarge the domain of the private sector and promote competitiveness. Nigeria urgently needs a restructuring and strengthening of the Judiciary to ensure prompt and effective administration of justice and enforcement of the rule of law. The list is long, but I will briefly elaborate on a few below.

Restructuring and Strengthening the legal-institutional framework of the State

To make rapid economic progress, the institutions of the State need restructuring and strengthening. The focus is to eliminate perverse institutions, rebuild or create institutions that are developmental in orientation, tie the hands of governments from arbitrary behavior and circumscribe it to behave in a manner that is socially optimal. James Madison had underscored the need for such a concern when he observed:

But what is government itself, but the greatest of all reflections on human nature. If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable government to control the governed; and in the next place oblige it to control itself.

James Madison, Federalist Papers, No. 51.

The starting point is to keep our gaze on the Constitution. While no Constitution is perfect, it is important to recognize the myriad defects in the current 1999 Constitution which may retard our quest for rapid economic transformation. The

National Political Reform Conference recognized many of these defects as embodied in its Report, and many of the Clauses proposed for amendment by the National Assembly underscore the point. Several aspects of the Constitution require serious re-examination. Many aspects pertaining to land use to unleash the mortgage system; operations of the federation account for effective macro economic management, etc need urgent attention. The national law reform efforts should complement the constitutional review.

The contradictory provisions in the Constitution pertaining to the responsibility for managing the national economy and operations of Federation Account illustrate one of the defects in the Constitution in respect of managing the economy. On the one hand, the Federal Government is mandated to manage the national economy for the benefit of all Nigerians, but on the other, the provisions on the Federation Account takes away a key instrument for economic management (control over fiscal policy). If all revenues accruing to the Federation Account are shared among all tiers of government and each with statutory right to spend irrespective of the economic implications, then the Federal Government has very little control over fiscal policy. The monetary policy implications of such a regime are also complicated. Given the peculiar source of revenue (oil), analysts need to come up with a more credible and sustainable mechanism for operating the Federation Account. One possible suggestion is for the key elements of the Fiscal Responsibility Bill to be enshrined in the Constitution. To complement such a provision, the Central Bank could also be mandated by the Constitution to ensure price stability. These legal- institutional arrangements will guarantee macro stability, fiscal sustainability and signal to economic agents that reforms are permanent.

A fundamental missing link today is how to strengthen institutions at the lower levels of government to promote competition, efficient and accountable allocation of resources and poverty reduction. In many states, the State Assemblies are co-opted by the Executive and the Governors literally run the states without any oversight by anyone, except sporadic complaints by few citizens (mostly those cheated out of the ‘cake-sharing’). Poverty reduction and employment generation are mostly local issues, and unless the system works at those lower levels, the efforts at the Federal level will continue to be grossly undermined in terms of outcomes. This is the challenge to our lawyers, law makers, and institutionalists. How do we build and strengthen institutions at the lower levels of government? What institutional design could provide incentives to minimize dependence on the Federation Account or ensure efficient deployment of such resources in a measurable and monitorable manner? Alternatively, how could the law help to

unleash competition among states and restore the umbilical cord between business and government at the state level? Governments usually depend on businesses to pay taxes and create jobs. If because of guaranteed revenue from the Federation Account many states do not have any incentive to attract or grow private business, then our quest for rapid transformation will be delayed. The question then is, how do we redesign the operations of the Federation Account in such a manner that it induces competition and accountability? In so far as the states are not under pressure to create wealth through promotion of private enterprise, propelling the Nigerian economy would amount to an aeroplane trying to fly with only one wing.

Another set of institutional reforms to move the economy forward pertains to the judiciary itself. Its processes and skill-set may need scaling up. Specially, improvements may be required in the remuneration, technology and skills of judges. Structured training for judges in specialized areas and especially the use of IT in court processes will have to be encouraged.

One aspect of the reform of the judiciary is a consideration of a specialized division of the High courts devoted to commercial cases, especially bordering on property rights and contract enforcement. This is the heart of a market economy. The first principle of justice I learnt is that justice delayed is justice denied. Indeed, the speed of dispensation of justice especially the enforcement of contracts and property rights is increasingly becoming one of the measures of extent of economic advancement. This is because if commercial issues--- contract rights and property rights are not easily enforceable, market-based economic systems cannot prosper. The Central Bank of Nigeria is committed to this reform, and is ready to partner with the Judiciary and other stakeholders to ensure its success.

The final example of an institutional process that must be strengthened to ensure rapid economic transformation is to evolve a free and fair electoral system in which every vote is counted and every vote counts. Without this, it is difficult to have responsive and responsible leadership. This is the path to sustainable democracy and hence sustained economic progress. If people believe that election results can be 'written or manipulated', then political parties will not be under pressure to search for qualified, credible candidates who can win elections; and responsible candidates will be discouraged from offering themselves for service. For sustained economic transformation, credible leadership must emerge out of a fair electoral process.

Conclusion:

I must now conclude this boring lecture. Nigeria has all it takes to rapidly transform from a third world to a first world economy. The Obasanjo administration is laying a very solid foundation for that to happen. The challenge is to sustain the momentum for several decades as Singapore and other newly industrializing countries did. Today in Nigeria, the most frequently asked question is whether the Obasanjo's reforms will be sustained. The answer, in my view, lies in the law and institutions. It is my belief that individuals make a difference, but for sustained development of a society, institutions make all the difference. Evolving, adapting or creating the appropriate institutions remains the cardinal challenge of our transformation agenda. Now that we have the courage to envision a prosperous society in the near future, we must also have the ingenuity to fashion the legal- institutional framework to propel the new economy. And Nigeria has enough geniuses like the retired but not tired Hon. Justice Kayode Eso to help us. May God bless you Sir, as you continue to serve Nigeria.

Thank you for listening!