

The Role of Lawyers and the Law in Supporting Creative and Innovative Economic Development in Zimbabwe.

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Abstract: *The economy of Zimbabwe for the period 2009-2012 registered an average growth rate of 10.5%. This however decelerated to 4.5% in 2013 and 3.2% in 2014. There are many factors that contribute to the growth of an economy. While the performance of an economy is hinged on various confidence measures and factors as undertaken by government in collaboration with stakeholders, this paper does not wish to address all such factors as if it would be a paper in economics. Only the role of lawyers and the law in economic development will be discussed with the view to establish a nexus if any.*

Keywords: law, lawyer, economic development, growth rate, economy.

The relationship between laws and lawyers and economic development

Economic growth and development across the world is marked by recognition that the law has an important role to play. The economic reforms which have been instituted since 1980 have seen a continuing succession of changes in formal law and legal processes, sometimes following economic change and sometimes spurring it.

Sustained economic development requires a legal order offering stable and predictable rights of property and contract. Hence, it is commonly agreed that the relationship between legal and economic development is uni-directional.

As such, in exploring the determinants of a country's growth and development performance, it is critical to understand that the legal system is a significant cog which fosters confidence among investors or property owners making agreements.

This co-evolution of economics and the law is nicely exemplified in the sphere of the banking services sector, which the Reserve Bank of Zimbabwe superintends over.

Over the years the legal fraternity has been involved in crafting laws and regulations which

govern the operations of the banking sector. Some of the legislation includes:

- a) The Reserve Bank of Zimbabwe Act, (Chapter 22:15);
- b) The Banking Act, (Chapter 24:20);
- c) Banking Regulations (S. I. 205) of 2000;
- d) Building Societies Act, (Chapter 24:02);
- e) Post Office Savings Bank (POSB) Act, (Chapter 24:10); and
- f) Exchange Control Act [Chapter 22:05] and Exchange Control Regulations [S. I. 109 of 1996].

Apart from formal pieces of legislation, the Reserve Bank of Zimbabwe has put in place a number of Policies and Guidelines such as:

- a) Troubled and Insolvent Banks Policy 2001
- b) Guidelines on Money Laundering 2002
- c) Disclosure Guideline 2000

In addition there are various pieces of legislation governing the operations of different financial service providers in the country such as insurance, pension funds, unit trusts, asset management companies and microfinance institutions.

The amendments, new laws, policies and guidelines seek to enhance the effectiveness of the regulatory framework which ultimately leads to strengthened contribution of the financial sector to economic development.

The contribution of the legal services sector is paramount. Without the drafting of the laws by the laws economic development strategies would be futile. It is not only in drafting that the lawyers become handy but in interpretation too.

World Bank observations

The World Bank made observations in some specific areas where the legal profession can play a critical role in advancing economic development in Zimbabwe.

The World Bank 2015 'Doing Business in Zimbabwe Report' shows that there are a number of areas in which the legal framework in Zimbabwe can be enhanced in order to make Zimbabwe more

competitive. To mention just a few, these areas include:

- a) **Starting a business** - The bureaucratic process and the legal steps that an entrepreneur is required to comply with before a company is fully registered were found to be cumbersome, lengthy and costly. So in this regard the law becomes an impediment to economic development. The Companies Act for example has cumbersome requirements for companies.
- b) **Construction Regulations** - Complying with construction regulations was found to be excessively costly in time and in money. The current construction laws do not support innovative low cost housing initiatives. As a result, many may be tempted to bypass the laws leading to hazardous construction, putting the lives of people at risk.
- c) **Enforcing Contracts** - the process of resolving commercial contracts in the country was found to be inefficient, taking very long to obtain a court judgment. Despite the fact that court processes are lengthy the cost of litigation is quite prohibitive.
- d) **Resolving Insolvency** - resolving insolvency was found to take 3.3 years on average and cost 22% of the debtor's estate, with the most likely outcome being that the company is sold on piecemeal basis. The average recovery rate is 13.8 cents on the dollar.

It is without doubt that this kills the entrepreneurial efforts and therefore calls for a review of the legal framework. It also goes without saying that a country with a conducive legal environment will attract more investment. Legal structures and processes should not be cumbersome for investors. A legal system that promotes the rights of property and contract enforcement not only provides a basis whereby partners in economic transactions can trust each other, it also reinforces the confidence that the government itself can be trusted to transact honorably and to meet its contractual obligations.

While Government is seized with these issues, there is need for the legal services sector to take a keen interest in advancing the necessary reforms. Indeed, there is scope for private solutions as well as public-private partnerships.

There is need to consider out of court workouts such as alternative dispute resolution methods, e.g. Arbitration, conciliation and mediation. Business rescue processes should assist in commercial dispute resolution and insolvency. The legal profession should make necessary recommendations on these and related matters.

Harmonization of our laws with those of other countries in the region is critical in improving the country's competitiveness.

Role of lawyers in economic development

Lawyers play different roles depending on their place in the legal profession and the nature of their law practice or activity. A vibrant and engaged legal profession is an essential institution in building a healthy democracy.

Judges and prosecutors have fundamentally different roles from those of private lawyers. But even within the ranks of those we would usually call "lawyer," different practice settings shape the lawyer's role in different ways.

In-house corporate lawyers have special responsibilities and duties while lawyers for government agencies serve somewhat different interests than do private lawyers.

Nonetheless, all lawyers play a crucial role which entails bringing the law to non-lawyers by advising clients and drafting documents that make transactions work within legal confines. Lawyers make the system of justice work. Many lawyers serve in legislatures and parliaments and often lawyers are called upon to advise parliaments on the details of new laws.

As such, the legal profession is an anchor stakeholder in the promotion of economic growth and development in all sectors. It has the catalytic capacity to act as an agent of change in our socioeconomic development. This is particularly important where there are rapid changes in the operating environment.

Further, proper representation of legal matters and interpretation of laws promote public confidence in the judicial system, leading to economic stability and hence a conducive investment climate.

With so many laws, regulations, and industry specific rules that change from year to year to accommodate changes and new requirements of the ever-changing economy and market environment, it is absolutely essential for businesses to employ lawyers.

The economic transactions that have a legal impact on business where corporate lawyers are involved include:

- a) Deciding on a business structure and legal form
- b) Receiving finance from an external source
- c) Signing deals, contracts, or leases as well as the negotiations for these

- d) Developing a hiring process
- e) Being involved in Merger and Acquisition
- f) Protection of intellectual property

The primary role of the lawyer should be to ensure that the strategies and tactics developed by business management are legal and that documentation required in executing that strategy is properly prepared and, where necessary, filed and approved.

Globalization has fundamentally accelerated and altered business transactions. There is a proliferation of international transactions both at the corporate level and the country level. In this regard, the services lawyers bring to international trade are extremely important.

As for the banking sector which has been used as an example in this paper, lawyers assist businesses to tap into sources of finance both on the domestic market and around the world in relation to international trade finance and the capital markets.

The kinds of transactions that lawyers and law firms are called on to participate in are large, diverse and complex.

No global transaction - *contract, distribution agreement, securitization, franchise* - can be engineered without lawyers.

In order to serve the financial markets effectively the lawyers involved need expertise in environmental regulation, tax law, banking and financing, and regulatory issues to mention just a few.

Creative and innovative economic development

Zimbabwe, like other countries within the global village, has to adapt to changes in the economic climate. Over the past decade, for instance, there has been a major shift across sectors towards more innovation, creative endeavors and critical thinking in order to navigate the business environment.

It is imperative that the legal system supports the innovation, creativity and entrepreneurship without compromising on citizens' rights and the quality of social and economic justice.

It is noteworthy that creativity, innovation and entrepreneurship are cutting across many sectors of our economy. In addition, technology has become central to efficient delivery of service and products.

The lawyers' role is that of facilitation and provision of legal expertise in order to enable the efficient delivery of service and economic growth.

In this regard, pro-activeness and value addition are now more than ever particularly important in transactional law, where increasing do-it-yourself resources are available to business owners through the internet and other sources.

In Zimbabwe, for instance, there is rapid development of digital financial services. Lawyers need to be proactive in providing the right advice in ensuring adequate protection of consumers of these financial services. There must be a proper balance between innovation and regulation in order to ensure that regulation does not stifle innovation.

Lawyers need to move in sync with technological and other developments in the global space in order to remain relevant.

Conclusion

Corporate lawyers' primary responsibility is to ensure that their clients' business transactions are in compliance with the law.

In addition to their regular duties, corporate attorneys ensure that their clients' legal decisions translate to a strong bottom line or profits. For example, a corporate attorney may consult with a company's marketing department to understand whether settling a dispute will affect the market's perspective of the company and hurt sales that year.

Corporate lawyers must have a varied skill set, including business and financial acumen. It is crucial for corporate lawyers to understand the business effect of any legal decisions they make.

One of the emerging imperatives is that if a corporate lawyer does not have a business degree, they will need to take classes, such as accounting and financial statement analysis that give them business knowledge.

Corporate lawyers must be skilled negotiators because they need to bargain on behalf of their clients, on behalf of the corporation and on behalf of the country as well.

As corporate secretaries and administrators, lawyers are in a position to influence positively in the governance of institutions.

Sound corporate governance is key in economic development. This includes the need to maintain the right balance between rights and responsibilities of stakeholders and the integral issues of transparency, accountability and integrity.

The lawyers' role should therefore shift from just routine tasks of legal expert advice, to shaping enterprise strategies. The consequences of poor corporate governance on individual companies and on the country's competitiveness cannot be overemphasized. Corruption and lack of integrity have been noted as threats to economic development.

The Zimbabwean economy is dependent to a great extent on agricultural performance. Players in the agriculture sector, particularly small holder farmers, are failing to reach their potential due to inadequate financial resources linked to lack of collateral. As such the economy has not realized full benefits due to the current land tenure arrangement. The legal profession is challenged to come up with innovative and appropriate recommendations for a system that will address the challenges associated with the current land leases in order to foster economic growth and development.

Without law and order, meaningful development is no more than a mirage. The law gives effect to positive change in national development.

Optimizing laws and policies for innovation is necessary for the country to sustain growth. It is against this background that lawyers now require new skills sets that include strategic planning, leadership and creative problem solving in order to respond to the changing economy.

At the heart of these skills, there is need to foster imagination and innovation in ways that contribute to economic development. A combination of analytical acumen and innovative thinking will define the leaders in today's legal environment.

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