



**LUND UNIVERSITY**

**Rule of Law as Instrument for National Development**

**Two Years Master's Thesis in Development Studies (Major: Sociology of Law)**

**At the Faculty of Social Sciences, Lund University**

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## **Abstract**

The thesis is aimed to conduct research on rule of law as instrument for national development and to investigate the relationship between rule of law and development in rights based approach. Rule of law in relation to development will be examined to what extent it functions in practical development course of action. The study also aims at highlighting rule of law and spark light how it can be instrument to govern inter-intra development actors. Furthermore, the absence of rule of law is part of the discussion to show how its absence affects the relationship between development actors in the development process. Thus, rule of law will be discussed as: a fair, impartial and accessible justice system with a representative government. Based on this the thesis will convey rule of law as instrument that governs development actors equally in the enforcement process of development policies. In this regard rule of law as instrument for national development will be presented as a binding and governing force of the interactions of different development actors. In such manner the study will investigate the relationships between rule of law and development to show the possibilities of establishing a comprehensive understanding on their relation. This is because rule of law and development are emerging as national and international concerns. Therefore the qualitative approach of this paper underpinned by modernization development theory will investigate their emerging connection.

Furthermore, good governance that requires transparency and accountability and in turn fosters rule of law with other component parts of national development such as Democracy, Human Rights, combating Corruption, free press and institutions will be elaborated by using Rule of Law as a benchmark. Thus, rule of law as instrument for development will be conveyed as independent, efficient, accessible judicial and legal systems with a government that applies fair and equitable laws equally, consistently and coherently to all national development sectors.

Key Words: Rule of law, Development, Good governance, Human Rights, Democracy, Corruption and Institution.

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Abere Adamu Mekonin, August 30, 2012.

## Chapter 1 General Introduction

### 1.1. Introduction

*Economic growth, political modernization, the protection of human rights, and other worthy objectives are all believed to hinge, at least in part, on 'the rule of law.'*(--World Bank, *the Rule of Law as a Goal of Development Policy*)

According to positivist of law a government is an example of system that exercises sovereignty and is mandated to set rules or laws to guide its citizens. And from sociology of law perspective law has come to be acknowledged as an agency and instrument of power for governments (Cotterrell 1992:44). Thus for the rule of law to be practical the citizens must accept the law as it is abide by what is considered right, acceptable and independent agency of social control and social direction (ibid). Law keeps a balance in a society at the same time checks on the power of the government to ensure that it is not oppressive. Cotterrell (1992) states that law should be autonomous and independent in governing and keeping the equilibrium of the interactions of the society (Cotterrell 1992:44). It is because the multifarious interactions between government and ordinary citizens need legal instruments with defined guidelines (Haggard at.el.2008). In other words according to Cotterrell (1992), how law is interpreted and put in to effect is equally important with its content (Cotterrell 1992:56). Thus in this paper rule of law is discussed how its role affects the overall development referring to (World Development Report (2010) which states how lawlessness affects development. According to this report, the absences of rule of law in a given region and/or nation state can cause “anarchy, extortion and private predation (...)” (Haggard and Triede, 2010:674).

On the other way rule of law and its instrumental function for national development is important. Because law plays an important role in fostering social change and reshapes social institutions which in turn have a direct influence on national development Dror in (Cotterrell 1992:57). Therefore the critical analysis of rule of law and its fundamental role in the process of national development is covered in this thesis according to its operational function within a governmental framework that aims at national development. This is because law provides the institutional framework as an agency to exert influence for developmental change (Cotterrell 1992:57).

Such being the case it is obvious that the authoritative rule of law within a structural process originates from the sovereign power and flows to the citizens through a set of laws and a network of institutions as a driving force of development in action (Cotterel 1992:59). Having such a role, rule of law gives guidelines to different development actors who are expected to perform their development work in accordance with defined rules which are the enforcement agents (Cotterrell 1992:60).

Rule of law in relation to development mainly relies on the balance of two development actors. The first is the government which is responsible to facilitate good governance. The second is the citizens to play their part and contribute a better degree of citizen participation that in turn gives them citizenry power (Kumssa and Mbeche 2004, Sachiko and Durwood, 2007, Sen, 1999). These are the two major active powers with their respective institutions that may determine the enforcement and respect for rule of law (ibid). Due to this fact, rule of law comprises the system of laws by which the legislative, executive and judicial branches of government contribute to the prevention of the arbitrary exercise of their respective powers upon the citizens (Cotterrell 1992:247). Thus the preservation of citizens' rights in order to advance their willingness to maintain the functions of rule of law, maintains legal and developmental sustainability. On top of that, the reliability of laws for the purpose of producing and breeding a well-ordered society guides state to facilitate enforcement mechanisms. This empowers citizens to initiate action to make use of the facilities provided by law (Cotterrell 1992:247, Hyden...1).

Thus, the role of rule of law as instrument for national development will be investigated from such perspectives. And it is from such vivid contemporary facts that Timothy M. Shaw in Desai and Potter' (2008) explained the concern about the future threats to development that may arise because of unbalanced development opportunities that requires the functions of rule of law to play a balancing role (Desai and Potter, 2008:470-471). Having seen the future of human security threats for this paper, "Rule of Law-as Instrument for National Development" should function as independent, efficient, and accessible legal systems, with a government that applies fair and equitable laws equally, consistently, coherently, and prospectively to all of its citizens, which is the removal of all unfair treatments (Sachiko and Durwood, 2007:16, Sen, 1999: 3 Ballamy 2011).

As rule of law originates from the “sovereign power” (state) and flows to the citizens who are the main actors in the process of national development and enforcement of laws, it is very important to keep this balance between the state and the citizens which is the role of law to govern both (Rajkovic 2010:34). As Bellamy (2011) asserted that “law gives people instructions and guidelines to respect law for the advantages of living in law –governed environment” (Bellamy, 2011:55). Law facilitates social interaction and helps curb the abuse of power by making all equal under the law” (ibid). Bearing this in mind, the functions of rule of law with legal institutions will be paid special attention in this study and the study is going to unveil to what extent the rule of law can serve as instrument for national development. After I stated the introduction in such a way, the relationships between law and development have been the issue of academic discourse in 1960s which is going to be discussed in the following background topic.

## **1.2. Background**

As it has been introduced above, until the groundwork of 1960s by Coase (1960), Alchian (1965), Demsetz (1967, Alchian&Demsetz 1973), Williamson (1971, 1985) in (Haggard, 2008:at.el) the functions of rule of law has been neglected (Haggard, 2008:at.el:207).

According to the above groundwork of the new institutional economics, property rights and contract design enforcements require rule of law (ibid). Thus the connection between rule of law and development has been in the discourse of academia in socio-legal and socio-economic phenomena. Merryman (1977) reminds us the ideology of law and development has been around for almost half-a-century and 1960s saw the rise of the concern on Law and Development (Marryman, 1977: 458-459).

As far as my understanding is concerned it is a universal truth that development should not be approached as a verbal story (Hyden...1). It should be enforced in to practice (ibid).

Because development in its practical course of action it constitutes different issues that impact the daily life human society. In other words as Ehrlich (2002) states that all studies in the field of social science are based on the concept of human society (Ehrlich 2002: 26). For example, according to Ehrlich (2002)and Hyden (2002) the fundamental principles of Sociology of Law are to study the legal matters from societal perspectives as society is the sum total of human association that have relations with one another in the process of social development.



The rule of law as the product of social development and wisdom through legislations, it is used as an instrument of "social engineering". Deflem (2008) conveys the role of law from sociological perspective plays important role to re-engineer socio-legal knowledge as it deals with social role of law in development process (Deflem 2008:17). Having noted this, the background of this study recalls the connection between rule of law and development. As such the surge of interest in the relationship between the rule of law and economic growth is the result of a confluence of development and democracy promotion that requires the advancement of rule of law for security, political and economic reasons (Haggard, et.al 2008:206). These inseparable elements such as security, divergent -political views and movements with numerous socio-economic factors are the component parts of the contemporary national development that require legal instrument to be governed.

Marryman (1977) referring to the law and economics movement of 1960s, that law is an engine for social reform and lawyers and judges could serve as social engineers to advance reform efforts by bridging the gap between the law in the books and the law in action which is capable to govern the development in action (ibid).

### **1.3. Aim and Purpose**

As this thesis introduced the relationships of law and development in the introduction and background part, the aim of this study is to shade light on the advancement of rule of law and unveil legal and developmental complexities in socio-legal and socio-economic interactions. The instrumental power of rule of law in relation to national development is aimed to be analysed in order to assess to what scope their relation is understood. This is because there is a pressure in different 'internationalists' emphasis on the roles of rule of law for development and the tendencies of aspiration of globalist economic liberalization and the need of legal instrument to govern it (Sen 2000, Haggard et.al (2008). The aim of the study also aims to refresh classical thoughts about law and development as Adam Smith (1776) articulated that every individual to better his freedom, security and overall condition rule of law in relation to development should be given attention (Smith, 1776:358).

Furthermore, as I noted in the background one of the aims of this thesis is to explore to what extent rule of law plays an important role in the multidimensional national development that incorporates democracy, human rights protection, combating corruption

and to advance good governance (Sen, 2000 and 1999). Thus the aim of the study is to show that the developing states must scrutinize their development plans by the yardstick of rule of law. The thesis also attempts to give emphasis on rule of law that its role should be understood that it is to delineate the features of a democratic and progressive state where no one is above the law (Djelic, 2011:47). Such legal awareness sparks to the developing society and helps to adapt rule of law that aims to displace the contemporary anti-development elements in the focus areas of the study (ibid).

Having such aim, rule of law will be incorporated with national development and suggest Global South states to learn from modern nation-states and claim to be a democratic nature governed by rule of law and take this idea as a core principle and aspiration (ibid). And then to realize the conceptualization of modern rule of law as it suggests the triumph of reason and democracy over arbitrary power; the legislator being neutral and competent with just, rational, and impartial legal order (Djelic, 2011:47).

#### **1.4. Research Question**

The research question is motivated by two prime concerns. The First is the complex and multidimensional nature of national development and lack of institutional capacity in developing countries which are the focus areas of the study (Sumner and Tribe 2008, Kumssa and Mbeche 2004). The second is the unbalanced national development that neglects the roles of rule of law to defend human rights, fight corruption, protects property rights and fosters equal distribution of wealth in developing countries (Nwabuzor 2005, (Sen 1999).

Observing such development obstacles provoked me to examine and unveil how the governments with respective institutions work to enhance national development using rule of law as instrument. For this study poverty is the cause of saviour human rights violations in many forms (Messick 1999:2, Lane 2011:2). As such lack of good governance, democracy, human rights violation and corruption are the central provoking factors that triggered this thesis to raise the legal research question. Therefore, as Research Question is a statement that identifies the phenomenon to be studied, this thesis takes some time to map out the research strategy and describes the Research question to help for investigating the research in question.

## **To what extent does Rule of Law serve as Instrument for National Development?**

### **1.5 Delimitations**

As one can understand the scope of the thesis from the above designed research question, it should be noted that due to very limited time and space, it does not aim to discuss complex spheres of legal regimes and development issues. It only aims to investigate the roles of rule of law and its relation with rights based approach of national development. It aims to answer the research question that is posed to investigate to what extent the rule of law can serve national development in developing countries. As rule of law attempts to build a just political system and economic order, this thesis aims to examine rule of law as instrument for national development only from rights based approaches. This rights based approach of national development comprises democratization process, human rights protection, and freedom of expression, good governance, combating corruption and government and community organizations as institutions. The delimitation and main focus of this study is not to argue the judicial role of rule of law in relation to theory of justice which is complex and will not take other legal theories. It takes modernisation development theory that bridges law and development. This is because the scope of this study is to examine that to what extent rule of law serves as a coercive legal force when governing the above listed rights based national development concerns. The study also aims to conduct only brief interviews in the focus area of Eastern Africa.

### **1.6. Disposition**

The study is constituted from 7 chapters. The 1st chapter introduces and recalls the background of the chosen topic which is Rule of Law as Instrument for National Development. This part states the aim of the study, the research question, limitation of the study and the disposition. The 2nd chapter investigates the previous researches on rule of law and development in rights based approach perspectives. In this chapter the major component parts of overall national development such as democracy, human rights, corruption, good governance and freedom of expression are in focus. The 3rd Chapter which is, the theoretical underpinning chapter, strengthens the theorization of the entire study by using modernization development theory as the theoretical tool. The 4th chapter frames and strategizes the methodological designs that are instrumental to investigate the aimed research. The 5th Chapter brings semi-structural interviews as case study which is the mirror

of the entire research. The 6<sup>th</sup> Chapter argues taking the government and community organizations as the key elements of national development in playing the roles of enforcing and implementing the rules and regulations in accordance with the law in place. This chapter also asserts that institutions are the pillars of national development as they play the prime role in enforcing the rule of law in relation to development. The last, 7th chapter concludes and sums up the study by answering the research question backing with reflection remarks.

## **Chapter 2: The Rule of Law as instrument for National Development- Rights Based Approach**

### **2.1. Previous Studies**

In this chapter the exploration of previous studies attempt to bridge development studies and sociology of law by incorporating rule of law as a legal agent of societal change in the process of development (Cotterrell 1992, Sumner and Tribe 2008). It is also equally important to understand the relationship of Development Studies and Socio-legal Studies (Sociology of Law) which I connect development Study along with its main component parts with Sociology of Law from its societal and legal perspectives (Hyden 2002 and Sumner and Tribe 2008). Thus sociology of law and development studies will be bridged by bringing development issues such as democracy, human rights, corruption, good governance and freedom of expression and use rule of law as a benchmark.

From this perspective Haggard and Tiede (2011) theorized that rule of law and economic growth have become one of the most dynamic development discourse of the contemporary works of studies such as political science, economics and law (Haggard and Tiede 2011:673). However there remains more debates and contests about the very concept of rule of Law and its impact on development (ibid 674). Though the study is debateable, after many years of disappointing in building the rule of law in a given society's legal systems, the development community has paid a great attention to see rule of law as legal instrument that can influence overall development (Tamanaha 2011:1).

The previous researches chapter investigated different studies on rule of law and development with the aim to pay attention to the meanings and implementation challenges

of rule of law on national development. This is because of the theoretical disputes and disagreements over the meaning and enforcement of rule of law in the process of national development (Tamanaha 2011:2). Such disputes should be clarified as “rule of law” means hence in relations’ to development which is the concern of this thesis that government officials and citizens are bound by and generally abide by law (ibid). This is to say that the rule of law that governs government institutions and citizens equally can be reviewed through four major theoretical routes from rule of law to economic growth as such; through the mitigation of violence; through protection of property rights; through institutional checks on government; and through control of private capture and corruption (Haggard and Tiede; 2011:674).

For the early social contract theorists most notably Hobbes (...) the rule of law meant in the first instance the provision of personal security and property. Hobbes in Haggard and Tiede(2011) restated “rule of law as security of a person” Hobbes in (Haggard and Tiede 2011: 674). It should be noted that security of person can be practical through mitigation of violence, protection of property rights, institutional checks on government and control of private capture and corruption (ibid). From such theoretical stand point, it is believed that a well-functioning legal instrument with well-organized and equipped institutions governed by rule of law, are indispensable for the governance of socio-economic and political developments. This is because the current national/global system is at a complex system of economic, social and political interactions that needs legal guidelines (Haggard and Tiede, 2011, Tamanaha 2011). Through such interactions of a given society, there is an interest of each member of society, government and institutions that need to be achieved through exchanges of goods and service (ibid).

The processes of such multifaceted exchanges of material or ideas are value driven as every human person and legal person runs to secure the interest of the respective group. In this process development as a form of economic growth, good governance, human rights issues and so on reveal themselves accompanied with contested debates. As development is the concept which is debatable both theoretically and politically at the same time complex and ambiguous needs a legal instrument that can give guidelines to govern those societal interactions and debates (Sumner and Tribe 2008:9). From sociology of law perspective this

can be seen referring to (Ehrlich 2002:26 and Deflem 2008:17) as both explain that law is important to govern the social interactions in the process of development change.

As the contemporary national development policies and the role of rule of law for development are becoming the topics of discussion, it is also a serious concern for development community that rule of law with related concepts of legal systems, economic growth, political modernization the protection of human rights and many other development goals are all believed to hinge on the rule of law (Yu and Guernsey 2011). The foremost financial institution (WORLD BANK) stated that the difficult challenges of development are encompass the entire sphere of change in a given social system and acknowledged that:

The challenge of development (...) is to improve the quality of life (...) better quality of life generally calls for higher incomes- but it involves much more. It encompasses as end in themselves better education higher standards of health and nutritional, less poverty, ... environment, more equality of opportunity, greater individual freedom, and richer cultural life (World Bank 1991:1)

The complex and diversified goals of national development are scrutinized in a very comprehensive and revolutionary approach by Sen (1999) using the concepts of functioning and capabilities. Sen (1999) in his concept of capabilities approach to this complex and multidimensional development process argues that what is the most significant matter for citizens is their capability to function (Sen 1999:75). The development approach of the concept of functioning refers to those tangible and intangible things that a human person has right to value. Such things that a person can value differs from simple, such as the daily intake nutrition and avoidance of treatable disease up to more complete ones such as self-respect and the environment in the society(ibid). On the other hand, there are discussions and the proceedings of legal amendments on legal discourses at a higher level. The foremost worlds organ, the Report of the UN Secretary General (2006), gives attention to the importance of “United Nations support for the rule of law emphasising on the needs of strong efforts to build state legal institutions which are the most vital legal tools to give proper legal protection for those who practice to function according to their capabilities (Tamanaha, 2011:4, Sen, 1999:75). The UN Secretary General in his report listed those

institutions which are the prime arms of a given national government along with the citizens. Such legal institutions that impact the complex and multidimensional development process are:

court administration, legal drafting, judicial accountability,...prosecutions, international and mixed tribunal , legal training and land and property rights international humanitarian, human rights and refugee law, constitutional law institution building, public administration reform and so on (Report of secretary General 2006:7)

With such well-organized legal systems the capabilities of a person can be protected and flourished then inevitably leads to the freedom that a person has to choose his choice of functioning, enlightens his personal features covering personal characteristics into functioning and his power of command over commodities availability of goods and services (Sen 1985:10-11)

The instrumental value of law originates from those legal institutions and active participation of citizens in shaping of the judicial reform as it is part of a larger effort to make the legal systems in developing countries and transition economies more market friendly (Messick 1999:2). Messick (1999) argues that the broader legal reform movements, or revising commercial codes, bankruptcy statutes and company laws and teaching justice ministry officials how to draft legislation that fosters private investment which is the core for overall developments (ibid). Due to such facts before a decade ago few questions were raised about the importance of legal reform for development and little was known about the impact of the judicial system on economic performance. Others argued that such reforms cannot be achieved without a society guide consensus, while others contend that the reform project can help this consensus (Messick 1999:, Sen 2000, 1999). Thus before I start the to examine the roles of rule of law in the process of national development rights-based approach, I found that it is important to give a brief explanation for the rule of law in relation to national development.

## **2.2. Rule of Law in Relation to National Development**

### **2.2.1. A brief explanation about the Rule of Law**

Economic growth, political modernization, the protection of human rights, and other worthy objectives are all believed to hinge, at least in part, on ‘the rule of law’(--World Bank, The Rule of Law as a Goal of Development Policy 2011)

According to Helen Yu and Alison Guernsey (2011) politicians, lawyers, economists and policy-makers often use the term “rule of law” to denote a certain type of legal-political regime. According to these scholars, the contemporary world has come to understand that developing countries should prioritize their development policy programmes putting rule of law as the first task to enhance and promote it in relation to development (Yu and Guernsey 2011).

As a positive law scholars agree that rule of law does not have a clear-cut description as it may vary from nation to nation legal traditions. However, in most cases it can be understood as a legal-political regime under which the law constrains the “government by promoting certain liberties and creating order and predictability regarding how a country functions. In a basic sense, the rule of law is a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power” (ibid).

Yu and Guernsey (2011) referring to the Morality of Law, American legal scholar Lon Fuller presented eight elements of law which are recognized as necessary for a society aspiring to institute the rule of law. I find these elements important to underpin the study and give clarity to the aim of the study in question

1. *Laws must exist and those laws should be obeyed by all, including government officials.*
2. *Laws must be published.*
3. *Laws must be prospective in nature so that the effect of the law may only take place after the law has been passed. For example, the court cannot convict a person of a crime committed before a criminal statute prohibiting the conduct was passed.*
4. *Laws should be written with reasonable clarity to avoid unfair enforcement.*
5. *Law must avoid contradictions.*
6. *Law must not command the impossible.*



7. *Law must stay constant through time to allow the formalization of rules; however, law also must allow for timely revision when the underlying social and political circumstances have changed.*
8. *Official action should be consistent with the declared rule (Available at: Accessed on august 6, 2012: <http://freedom-school.com/law/what-is-the-rule-of-law.html>)*

Having noted this I want to restate Sengupta's(2011) questions on the article entitled "Development". The article raises one descriptive question that asks how a nation does grow and the other second question is a question that requires quantifiable cause of development as it asks "what causes development (Sengupta 2011:1). Sengupta (2011) continues the argument and states that these questions are basic economists attempted to answer since 1776, when Adam Smith published the volume: An Inquiry into the matter and causes of the Wealth of Nations (ibid). Since then the debate on economic development has developed from the classical and neoclassical to contemporary schools, to the extent that advocating as economic development is not only just economic progress but also from human rights based approach on the national development (Roemet 2006:233, Sengupte, 2011:1).

Furthermore Sengupta(2011) argues such trends of development can result incorporating the modern growth theory in economics (...) including both physical and human capital (...) that can yield modern and overall national development (ibid).To achieve development in a given society, especially in this advanced contemporary global world, national development must be conceived as a power for citizens to command development sectors at all levels. Thus, having such instrument is significance to use opportunities which are meaning-making in the realisations of real development evolution. Such a better development practice to the nation in which citizens find themselves and to advance the development in the process of changing it as the given nation requires is essential. In this case restoring confidence and transforming the institutions that produce citizen security, justice and jobs are the major roles of rule of law (World Development Report 2011:8).

In today's development discourse actors who find themselves in Global North, show their concern with the notion of "development aid" and its process in the Global South. It is public knowledge that the North gives development aid to the South for the last several decades. But it is unfortunate for the donors (North) and for the recipients' (South) as they

both fail to alleviate poverty and achieve development (Dike 2003). From this point of view and one is not quite certain that what it is that hinders most countries in Africa, Asia and Latin America to remain poor.

On the other hand development scholars produce volumes of books articles and journals with their power of theorizing and reflective recommendations. For example Dike (2003) argues that the classic of development (...) contains as its core what might be termed as “missing factors” (...) (Dike 2003:300). According to Dike (2003), the key intuitions of the capitalist economy (identified in neoclassical theory to be central to sustenance of long-run growth and development), namely, corporate firm and specialization in production with it undergoing need for external trade are assumed to be either completely missing or at best malfunctioning (ibid). Yet again Dike (2003) forgot what to mention is that the role of rule of law to govern all the above interactions of actors whether they act in accordance with law to scrutinize the missing factors and/or malfunctioning of those institutions.

Most economists and governments advocate alleviating poverty but they always forget poverty alleviation is a complex issue as it is the part of overall national development process; which needs strong legal instrument to be governed and tackled. It seems that it is because of such lack of clear understanding whatever it is said that the world remains incompetent to break the vicious circle of poverty in many countries (Sen 1985, Messick 1999, Tamanaha 2011). However, the World Bank as financial international institution seems to understand this scenario. World Bank(2011) in its Annual Development Report acknowledged and states that “to break cycles of insecurity which comes because of the absence of rule of law, and reduce the risk of the recurrence international reformers and their international partners need to build the legitimate institutions that can provide a sustainable citizen security, justice and job...” (World Development Report 2011:8). These listed variables are the positive indicators of development Rigg in (Desai and Potter 2008:30). It is from such concern that for the last almost two decades Global North led by American and World Bank have been funding legal projects to promote the rule of law in the developing countries (Gordon 2010:441).

In the national development rule of law plays an important role that sustains the development process as Gordon (2010) states referring to the classical socio-legal

philosopher such as Max Weber and Douglass North in one version and Minton Friedman and Friedrich Noyek in another. Gordon (2010) argues that well-functioning markets to benefit the national development require the support of a framework of defined and effectively and predictability enforced legal rules and rights (Gordon 2010:442). Gordon (2010) continues the assertion that even though rule of law has been paid little attention, the height of the so called Washington Consensus in (1990) neo-liberal promoters stressed in particular that the rule of law protects property rights, especially in foreign direct investment and entirely contracts (ibid). The role of rule of law in its much broader notion functions to supply public goals such as healthcare and education infrastructure, to constitute conditions facility trade and commerce, and to regulate harmful private as well as public conduct etc. (ibid). Bearing this in mind rule of law in relation to the most important rights-based development issues such as democracy, human rights, corruption, freedom of expression and good governance will be discussed in the following sub topics.

### **2.2.2. Role of Rule of Law in the Democratization Process of National Development**

Rule of law and democracy complement each other. Both serve national development to flourish. The argument here is not what comes first. This subtopic aims to investigate that to what extent the rule of law plays to foster democracy in the process of national development. It is already a decade that African Institute for Economic Development and Planning that was held at Dakar, Senegal in 2001, acknowledged that democracy has become widely recognized as one of the prerequisites for development (Ghana Centre for Development, 2001:1). Thus democracy is one of development issues that need legal order to function. The Ghana Centre for Development claims that democratic governance fosters transparency, accountability, and respect for human rights, civil participation and inclusiveness (ibid). All of which are necessary for securing economic productivity with equitable distribution and state legitimacy (ibid, Sen 1999). On the other hand the above mentioned development issues including democracy need legal instrument that keeps the equilibrium and governs them equally. This is because the contemporary development discourse gives equal value to, economic progress (commonly known as economic development), human rights protection, democratization process, combating corruption as the inseparable ingredients that should grow equally (Sen 1999). Bearing this in mind I am

going to elaborate the roles of rule of law as instrument to safeguard democracy in the process of national development.

The Ghana Centre for Development attempted to highlight advantages of democracy in the overall development that I intend to present in this sub-topic. Sen (2000) reminds us to talk about the interdependence of different aspects of development –economic, social, political, democratic connecting with the context of the present functions of legal systems (Sen 2000:1). This is to say that unless the multidimensional and complex nature of development is not addressed considering all development ingredients as equally important, all may end up in vain (Sen 2000:1, Sen 1999: 4-5, Sumner and Tribe 2008: 9). Thus this topic is aimed at the need for a well understanding of the interconnections between democracy and national development.

Sen (2000) articulated that development demand can be interpreted in two different ways. When we look at it from within its comprehensiveness it looks outward – at legal and judicial development seen as a part of fuller view of overall advance linking legal reform with economic expansion, social progress, political enrichment (which is democratization process) that complements with rule of law and most importantly mutually reinforcing one another (Sen 2000:1-2). On the other hand the second interpretative approach looks inside the legal domain itself (ibid). According to Sen’s “Comprehensiveness” approach to development is concerned with the internal diversity which the huge sphere of legal and judiciary activities demanding fuller integrations (Sen 2000:2). Such approach towards national development involves rejecting a compartmentalized view of the process of national development (ibid).

Thus, the idea of bringing those component parts of development together and harmonizing each other to function well by complementing one another and framing them to be governed by the rule of law is quite central to this approach. Such approach is also the most important to acquire and adapt an integrated understanding of the process of development (ibid). Furthermore, Posner (1998) referring to the World Bank research observer, 2011:13, no. 1 February 1998 affirmed that it is not possible to demonstrate as a matter of theory that reasonably well-functioning legal system is a necessary for nations’ development (Posner:1998:3). This argument is valid because when law is weak or when there is the

absence of law and order, the enforcement of property rights and agreed contracts become dependent on the threat and that leads to violence as a result political and democratic values remain vulnerable (ibid)

On the other debate Leftwich (2002) came up with that all political systems are best understood as systems of power in that they generate, legitimize, distribute and seek to control, political power (Leftwich 2002:269). Whereas economic systems are best understood as the systems of wealth in that they, too generate, legitimize, distribute and seek to control economic power (wealth) (ibid). As such political and economic powers proceed to achieve their goal in the process of development in a given nation, political and economic powers overlap or coincide and may complement to keep the balance or conflict with each other. As a result in most developing countries these powers compromise one another and create political and economic tricks to maintain equilibrium between them (ibid). Thus, such kind of political and economic tricks lead to the threat that can be susceptible where economic wealth and political power are concentrated in the hands of some, illegally privileged individuals, as it was true in pre-revolutionary France and Russia ((Leftwich, 2002:269).

Such being recalled, I argue that political and economic power concentrations in a few hands break the relationship between those few and the majority citizens and deforms the development process that aims to address all equally and breaches the law that requires all to be equal before the law. In such deformed and unlawful development discourse and practical course of action of development ill socio-economic and intolerant political grievances emerge with the potential threat that undermines stability and disrupts the sustainability of development process (ibid).

The actual scenario in the development process of many countries of the Global South how political power and economic wealth are within very few hands and the gap between the haves and don't haves is provocative factor that needs the strong legal institution which is unbiased. Unless those uneven political and economic grievances not governed by the law that rules all human persons and legal persons in a given nation, inevitably adverse causes of development in political democratization occur as history unfold, in 1960 in Malaysia 1980 in Nicaragua and post-apartheid south Africa (Leftwich 20021: 269). It is such ill

political, social and economic power relations that need rule of law to be justly governed in the process of national development.

This crucial concern which is debated for many decades and the most debated with the intention of efforts to understand it inflames me to associate the imperativeness of conveying rule of law to the core of multidimensional development studies. It is because I strongly argue taking “(...) the law is the last result of human wisdom acting upon human experience for the benefit of the public” (Samuel Johnson). Because billions of world population surrounded by poverty and extreme-poverty, yet development programmes in many forms are being disrupted by lawlessness and/or unlawful actions of many kinds (Bardhan: 1997, Sen 1999, Tamanaha, 1995).

Among those hindrances to alleviate poverty is the concentration of political and economic powers within very few individuals (Steven: 2007, Bates: 2006, Sengupta: 2011). Under such situation, it is clear that those individuals who are supposed to provide services and deliver democratically functioning institutions and allow the citizens to fully participate in the process, manipulate the law for their personal ambitions (Lane 2011:2). The absence of such proper leadership from those few individuals must be controlled and scrutinized in accordance with the rule of law to maintain the equilibrium of the process of development (ibid). To make it clear, in the democratic society where there is accountability and transparency the role of rule of law to safeguard democratic values in the development course of action is indispensable. This was well articulated by the United Nations Development Programme UNDP (2004) which is the foremost development agency of the United Nations Organization as “Rule of Law is a core pillar of UNDP’s work – falling within the focus areas of both democratic governance and crisis prevention & recovery”.

*Rule of law refers to a principle of governance in which all persons, public and private institutions and entities, including the states itself are accountable to laws that are publicly promulgated, equally enforced independently adjudicated, and which are consistent with international human rights norms and standards (The rule of law and Transitional Justice, Report of the Secretary General, 23 August 2004)*

And again World Bank defines it:

*The (...) legal political regime under which the law restrains the government by prompting certain liberties, and creating order, and predictability regarding how a country functions; in the most basic sense, the rule of law is a system that attempts to protect the rights of citizens from arbitrary and abusive uses of government power ( World Bank 1991)*

Very careful and critical readings of above designations discover an equivalent playing field that hosts all mentioned actors in both explanations. As far the role of rule of law in democratization course of action in connection with development is concerned, we can single out the government as an organized institution and practices and the citizens who have rights to exercise their rights of all kinds and put both in rule of law frame with its dominion power on both the government and citizens.

In such a way the role of rule of law plays a fundamental role to maintain the equilibrium of democratization in the political arena allowing all actors to exercise their rights and forces both of them to perform their duties in accordance with the law. This is because the roles of law are the most needed that as Hobbes in Haggard et.al (2008) notes in a very simple way that law is needed “even to sleep and the corresponding impossibility of protecting against all possible threats to a person and property” (Haggard et.al. 2008: 2009).

Therefore for political democratization to flourish in the course of development and the common citizens to enjoy their democratic rights and live the life that they value best every interaction should be governed by the rule of law. It seems that Haggard et.al (2008) states that “(...) rule of law means anything (and) it must mean in the first instance the security of person and a number of legal scholars have noted such as; Mush Narayan AI (2000), Black et.al (2000), (Belton 2005) in (Haggard et.al; 2008:2009). The security of person here can be understood having all economic, political, social and related legal protections that in the other way allow the person to exercise her/his social, political and economic rights in the route of national development under the protection of rule of law. Having noted this, the following sub topic will investigate the roles of rule of law how it functions to protect human rights in the process of national development.

### **2.2.3. Rule of Law in Achieving Human Rights Protection in the process of National Development**

Development study as it deals with the developing countries in most cases is concerned with human rights violations. And yet again human rights are the socio-legal concerns. Both are the concerns of a given nation in the process of national development. Having such knowledge of socio-legal and development issues, when I talk about “rule of law” I’m always tempted to raise other legal questions that may be the questions of many. This is due to the contested nature of rule of law” and the value-driven nature of its interpretation and enforcement (Lane 2011:2). Thus, as I am associating the rule of law and its role to achieving human rights protection, I mean that the laws of which declares human rights protection should also be examined and governed by rule of law to actualize meaning-making human rights protection. In the activities of rule of law sermon the rule of law can depend on whose expression a noteworthy rightful presiding is employed and how that noteworthy and particular laws shape the diverse fragments of the given society.

Thus as it has been argued in different sections of the study, the socio political and economic role of rule of law needs a critical attention to comprehend in what way and in whose political economic and socio-legal interests the rule of law defends. Or what political and economic interests are socio-legal concerns that may negatively affect the due process. And whose interest was adversely affected by that particular lawful presiding or the established legal procedure.

To avoid such complications and adverse effects when dealing with human rights issues, one should be aware and diligent about how to interpret and reinforce human rights laws by using rule of law as the benchmark. As the end result of rule of law is to govern and control the laws and rules, this can be achieved by means of independent legal institutions which are capable in monitoring the principles and definitions of rules of law Helen and Guernsey, in (United Nations Organization2004).

On top of that Clair (2003-2004) did an extensive human rights investigation in 154 developing countries and indicated that the importance of law and judicial independence in securing a variety of human rights (Clair 2003-2004: 292). Having human rights laws and adopting Universal Declarations of Human Rights (1948) and of rectifying multiple human rights conventions and adapting the best and articulated national constitutions are not the end goals of the modern society (ibid). The role of rule of law is more than having laws on



the paper (Hyden..). Rule of law as its definition voices, it is not about (...) rulemaking in a particular sphere of human or social activity but and more importantly it governs the tools and mechanisms that allow the lawful implementation, monitoring, enforcement and control of the products of rule-making (Djelic2011:37, Hyden...). Legal scholars, politicians, different social and economic activities above all human rights advocates with their respective organizations have posited that the prime role of the law is fundamental to the protection and promotion of human rights (Clair 2003-2004:292) which is the component parts of overall national development.

Having investigated 154 transnational countries in the Global South, Clair (2003-2004) devices that well-functioning, independent judiciaries under the rule of law can end the impunity, preferential treatment and political protection of the perpetration of human rights violations (ibid). Rule of law in the practical legal world is given a special place as the only fair and just instrument that can bind all equal and creates the fields of spiritual, material and social activities to take place (Clair 2003-2004:292). Those practical activities of the actual world range from the activity of the traditional primitive-like life of the poor in the remote peripheral village of the Global South to modern activities. In such different activities humans interact between them and individuals with the governments. Those interactions need to be governed by rule of law. This helps to avoid political and economic deprivations of the common citizens especially in developing countries (Leftwich 2002:269, Haggard etc. al 2008: 2009)

The other human rights writer Burton (2005) did human rights case studies in 177 states during the period of 1972 to 2002 and states that human rights violations are pervasive in substantial percentage of states that suppress their citizens (Burton 2005: 592- 593). As a result Burton (2005) argues that institutional design and influence are important in the area of human rights and suggests hard laws are essential with required legally binding obligations that are enforceable (Burton 2005: 594-595). On the other hand Clair (2003-2004) argues that without strong and enforceable law human rights and humanitarian guarantees are fragile and social justice merely a dream (Clair 2003-2004:292).

As the definition of rule of law is a heated debate in the development communication, the same applies in relation to human rights. Clair (2003-2004) comments in her human rights

research that was conducted in 154 countries worldwide legal scholars not reaching a consensus on how to define rule of law and judicial independence (Clair 2003-2004: 294). Clair (2003-2004) compares the definition of rule of law which were given by two authors in relation to human rights protection that reads as:

F.A. Hinyek in Clair (2003-2004) defines the rule of law as a "...frame work that binds government by rules fixed and announced before hand-rules with fair certainty how the authority will use its coercive powers in given circumstances and to plan ones individual affairs on the basis of this knowledge".

The second definition that Clair (2003-2004) tries to incorporate to her human rights research refers to Glazbrook quoting Tomasic offers a similar yet distinct definition. "The rule of law can comprise the predominant of regular law" as opposed to the exercises of discretionary or arbitrary state powers in governing human relation, as well as the equality of all subjects before the regular law..."(ibid).

It is very vital to note that again the role of human rights is also imperative as its presence gives the independent tenure of judges' habeas corpus equality before the law, procedural justice and/or effective constraints on governing arbitrariness (Clair 2003-2004" 294). The judicial independence is also important concept that always certifies and interprets rule of law to effect. As such United Nations defines it as:

The judiciary shall decide matters impartially based on facts without undue influence, the judiciary shall have exclusive authority to decide an issues within its competence, judicial decisions shall not be subject to revision (the accused shall have) the right to ordinary courts or tribunals and judicial proceedings ought to be conducted fairly(Clair 2003-2004: 294)

In general in the modern society's political and economic orders legal rules exist and government officials and most citizens know what the rules require in connection with their actions (Tamanaha 2011:4). Thus the rule of law operations at two levels: it imposes legal limitations on and coordinates the acts (behaviors) of government officials and it imposes legal limitations on and coordinates the behaviour of citizens (ibid). The role of rule of law for human rights protection has already become the contemporary global orders wave of legal pluralism (Tamanaha 2011: 12). As the theory of legal pluralism asserts that legal

pluralism exists in all societies. For example the human development settings today differ in several crucial respects; multiple legal forms with legal status continues to exist along-side status law, state legal institution and legal traditions, such as international law, state law, customary law, religious law, human rights law, women rights (...) (ibid). Furthermore, a growing emphasis on human rights, democratic labour rights, environmental protection and access to just for the poor are always governed by the rule of law and at the same time bundled with rule of law promotion (Tamanaha 2011:12-14). If we see the connections of rule of law in human rights protection in such manner, the following sub topic will pay attention to investigate the roles of rule of law to combat corruption in national development course of action.

#### **2.2.4. Rule of Law to Combat Corruption in the process of National Development**

Corruption is one of development issues. Corruption hinders rule of law not to function well. Yet again if rule of law is strengthened it can undermine corruption. I argue that when the rate of corruption is high the role of rule of law becomes low and when there is a proper functioning law the rate of corruption becomes low. Thus this topic conveys the role of rule of law to what extent it can serve as instrument to combat corruption in the process of national development. Before I discuss the role of rule of law to fight corruption in the development process, it is important to note and explain the advert consequences of corruption in development course of action. Giving a background face to corruption can enable me to magnify the roles of rule of law and its legal arms in combating corruption. Bardhan(1997), writes corruption is an ancient problem and he asserts that in a treaties on public administration dating back to the fourth century B.C in India referring to Kautiliy's in Bordhan (1997) that:

Just as it is impossible not to taste the honey(or poison) that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the kings revenue (...) R.P. Kangle 1972:91 in (Bardhan 1997:1320)

The above writing tells us that corruption is not a new socio-economic phenomenon. It was there and evolves together with society conceived with its adverse consequences on overall human development. The discussion about its causes and effects were common during cold war and before and so does in our time. Gould and Amaro-Reyes (1983) on their World

Bank staff working paper number 580, noted that public money was illicitly diverted for private gain is present to some degrees in all societies and stated that corruption is nothing new (Gould and Amaro-Reyes 1983:1):

The reason why I recalled Bardhan(1997) with the extraordinary social designation how Kautiliya in Bardhan (19997) states and the World Bank Report of 1983 is that it is aimed to be connected with the present corruption discourse on developing countries. World Bank came up with another report that states corruption as a major problem in many of the world's developing economies of today and quantified that over 1 trillion USD per year is taken in the form of bribery and yet again largely ignored for many years (...) (Nwabuzor 2005:121). Having such adverse consequences corruption has been described as the abuse of public trust for private gains, validation of established rules and ways of doing things with the motive of benefiting private gain (ibid, Sen 1999:5, Suzan Rose-Akarman in Desai and Potter 2008:493). As anyone simply can understand that the misuse of public power, which can be political power, financial power legal power for private gains will definitely include the bribing of public official and /or government officials to abuse and break the law and divert the public fund that was supposed to be used for the betterment of the life of general public to advance national development (Akerman 2008:555)

Such embezzlement of funds of different development projects in different development sectors, paralyses rightful functions as fund embezzlements involve large sums of public money (ibid). Einas(2003) in Nwabuzor (2005) reminds as corruption is as a "form of unethical behaviour or wrong doing the deals with bad things. As Nwabuzor(2005) narrates that corruption may be seen as a form of anti-social behaviour which violates the norm of society and facilitates improper gains to those who are supposed to serve the development process (Nwabuzor 2005:122). Corruption as adversary of national development confers unlawful benefits to the individuals in authority through a perversion of social norms and morals (Banfield, 1998 in Nwabuzor 2005:122).

This thesis agrees with all designations of corruption which are given above. Thus corruption in relation to development is the complete deviation of individuals who are supposed to be in a passionate role to combat it. The major actors in this unlawful act can be multinational companies, or private sector entities, as inducements to obtain government patronage and

contracts (ibid). Yet again the ethical behaviour of those government/public officials is charged in to unethical behaviour that betrays the nation and public that trust them and the extortion of public money continues. Under such circumstances where corruption reigns with evil regimes, it is a foolish act to attempt the task of development course of action. The law to be interpreted and to be enforced those government institutions and citizens must have a well-studied anticorruption mechanism the first should be to submit the full trust to the rule of law (Lane 2011:2)

The absences of rule of law result in corrupted regimes and produce criminal groups within the government and in different development sectors (ibid). And incidents of very serious crimes assassinations, open banditry, daring daylight raids on banks become a common threat for the common citizens (Nwabuboz, 2005: 128). On top of that the ordinary citizens' personal safety is constantly threatened and in such away rule of law cannot function as it is aimed to serve (ibid). In most developing countries the absence of rule of law is a common problem and corruption affects the poor in their communities (ibid...129).

Nicholas Ambraseys and Regot Bilham (2011) came up with a journal entitled "corruption kills" and they singled out just one sector among the many development sectors. The sector they mentioned is the construction sector and they took examples to show how tragic consequences of corruption are (Ambraseys and Bilham 2011:153). The example they mentioned in the construction section is related to earth quick. They asserted their argument that earthquake resistant construction depends on responsible governance and its implementation can be undermined by corruption or by poverty, through the use of substandard construction materials and assembly methods or through inappropriate siting of buildings (Ambraseys and Bilham 2011:153).

According to Nicholas and his co-author (2011), it is in the poor and corrupted countries 83% of all deaths from earthquakes in the past three decades have occurred (ibid). Indeed corruption kills. Corruption as a negative factor for development has been acknowledged by many scholars; Rose Akerman(2008) wrote that scholars have begun to analyse the impact of corruption on economic and political phenomena and the studies have found that high levels of corruption are harmful to growth and development. Corruption is the result of weak economic and political institutions (Akerman 2008:555). Highly corrupted

governments deprive their enlightened citizens from many development and underinvest in their human capital as they under invest on education. As the consequence such governments lack political and legal legitimacy from the citizens (ibid). And corruption discourages the effectiveness of industrial policies instead encourages corrupted companies and individual with black market business to operate in unlawful organized activities which is the direct violation of tax regulatory laws that affect public development interests Mauro 1995, Wei 2000, Mauro, 1997: Tanzi and Davood 1997, Jonson et.al 2000, Kaufmann1997 in Ackerman 2008:555).

The development worker, development practitioner, politicians and sociologists did a lot of recommendations to alleviate poverty. Above all the UN came up with the very interesting explanations that were declared as “the Millennium Development Goals” (MDGs) aimed at alleviate poverty in 2015 the period that is expected to be celebrated in two years-time (Rigg in Desai and Potter 2008:30). Whereas the poverty issues with all problems such as corruption are even worse than before (Ackerman in Desai and potter 2008:495). So we have to ask why the international communities and national governments who were participating and having their development goals fail to achieve it. Where the money is that was allocated for the promotions of different developmental institutions including legal empowerments to tackle poverty.

As Rose Ackerman in Desai and potter (2008) notes that (...) development depends on good policies and effective institutions to carry out those policies (Desai and potter 2008: 493). According to this author, corruption occurs where private wealth and public power overlap and such corruption represents the illicit use of willingness to pay as a decision making criterion (Leftwich 2002:269, Rose Ackerman in Desai and Potter 2008:494). The core problem in the developing countries that jeopardizes national development originates from the regime itself as the systematic corruption that implicates an entire bureaucratic hierarchy, electoral system or government structure from up to bottom (Ackerman in Desai and Potter 2008:494). Ackerman evidenced her argument that in Desai and Potter (2008) richer countries have less corruption reports and better-functioning governments (ibid). It must be under such systematic and complex development activities the rule of law should emerge as the governing power with strong and independent legal institutions. National development to bear fruit states should genuinely fight any forms of corruption that starts

from self-control and develop firm mental and moral ethics, psychological and cultural transformations and political determinations. As United Nations Organization convention against corruption states in its preamble its concern about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and value of democracy, ethical values and justice and as a result jeopardizes sustainable development and the rule of law. And this convention was signed by 116 countries and ratified by only 15 countries. That shows the commitment to tackle corruption is yet very far (United Nations Convention against Corruption 2005). This convention shows that the key instrument to tackle corruption which is rule of law is forgotten. This means that legal rules are adversely maintained in regulating and maintaining the status quo that safeguards powers of wealth (mostly obtained through corruption), inequalities above all the rulings of the rules of men as it was Rousseau's and Habbes' time (Haggard and Tiede 2011). The other national development issue that needs legal protection is the freedom of expression which is going to be examined in the following sub topic.

### **2.2.5. Rule of Law to Protect Freedom of Expression in the process of National Development**

The contemporary rights based approach of development discourse brings freedom of expression as one of the major development issues. Thus freedom of expression to flourish needs legal protection. This connects the issues of development studies with the roles of socio-legal studies. I therefore bring freedom of expression as development issue to play its expressive role in national development process by exposing illegal actions. By doing so freedom of expression updates the public with relevant national information and checks on government authorities to be transparent and accountable. On the other hand I bring rule of law to examine that to what extent it plays to protect freedom of expression when freedom of expression checks on government authorities. Having noted this the argument is that humans are peculiar and the most privileged animals that were/are created to think, seek and then to speak, reason and justify their thoughts. Depriving such rights frustrates citizens to the extent of choosing a hard choice as Patrick Hennery chooses and declares "give me liberty/freedom (to speak) or give me a death!" (Nygaard 2009:23). It is from this actual fact Universal Human Right Declaration Article 19, and article 10 of right to freedom of expression pay attention to it. Article, 19 of UDHR and Article 10 of right to freedom of

expression states that the right to freedom of expression is crucial in a democracy – information and ideas help to inform political debate and are essential to public accountability and transparency in government (UDHR Article 19, Right to Freedom of Expression Article 10)

Bahman (2009) contributed an article entitled “Living without Freedom: cosmopolitanism at Home and Rule of Law”. This author referred to Kant with many modern cosmopolitans, for them establishing the rule of law provides the chief mechanism for achieving a just global order (Bahman 2009:539). As I explained in many parts as the core of the study the pervasiveness of dominated persons without legal status is a fundamental violation of the rule of law. In Kant’s argument, legal status can be understood as an original right to freedom (ibid) (...) as such freedom of expression also must be understood as a natural right that one cannot give or deny it.

Gilmore(2011) argues that freedom of expression finds its justification in the interests that speakers have in their own speech or thought to be distinguished what interest they have and the core commitments most share (Gilmore 2011:517). Such expressive liberty plays a significant role in securing and constitutes individuals self-realization (ibid). It provides the recognition of interests that one has freedom of expression: such as expressive activities in shaping and discovering one’s belief, desires and commitments (ibid). Freedom of expression is the very attached a must respected human freedom that plays a creative role in shaping and moulding human thoughts and re-engineering the society in the long routes of development.

Gilmore (2011) argues the human nature of self-realization should be understood as a discovery of one’s thoughts themselves as sometimes even we don’t seem to know what our desires, beliefs, commitments, potentials are until we try to express and convey them to others (Gilmore 2011:518). The more a human person expresses himself the better he/she realizes what potential and demand and ability he/she has to value most (ibid). I also argue that the freedom of expression in the process of overall citizenry development allows citizens to have different expressive activities. Those expressive activities as Gilmore (2011) argues lead to self-realization which is internally related to the very activity of expression. As a very particular animal with a precious human nature that is entitled to express, the



freedom of expression and its value in knowing ourselves must be protected and respected (Gilmore 2011, Nygaard 2009).

“Expressing ourselves is one way in which we mind” (Gilmore 2011:518). It is so sad and an inhuman act to deprive one’s freedom of expression. It is not surprising to give more emphasis to the slogan of Patrick Henry “give me liberty or give me death”! (Nygaard 2009:23). It has been explained above that expression helps humans to promote their desires and to associate themselves with others. This helps to claim freedom of association which in turn is vital for the individual. According to Emerson (1964) “in order to realize his/her own capacities or to stand up to the institutionalised forces that surround him has found it imperative to join with others of like mind in pursuit of common objectives” (Emerson 1964:1).

Such freedom to do so is again vital and helps to develop more expression and builds a democratic way of life that enables individuals to engage in different social, economic, political and legal discussions for the betterment of tomorrow (ibid). Thus, social associations based on mutual understanding are beyond debate. Freedom to engage in association is natural for humans. Therefore, freedom of expression for the advancement of different activities and ideas that can be instrumental for the overall development of citizens is inseparable aspects (Emerson 1964:2). On the other hand freedom of expression must be governed by the rule of law to function and provide the necessary information to the development process.

As we remember in the previous parts the major actors in the process of national development are the government and the citizens. Those actors with their development sectors must express the ideas, thoughts findings, recommendations, their desires, beliefs and commitments in accordance with the rule of law that arbitrates all equal (Emerson 1964, Haggard and Triede, 2008, Sen, 1999). On top of that theory of freedom of expression in relation to development is the self-realization of individuals. Thus freedom of expression deserves legal protection as it has fundamental values that can contribute for development in its daily basis process. More importantly well scrutinized and lawful freedom of expression checks on government’s power implementation and plays the role of checks and balances on the division of power in the government arms (Gilmore 2011: 519).

Furthermore there are countless goods that can be made possible or enhanced by freedom of expression. However Gilmore (2011) notes to another theory of freedom of expression referring to it as the self- government accounts – this theory relies on the proposition that in democracy individuals are sovereign judges of where their government properly pursues the public good and respects the rights of individuals (Gilmore 2011:520). According to this theory individual citizens with their right of freedom of expression are the final authorities over a state’s legitimacy (ibid). At the same time individuals must be self- governing or autonomous in a manner that they must make up their own minds about what ideas they should be exposed to and not that determined for them by others (Gilmore 2011: 520). Thus the role of rule of law to play its role is much needed here associated with democratic self- rule (ibid). As we could see the roles of rule of law in the above component parts of national development which are the foundations to constitute good governance, the following sub topic is going to navigate the roles of rule of law to safeguard and foster good governance.

#### **2.2.6. Rule of Law and Good Governance in the Process of National Development**

Good governance is one of the most important development issues and it is at the front page on the contemporary national development agenda. Rule of law and good governance go hand in hand fostering and complementing each other. There are two fields of studies here which must be bridged. One is development studies that give a great emphasis for good governance; the other is socio-legal studies that argue that law is an agent to re-engineer the interactions of society (Desai and Potter 2008, Deflem 2008). Yet again the two fields of studies are concerned about the society they study. Therefore in one way or the other they are interdependent and must be connected by the instrument that serves the society. As far as my education in both fields of studies is concerned both studies are right and yet should be connected to support one another. Bearing this in mind, this sub topic is exploring the role of rule of law to what extent it supports good governance to function well in the process of national development.

The system we are governed is termed as global system and the world we inhabit is pronounced as globalization which is the reordering and re-engineering of the new world society. In such world development course of action national rules of law heavily have to

confront the emergence of transnational law of rules (Djelic 2011:35). Djelic (2011) argues that globalization is not about the disappearance of rules and order. According to this argument globalization comes together with an increasing density of regulatory and governance activities of all kinds (Djelic and Sahlin-Anderson 2006) in Djelic2011:36). The national states are there even new nations are born and involves in the process of global governance with respective organizations, networks and communities emerge together with multiple regulatory projects and development agreements (ibid).

These contemporary development activities take place across and beyond state boundaries (ibid). However, there is a very significance challenge for this global order. As the flows of goods and services are cross national, regional and international, there is a need to standardize practices to have fair and just (win-win) governance of development. This insures rules, norms or standards to be governed under the rule of law that creates apt preconditions for the multi-face national development governance (Sen 1985, Djelick 2011). One of the developing countries, Philippine, has come to understand the importance of good governance and the rule of law and incorporates both in her development plan of 2011-2016. In the assessment and challenges of the plan good governance has been framed as it sets the normative standards of development (Philippine Development Plan 2011-2016:206). Good governance fosters participation, insures transparency, demands accountability and promotes efficiency and up holds the rule of law which is fundamental principle in the practical development actions and legal enforcements in the development plan (ibid).

As the main component parts of development such as democracy, human rights, and freedom of expression are elaborated above how they promote national development if they are safeguarded by the rule of law, good governance also plays an important role in achieving national development as it by its goodness defends rule of law in economic, political, social and judicial administrative processes (ibid). On the other hand rule of law is highly needed to safeguard good governance to play its role for economic growth to progress, diversified social transformations to flourish, legal protections of citizens to be respected (Haggard and Tiede 2008, Sen 1999).

It is a common knowledge that national development as very complex multi-face development processes needs a well-structured and organized system of governance. In turn good governance requires an amalgamated and participatory long-term development strategy established upon vibrant collaboration with strong team work spirit between national government and the common citizens (Philippine Development Plan 2011-2016:209). In such development process, the rule of law plays its role as overseer of different arms of government and creates a government that is effective, widely reinforced by citizens and civil societies (Djelic 2011:40). Such governance systems allow citizens and civic societies to be strong, transparent and competent in playing of affirmative functions in the development course of action (ibid).

This being noted, there are challenges in the development process especially in developing countries. For example, lack of clear conception and political will to frame rule of law. Due to this fact judges and other law enforcers are subject to adjudicate on the basis of short term political considerations, twisting the law to please the rulers (Lane 2011:2). Such challenges and ill interpretation of the legal code in the national development process allows those who are on power to manipulate the law making, law reading and law enforcing that automatically jeopardizes the targeted development goal (Djelic 2011:48). Even if as Djelic (2011) reminds that states remain important regulators but they are themselves embedded in, and must be reshaped by powerful society and associated templates(Djelic 2011:40).

As a point of fact in the contemporary networked global world we inhabit, the transactions of goods and services and the interactions of many kinds in the process of national development, we need to understand how different rule systems and governance interact and interplay (ibid). According to Djelic(2011)- transnational arenas of governance that directly or indirectly affects the national governance are increasingly dynamic and apparently in constant process of change in the national development (Djelic 2011:41). For such courses of actions practice-oriented governance that understands national development strategy is needed (ibid). In this regard the main national development actors/ state- citizens, in particular who are issue- based and issue specific from major development fields to subfields are the most crucial capitals for the rule of law to protect good governance.

It is noticeable that such complex development process governance comes together with multitude of actors and their interests involve in the governance process. As a result of such multitude development actors with multiple interests and intentions, governance fields become densely populated (Djelic 2011:41). As such the roles of rule of law come to stand to be the defender of good governance (Haggard and Tiede 2008, Tamanaha, 2011). As discussed in many parts, the notion of rules of law rests on the modern aspiration to a separation between law and politics as Djelic (2011) connects good governance with rule of law (Djelic 2011, Haggard and Tiede 2011, Daniel Kaufmann 1996, 2008). The World Bank Development Research Team(2009) came up with the phrase “governance matters” in their policy research working paper no.4978 and the report updates the worldwide governance indicators (WGI) covering 212 countries and territories and measuring six dimensions of governance between 1996-2008 Kaufmann et.al in World Development Report (2009) “voice and accountability, political stability and absence of violence/Terrorism, governance effectiveness, regulatory quality, rule of law and control of corruption” (Kaufmann et. al. World Development Report 2009:1). As the aim of their research was to study the causes and consequences of governance for development, they recommended that governance reforms are needed and they added that all the mentioned six variables are complement each other (Kaufmann et al 2009: 5).

Furthermore Rajkovic (2010) asserts the process of governance enhances our analysis of law in governance by virtue of how governance stresses the importance of thought for the steering of human conduct to strengthen productive capacity of law to influence human perceptions of just and legitimate actions (Rajkovic 2010:34).

On top of that Barnett and Duvall (2005) in Rajkovic (2010) explain that law wields productive power because it provides system of meaning and signification capable of influencing social conceptions of just rule (ibid). Most importantly, this role becomes central in the process of multitude actors along with their interest and subjective perceptions and conceptual understandings. Thus, to play such function the rule of law provides techniques of power to its meanings and practices of discourse that grants the capacity to objectify and thus govern the substance of what we believe to be just conducts (...) (Rajkovic 2010:34). For Djelic (2011) on the other hand as described above the frame and structure of human and social action has been undergoing profound transformation and fundamentally

changing in nature and as a result of a societal changes law must also change to be able to govern (Djelic 2011:48). The role of rule of law to defend good governance in the process originates from this indispensable instrumentality as the role of “(...) rule of law is meant to displace the dictatorial rule of men and thus to claim rule of law as a core principle and aspiration” (...) (Djelic 2011:48).

The principles of good governance to be functional the core and modern conception of rule of law should be paid a series attention in every level of governance within different sectors of national development plan. As a point of departure, the modern conception of the rule of law proposes the triumph of reasons and democracy over arbitrary power and so to speak legislators with all legal beings to be neutral with competent, just and impartial (ibid). Such noble conceptualization of rule of law was well conceptualized before 236 years ago (1776) when Thomas Pain of English pamphleteer coined it as: “let a crown be placed thereon, by which the world may know, that so far as we approve of monarchy, that in America THE LAW IS KING”(Pain 1776: section III) in Djelic 2011:47). The above chapter with its sub topics examined the rule of law from different ingredients of national development rights-based approach perspectives. Yet again, the above discussed component parts of national development need legal institutions to be enforced and implemented. In this regard chapter 6 will elaborate how the roles of rule of law can play a significant role to direct institutions such as government and community organizations as development institutions. In the following theoretical chapter the theoretical foundation and relationship of rule of law and development is presented.

### **Chapter 3: Theoretical Framework**

#### **3.1. Law and Development**

The interdisciplinary nature of development studies since its foundation in 1940s has been a continuous process of change, in strategizing about its course of action Potter (2008) in (Desai and Potter 2008:67). In such a way, the study for new theoretical conceptualization of development has been seen by changes in its practical working fields and in this process there has been much debates and controversy about it as it covers theories and practice (ibid). According to Potter (2008) this is to say that both, theories about how development should occur, and real-world efforts to put various aspects in to practice. Theoretically

speaking development studies involve three things: development theory, development strategies and development ideologies which is the first is the focus of this theoretical underpinning chapter (Potter 2008 in Desai and Potter 2008:67). On the other hand which is from sociology of law perspective, law has come to be acknowledged as an agency of power and instrument to govern the activities of societies in development process as independent agency of social control and social direction (Cotterrell 1992:44).

Thus development theory (...) “as the set of logical propositions about how the real world is structured, or the way in which it operates, development theories may be regarded as sets of ostensibly logical propositions, which aim to explain how development has occurred in the past and/or how it should occur in the future” (ibid). I therefore use this theory as the tools to underpin the research. This is simply because the contemporary world is getting more advanced and it is very important to have a scientific theoretical mirror that can show the problems of society which is the concern of social science. As natural science develops and uses laboratories with different equipment to identify the chemical elements and/or biological micro-organisms, social sciences also must develop and use scientific theories to gain knowledge and design tools to describe, understand, explain and predict social phenomena in the fields of social experiences. It is from this fact that Brante (2001) suggests for the development of new theory in the social sciences (Brante, 2001:168). For this thesis the major theoretical tool to underpin the argument is moderation development theory as it helps to investigate law and development.

### **3.2. Modernisation Development Theory**

According to American Journal of International Law under the title of “The Lessons of Law- and –Development Studies” modernization theory as a paradigm shift first introduced the political development movement arose after World War II, by American economists, political scientists and sociologists of the time. According to Tamanaha (1995) modernisation theory embraced that development was predictable course of action intensifying communal demarcation in economic, political and social institutions (Tamanaha 1995:471). Thus in such process for modernization theorists, the differentiations should be the creation of a free market system, liberal democratic political institutions, and the rule of law (ibid). Modernization theory backs its argument taking essential elements such as,

rationalization; based upon the familiar dichotomies found in the social theories of Durkheim, Weber, Tonnies and Parsons, involving the shifts from particular to universal, from ascription to achievement, and from affectivity to affective neutrality all of which purportedly accompanied the functional activities of society (Tamanaha 1995:471).

From sociology of law perspective, rule of law has come to be acknowledged as an agency of power and instrument to govern the activities of societies in development process as independent agency of social control and social direction (Cotterrell 1992:44). This is because according to modernisation theory, rule of law emphasises on national integration in turn creates peace and stability as such political order helps to address conflicts that threatened developing countries (Tamanaha 1995:471). Modernisation theory bases on democratization by emphasizing pluralism, competitiveness and accountability which are vital for national development that fosters mobilization or participation through education, with an aim toward expanding the proportion of the populace actively involved in the political arena (Tamanaha 1995: 472). In general the modernization theory underpins the chosen topic based on 7 core characteristics of rule of law model as Trubek and Galanter detailed in Tamanaha (1995:473).

1) society is made up of individuals who consent to the state for their own welfare; 2) the state exercises control over individuals through law, and it is constrained by law; 3) laws are designed to achieve social purposes and do not offer a special advantage to any individuals or groups within the society; 4) laws are applied equally to all citizens; 5) courts are the primary legal institutions with the responsibility for defining and applying the law; 6) adjudication is based upon a comprehensive body of authoritative rules and doctrines, and judicial decisions are not subject to outside influence; and 7) legal actors follow the restraining rules and most of the population has internalized the laws, and where there are violations of the rules enforcement action will guarantee conformity (ibid).

Having noted the theoretical foundation in such a way the case study, which is the other mirror to look at the whole pictures of the study, will be elaborated in the semi-structural interviews chapter (Chapter-5).

## **Chapter 4: Methodological Framework**



## 4.1. Qualitative Research Method

This thesis takes the research method known as qualitative method. It is because qualitative research method qualifies to be a research tool for the chosen topic as it provides a wide range of secondary data gathering and analysis. Major researches on laws and development apply a qualitative research methodology. Some of these previous researches include: Tamanaha (1995), Ohnesorge (2007), Messick (1999), Williman (2006), Haggard and Tiede, 2010, Amartya Sen 1985, 2000, 1999 to name a few. Messick (1999) and Williman (2006) stated in their analytical qualitative study the relations of law and development in enforcing property rights, checking abuses of government power, and otherwise upholding the rule of law (Messick 1999:5). Such descriptive studies can be analysed by using qualitative method. For example John Fortescue in Messick(1999) affirmed that medieval England's prosperity was traceable to the quality of English legal institutions (Messick 1999:7). The issues of rule of law and development in general are in a much contested state of affairs. Several theories have emerged as dominant and generally accepted approaches some of which explain the reasons why and the ways in which the process begins. Such theoretical process requires a thorough quality investigation. As Williman (2006) describes social phenomena are in a constant state of change because they are totally dependent on social interaction (for this thesis the interaction between law and development actors) (Williman, 2006:15). So, such social interactions take place in the process of development and need a methodological tool to be investigated, analysed and described.

Such being noted, the roles of rule of law in national development process, requires an in-depth investigation. Thus qualitative method is the most appropriate. This is because qualitative research method has methodological power to unveil a clearer picture about the subject under research (Buchanan, 1992) in Silverman, (1997) in Miller and Dingwall, (1997:19). This is because it provides secondary data that can be investigated, described, analysed and concluded. On top of that, for example as Silverman (1995) states the researchers who use qualitative method seek to observe things in context to describe and analyse social phenomena (Silverman, 1995:31). Thus qualitative method produces rich data for theoretical knowledge and practical use (Boeije, 2010:11). Possessing such qualities, qualitative research method provides with an in-depth understanding of the what, why and how questions to investigate the topic under study (Boeije 2010:24-25)

## **4.2. Choice of Method**

Because of numerous factors that directly impact the selected task I have kept an open-ended research approach through data collection with further analysis. Therefore, I have to re-engineer ways and methods as the research is put in writing. Manifold methods have been used for data gathering. Legal documents concerning the relationships of rule of law and development were collected to underpin the arguments to what extent the legal amendments that advance rule of law play a significance role in achieving sound national development. This helps to obtain preliminary vision, awareness and views of the legal amendments towards development. Choice of method was very crucial and meaning-making as it is the most important tool to discover the reaction to my original question and for additional contextualization of the thesis which is governed by its core values such as aim, content and scope.

Thus, I had to conduct semi-structured interviews with different individuals who work in different organizations as primary sources and direct experience to what extent the absence/presence of rule of law impacts the development process. Important to mention in this part is that all data gathered have been in English. Subsequently, extending contextual familiarity of the thesis, semi-structured interviews from different offices were conducted in order to explore and grasp the individuals' experiences and perceptions towards legal concept and the prospect outcomes related to possibilities for future functions of rule of law.

## **4.3. Document Analysis**

Documents, for this research can be understood as the forms of written secondary data such as books, journals, case studies, notes, reports letters, diaries with pieces of information with a careful examination, opinions from different experts, believing that all are equally relevant (Yin 1984:79). However, during document analysing it is highly important to take note that they are the products of somebody perhaps with different intention or purpose (Yin 1984:81). This has been noted that documents were examined as a tool of communication and the researcher must understand their relevance for the chosen topic (Flick 2009:257).

In such manner legal and development related documents are the centre. As the chosen method for data collection is qualitative the documents have been examined from a

qualitative content analysis point of view. They have been used in different parts in accordance with their relevance and provide a detailed understanding of the entire thesis. During document collection, it was understood that we use documents as data for further analysis and thus documents need to be recognized for what they are as written with distinctive purposes in mind(...) (Bryman 2008:527). This is to mean that it is important to scrutinize the originality of the documents by recalling the criteria used for the purpose of quality investigation and its unquestionable origin, credibility, authenticity, representativeness and comprehensibility (Bryman 2008:516). With such methodological preparedness, the most significant documents have been selected, thoroughly read and analysed in accordance with the topic.

#### **4.4. Ethical Considerations and Methodological Challenges**

The research ethics is the most crucial and in most qualitative research methods as it is descriptive, this thesis has taken it to be value-free. For every social science researcher, it is imperative to take note those relevant disciplinary, social and ethical issues, as well as to be aware of ethical and methodological aspects throughout the research. As Law (2004) describes researchers as “tribes of scientists” they are not also very different from the other tribes (Law, 2004:19. Thus the ethical challenges come from such subjective behaviour as David Hustler (2005) in Law (2004) termed an ‘unavoidable’ human behaviour that the researcher as a ‘human instrument’ brings to bear his or her own interpretations and cultural orientations into the picture. Taking this in to consideration, this thesis is aware of such ethical and methodological challenges and has paid a serious attention to avoid a biased data (Bryman, 1988: 38).

#### **4.5. Semi-structured interviews**

In addition to collecting scientific documents and analysing them, conducting semi-structured interviews was very important to solicit additional evidence to display the key role played by the rule of law in promoting development. When I schedule for collecting data through interviews, I noted the principles provided by Silverman (2010:194): as qualitative method interview has a tendency to be carried out with small numbers and informal design of questioning to allow the interviewee to establish confidence.

The interview questions had the format of standardized and were open ended. I preferred to start with semi-structured requests accompanied by further lengthy section of open-

ended design and format of questions. This was done with a clear aim to motivate respondents to convey the interview to the extent of possible open up for respondents' personal views and reflective suggestions. The semi-interviewing method of this particular thesis aimed at allowing the persons speak freely leading to the focus of the topics of their choice of relevance. Considering interview guides the respondents were interviewed about their views and experiences, knowledge or awareness of the roles of rule of law in the national development arena. The questions have been designed and strategized considering the status of the respondent for example whether the recipient is, the poor, and the development worker and/or advisor or authority representative.

Thus this very brief semi-structured interview is conducted to examine whether the interviewees' views proves or disproves the previous study that has been analysed in chapter two. In such research ethical manner the study bridges the research course of action as a coherent chain linking the empirical data to the research question and to its concluding results. In such a way the case study can use the designed methodological method as a "blueprint" when incorporating what/which sphere can be studied and how the findings can be analysed (Yin 2009:26f). For this thesis this brief semi-structured interviews were so important to answering the research question; to what extent Rule of Law serves as Instrument for National Development.

#### **4.6. Recruiting Informants: Sampling**

During the semi-structure interview the research method used for recruiting informants has been purposive sampling. As such type of sampling technique helps the researcher to be selective when choosing informants and their profession with their respective institutions relevance for the investigation. Furthermore, O'Reilly, (2009:194) reminds researchers that sampling helps in selecting representatives from a wide ranges of choices. Besides, in purposive sampling, cases are intentionally selected driven by the aims of the research (and) such methodological technique studies the phenomenon in-depth with diversified amounts of information being generated (Boeije, 2010:35-36).

#### **4.7. Interviews**

Olsen and Pedersen (2005) note that in qualitative research interviews play a central role. Dingwall (1997) also strengthens that interviews are discussions between researchers and informants where the researcher posed questions hoping to obtain answers from the interviewees (ibid) in Miller and Dingwall, (1997:58-59). The other scholar states that carrying out interviews is one of the most important sources of practical research and considered as one of the major methodological approaches in qualitative research (Flick 2006:204). During conducting interviews with different individuals, a subjective knowledge, of interviewees' different standards of knowledge on the studied subject and the semi-structured interview are an asset (Flick 2006:155). Therefore the interview has been conducted in such manner.

#### **4.8. The Interviewees**

The respondents are individuals from different nationalities. As the topic of the study requires respondents capability to comprehend its conceptual understanding in relation to development, most of the interviewees were made of representing diversified socio-legal and socio-economic backgrounds with practical experiences. All interviewees speak English though it is not their mother tongue. I could say that interviewees constitute a representative sample of Eastern Africa (see case study chapter). The minimum age of the interviewees was 34 years old and the maximum was 73 years old.

Interviews were conducted in offices, homes and coffee houses. The interviews took an average time of 45 minutes to one hour, and notes were taken during each interview session. In some cases unexpected questions were appearing in the interview guide and that was restated and explained in more profound manner. At the end interviewees have been given a chance if they have additional comments, reflections or questions that were not discussed. When I write the interviewees' statements I used ITALICS to identify from the analysis. The analysis is based on common themes that emerged very often during data collection and in my interaction with respondents.

### **Chapter 5: Semi-Structural interviews**

#### **5.1. The Importance of interview**

In this semi-structured interview, I used Silverman's (2010) qualitative method and informal patterns of questioning and (Chambliss (2006) a non-probability purposive-sampling. Based on such methodological approach in combination with text analysis as a method of data collection, semi-structured interviews have been conducted to further grasp the argument's relevance and effectiveness of the rule of law as instrument in relation to development issues.

Silverman (2010) describes that qualitative interview studies tend to be conducted with quite small numbers and with rather informal patterns of questioning where the aim is to allow the interviewee to set the pace. Usually, the interviewer will have a prepared set of questions but these are used only as a guide. The interview questions applied had the format of standardized as well as open-ended, including probes when needed. I chose to begin with semi-structured requests, followed by a more lengthy section of open-ended format of questions. This was made due to creating possibilities for the respondents to "lead" the interview to the extent possible and open up for respondents' personal reflections. The interview method furthermore aimed at letting the persons speak freely leading to a focus on the topics of relevance and interest for the respondents. Applying an interview guide, the respondents were foremost asked about their views on law and development. The questions were differently designed depending on whether the respondent was a recipient, advisor or authority representative. The selection of samples was based on a non-probability sampling, including purposive. As purposive sampling, is described by Chambliss (2006:123) that "method in which elements are selected for a purpose, usually because of their unique position".

Thus in order to draw a clear picture of the study under investigation, semi-structured interviews has been conducted by interviewing individuals. As it has been stated above and Sjoberg et al, (1991) stated that semi-structured interviews in qualitative research interviews play a central role. Thus it involves configurations of a particular unit of analysis that can be individual, a community, an organization, institutions, and/or nation-state (...) (ibid) in (Feagin et al, 1991:36). On the other hand, the researcher to be able to come to the concluding results from the study and those results to be seen as a reliable and of valid there should be a need to conduct a practical study that includes individual interviews. Thus to describe and understand social phenomena in terms of the meaning people bring semi-

structured interviews were important (Boeijs, 2010:11). To differentiate the respondents view I italicised it.

## **5.2. Interviewees**

All respondents passionately agree that poverty issues in the Global South need an urgent global movement that acknowledges the very important need of peace and legal order with the governments to enforce the rule of law equally. When I raised questions why almost all countries and the United Nations advocate for the rule of law, the respondents provided me almost the same response. Because of the hub of Nairobi as the seat of many international organizations that operates from Nairobi- Kenya to different countries of East and Central Africa, I was fortunate to find the interviewees at different levels and from different countries of the Eastern Africa region.

However, in the middle of discussion most of them were reserved to give the names of individual countries and persons as an example but all consider the problems of legislations, interpretations and enforcements are the major regional problems that discourage national development. Almost they use the same vocabulary that because of poor and partial management of rule of law, human rights violations, lack of democracy, poor governance, and corruption become daily occurrences in the region. All respondents have common concern that even if the laws are already there, the institutional capacity and political commitments for the implementation of the laws are much neglected.

**Mr SalihMohamod Osman (North Sudanese)** who served as instructor of economics, in Sudan's higher education, Sudan's representative in the UN (New York) and Assistant Executive Director served as Chairman of the Committee of International Development and Environment Institutions (CIDEI) offices.

**Mr.Salih** remembered his practical experiences and explained the interdependent relations of rule of law and development. He believes that development is a process that needs time and space and quotes; "the change that lasts takes time". In this development course of action he brings the norms and values as important institutions to play an important role if they are understood well.

This reminds me to recall Hyden (2002 and Kumssa and Mbeche 2004 and continues his assertion following the question I posed

Q. How do the policy makers understand the roles of rule of law in relation to national development in your experiences?

**Salih:** *Development needs inward and outward flows of the societal values. As such the core values and norms should flow from the inner circle of the society to the controversial values (which are partially accepted) as the second circle of the society and controversial values must flow to ideoscalic values (where they are not yet accepted or as new social values phenomena) which is the third and last circle of the society and vice-versa.*

*When these values introduce to the society through such outward and inward processes they should tolerate each other and be harmonized. To be harmonized, there should be an apt condition that allows the given society to enjoy differences. And again to govern such societal values during the course of interaction, there should be a well-framed policy with peace and stability. Thus, it is very clear that all such processes need legal instrument that governs all which is in this case the rule of law.*

**Mr.Eljah (Kenyan),** he works with Transparency International Kenya as Governance and Policy expert. He told me that the office works in various sectors such as institution empowerment, legislation drafting, originating bills and developing leadership and integrity.

Q. How does Transparency International Kenya implement its goals you mentioned above?

He laughed!

**Eljah:** *To address your question I want to start with a quotation that reads as “transparency and rule of law are the touchstones of any modern society”. Transparency to function well and achieve its goals it needs legal protection. Rule of law to function and serve as a hard law it needs transparency that exposes those who break the law. That is why we work with different organizations and governments, members of parliament and so on to help the law to be known at all levels. And he noted that the new constitution of Kenya which was adapted in 2010 has brought a very good change as it gives citizens to exercise their rights.*



*And when they try to access the legal institutions, the constitution guarantees them right to be provided with advocate.*

**Mr. Agudah (Tanzanian)**, who is well experienced and long serving journalist, views the relationship of rule of law and development depending on his profession as follows. He worked/is working with different media agencies. We discussed a lot and finally he wanted to send me the summery of his view in the relationship of development, free press and the rule of law he sent me the following text via email.

*Development of any country cannot be viewed in isolation. It must be seen within the context of all other spheres of human life, in this instance, the life of every citizen. From my perspective as a writer, freedom of expression is an integral part of development. Why do I say so? Unlike the medieval times, it is no longer feasible nor good enough for those in power to exclusively come with up policies; they must engage the citizenry in the formulation of such policies or, in the very least, make it practical for all - the mighty as well as the lowly - in society to be contributory participants to the formulation of policies. In this regard, even the common person must feel that their right to the freedom of expression as stipulated in the Declaration of Human Rights is not only respected but protected by the state. This must not be the preserve of a certain class of people or a selected group of elites as it was practiced in medieval days. A man who cannot freely express himself/herself is no different from other creatures that were created without the ability to vocalize words in order to make their stand known.*

*Freedom of expression should be seen as an important channel through which a government can feel the pulse rate, that is, concerns of its people. Without such an avenue, it is easy for a government to become imperial, autocratic and even a dictatorship – losing touch with the aspirations of the people and overall human development. Needless to say, the anchor to sustaining these goals is strict observation and enforcement of the rule of law, founded in recognizable and internationally accepted democratic tenets.*

**An Engineer (Somalian)**-who works in different parts of Eastern Africa, told me that when he with his friends goes to the field where there is conflict, they don't care about the quality of the construction but for the time to finish it as soon as possible before the conflict breaks.

**Engineer:** *Such kind of construction is not long lasting and that can be considered as the improper use of fund. Because of the absences of rule of law the contractors order us to be very fast. This includes all infrastructure construction sectors. This is because there is no transparency and accountability under such circumstances. Everyone understands that the security issues are so sensitive and disturbs your mind and you feel vulnerable.*

Q. How do you evaluate the infrastructures construction sector to enhance national development?

**Engineer:** *The construction of infrastructures is the most vital sector for national economic development. Infrastructures are blood vessels of the nation state. Because they connect people, to teach and have accessible markets for the fast flows of goods and services infrastructures are so crucial.*

Q. Is there legal concern in its management?

**Engineer:** *The tragic problem is the range of corruption in this sector. It starts from day one to get the contract in illegal way then continues. The marketing search of poor quality and cheap construction materials becomes the second focus. Then the registration of poor quality materials on the balance sheet as the best quality and expensive materials sums up the corruption scenario. The amount of money in such embezzlement is in millions.*

Q. It is illegal and also unethical for an engineer to accept such poor quality construction materials as the best quality?

**An Engineer:** *in principle it is not ethical and it is crime also. But If one tries to resist such kinds of acts, he/she may lose his/her job or may be eliminated. They push you to join the club of corruption and then you become one of them. That is the fact.*

This respondent reminds me the functions of rule of law which is to supply public goals, regulate harmful private as well as public conducts (Gordon 2010: 442)

**T.W.** (Ethiopian) he is a lawyer served as judge in the first instance court and now works as an advocate with international organization.

Q. How would you describe the current situation of rule of law and its instrumental role for national development in Ethiopia?

**T.W.** *“Rule of law” is a term of art which denotes constitutional primacy and devotion to basics of due process. Political scientists use the expression to portray established procedures for governing the country and averting cruelty of authority through determined liability modus operandi and warranties of fundamental civil, human and substantive rights. The phrase is gaining popularity among economists who have come to realize that the rule of law is necessary to create a secure environment for business, investments, contracts and market transactions. Where rule of law prevails, good governance (accountability, transparency, free and fair elections, etc.) follows and economies grow. Since the 1990s, the World Bank and the International Monetary Fund, among others, have insisted on implementation of the “rule of law” as a condition of loans and assistance in Africa (largely without much success).*

Q. I argued this is the theoretical debate about rule of law. To what extent can a policy maker or a policy enforcer use rule of law as instrument for national development?

**T.W.** *it is unquestionable that rule of law serves national development. As I told you above when there is rule of law good governance with (accountability, transparency, free and fair elections, etc. follow. These are the most important elements for overall national development. But in our region, Eastern Africa in particular in Ethiopia, even if we have constitutions and laws, we don’t have rule of law governed institutions that can carry rule of law. The dictators in the region over and over again jabber about the “rule of law” to shroud their “rule by law” of one man.*

*It is unspeakable shame to have such wicked individuals in the 21st century and live in a society under the “rule of men”. Forget about national development and the roles of rule of law mentioned above. It is the absolute power that is worked out by the advantaged few who are the laws above the law. How can rule of law play its mighty while those few individuals decide for the whole society? Such kind of barbaric actions were practiced before 57 years back by Adolf Hitler, Joseph Stalin, and Mao Zedong and others; and that is the time African dictators live and that is the destiny they want to take back Africans.*

From this we can see the frustration of intellectuals and how the absences of law deny citizens the development they deserve the civilization they dream and the state of peace they starve. The other categories I interviewed were the ordinary citizens and the police who represent the poor and the police represent the middle class workers.

**Embugwa (Kenyans)**, Embugwa sells roasted maize in the side of the road under small tree. Most of the time, he comes after lunch. He comes with charcoal, gas, and match as his industrial machines. The row material he comes with is the raw maize with salt and hot chili. The time he comes is the time when the morning shifts workers come back home walking on foot as no transport service is provided. Most of them buy the roasted maize and eat while they walk.

Q. Do you have family?

**Embugwa:** *yes, I have wife and two children, one is 5 years and the other is 2 years old.*

Q. Are they from one mother?

**Embugwa:** He smiles and said; *no, they are not from one mother. They are from two mothers.*

Q. Is it easy to take care of them as they live in different place?

**Embugwa:** *It is difficult but it is common in Kenya. I take the one who is with me and my second wife take cares the other one.*

Q. How do you take care of your children and how is life in general?

**Embugwa:** *Life is very hard ad getting harder and harder. No jobs, no money, everything is getting expensive.*

Q. Do you have farm land?

**Embugwa:** *No, I don't have.*

Q. Why?

**Embugwa:** *Because, I don't have money to buy farmland it is so expensive. You know in Kenya, the land is owned by very few people. The buildings you see are for very few*

*individuals (and he put them in a rank). The first president's family are the first richest who owned the vast land of the country, the second president is the second richest person and the current president who is the third one in the last 49 years since the independence of Kenya is also among the top ten richest people in Kenya. So, they control everything.*

Embugwa reminds me how Leftwich (2002) portrayed that when economic wealth and political power are concentrated in the hands of some illegally privileged individuals in the developing countries (Leftwich, 2002:269). Through the life of Embugwa, one can see millions of fathers and children who are deprived of equal distribution of their country's land which is the clear picture of uneven development.

Wamboi (Kenyan lady), she is very hard working. She is a care taker of the apartment. She maintains water pipes, electricity and other minor damages. On top of that she cleans the apartments and she earns little money. Furthermore Wamboi sells telephone credit cards which are not legal according to Kenyan tax regulatory.

I asked her: is it legal for you to sell telephone credit cards?

**Wamboi:** *You know this is Kenya. You have to do or die. What is the law? I sell this small thing and I get very little. But those politicians sell the country and all the wealth is in their hand.*

What do you mean by politicians?

**Wamboi:** *I mean politicians and their family and close relatives are the owners of the country. They control everything their children studies United Kingdom and United States. There is no law in this country. The law works when the poor commits ordinary crime because of poverty and joblessness. So I want have money by hook or crook.*

## **Chapter 6: Rule of Law and Institutions**

### **6.1. Rule of Law and Institutions in National Development Course of Action**

*Law does not come into being merely by an act of legislation. In itself law is just words on a piece of paper. For law the other systems in society are just noise, as Gunther Teubner puts it. Law tells you how to act in certain situations. But what*

*makes law operational? In order to have any influence on people's behaviour, law has either to be followed spontaneously or to be forced upon actors (Hyden....1).*

As Hyden points, law has either to be followed spontaneously or to be forced upon actors (Hyden (...1). But the fundamental awareness about the roles of institutions in relation to national development and their functions in playing important roles of law enforcement are side-lined in developing countries. Thus in the development process the institutional strength especially in developing countries remain poorly managed (North, 1992 in Bentham 2012:2). In most developing countries legal institutions are not usually seen as institution where all rounded security management, the protection of citizens and the enforcements of rule of law are well carried out. Because of such institutional weaknesses the laws to play such roles remain on the paper and replaced by individual persons (Hyden...1). The dominate understanding becomes visible to be the law enforcement, and general security concerns and legal institutions operate negatively and replaced by few individual political and economic elites (Mary 2005:611).

As it was widely discussed the presence of law and order in a given state allows rule of law to be functional as it safeguards the development process. Therefore institutions that range from financial, developmental, governance, human rights and so on should replace the roles of individuals. This is because well organized and framed institutions play the key roles in the enforcements of the national development in to action (North, 1992; Knack and Kaefer, 1995; Plateau; 2000; in Bentham 2012:2). For example, institutional framework that supports a market economy fosters exchange and builds trust between national development actors; and that influences the state and other powerful actors to respect the law and protect private property and persons rather than expropriate and subjugate them (Mary 2005:611). Developing countries need institutions as legal persons, to challenge the challenges of contemporary development hindrances (Sen 1999:3-4, Haggard and Triede, 2010:674). On the other hand the Lessons of Law and Development Studies as it is articulated that "legal systems are institutionalized power resources that lend themselves too many uses to those who wish to reshape society through law (...)" (Tamanaha, 1995:484). This is to say that effective institutions governed by rule of law can play a key role for the maintenance of local peace and order that enhance national development (Sen, 1999:3-4)

As Mary (2005) enumerates in this case the institutions that can play important role in the development process includes contract and contract enforcement mechanisms, commercial norms and rules, habits beliefs favouring shared values, and the accumulation of human capital (Mary 2005:611). Furthermore a set of institutions such as constitutions, electoral rules, law governing speech and education and norms that motivate people to abide by laws and cooperate in monitoring government are unavoidable components to achieve sound national development (ibid).

On the other hand Troilo (2011) argues that the impact of property rights institutions and contracting institutions on high-growth aspiration are more significant for profound market expansion and rule of law is more significant to govern them (Troilo 2012:158). Troilo (2012) continues the argument by raising a “why” question as why do countries vary in development? And asserts that one explanatory factor is the legal environment as the effect of legal systems on interest whether laws were designed to promote business establishment (Djankov et.al 2002), to the extent which rule of law is a fundamental and key constraint to rely on (Desai et al 2003) in (Troilo 2012:159). In this context rule of law is an institution that governs the other institutions which are devised to constraint on human interaction (North 1990:3 in Troilo 2012:156).

As mentioned institution is again a complex for various scholars. It is an arena of controversy and disputes. For others institutions are rules, enforcement characteristics of rules, and norms of behaviour that structure human interaction (Norm 1989 in (Kumssa and Mbeche 2004:841). Yet for others they are the constraints that govern the relations of individuals or groups, the World Bank defines it as “set of formal and informal rules governing the actions, individuals and organizations, and the interactions of participants in the development process” (World Bank1999/2000:22) in Kumssa and Mbeche 2004:841). Thus the term institution for this paper is the institution which is legally recognized as legal person in accordance with the law of the given nation that ranges from governmental to non-governmental associations along with their underlying values, norms, behaviours, traditions, cultures and rules that govern the social interactions in the process of development. In such a way the institution in developing countries should be given the place of prime and final authority to rely on (Desai et al 2003) in (Troilo 2012:159). The developing countries have a very misleading culture which is common in most of them as they rely on one man/one party considering him as indispensable entity.

## **6.2. Government as Institution in the process of National Development**

The Government of a given modern state is the foremost institution that represents the entire population with the respective institutions, at national, regional and international level. This important institution through its arms such as legislative, executive and judicial branches frames the formal rules and plays a prime role in enforcing them with its different coercive institutions (the police, army, the court at different administrative levels) (Kumssa and Mbeche 2004:841).

Furthermore the government produces public goals and services and facilitates the rules and regulations that allow national development process to flourish. The government guided by the rule of law also carries out and puts in place the necessary policies that can facilitate efficient distribution and allocation of resources to accelerate the national development and to fulfil the needs of citizens. As Kumssa and Mbecha (2004) state that the government is also responsible of providing the most important institutional infrastructures

such as laws (rule of law for this thesis) to protect property rights, and maintaining public peace and order, without which long term investment which is vital for national development and sustained socio-economic development is impossible (Kumssa and Mbecha 2004:846). In doing so the government as the main pillar of national development plays the role of generating future incomes. Potter et.al (2008) recommended effective government institutions are needed to build the legal institutional and regulatory framework and put in place good social policy to ensure the provision of key public services (Potter et.al.2008:277). In another way for the developing countries initiatives in all development fields to create a system capable to carry the tasks necessary for development such as importance of governmental stability, the maintenance of public order and respect for the law are essential (Rahnema and Bawtree, 1997: 193). In general government as institution provides security facilitation of all kinds and strengthening the non-productive forces consumption such as military, police and so on which play important roles in keeping peace and order that guarantee the national development process to be meaning-making (Kumssa and Mbeche: 2004:846, Osman et. Al. 2012:15).

Such being the case, the role of institutions in the process of national development depends on the quality and effectiveness of the institutions to carry out the functional roles of rule of law. It is because a successful national development requires a committed government with strong visionary leadership, coherent and impartial legislation and a well-equipped enforcer (Kumssa and Mbeche 2004:846, Greif and Kingstone 2011:1). In other words as Aldashev (2009) articulates that one of the key factors in the entire process of development is the legal system. It is because the characteristics of the legal system should affect the development behaviour of individual actors by positively influencing all competitions of material and human capital (Aldashev 2009: 257). In this vital development process the legal system and the role of rule of law- should lead to a better allocation of resources that increases and encourages total factor productivity (ibid). As such the total factor productivity originated from community based grass root development activities as we are going to see this in the following sub topic which community organizations as development institution.

### **6.3. Community Organizations as Development Institutions**

Community organizations are important social institutions of collective society that accommodate various norms and value in the process of their interaction. The interaction plays a vital role for overall development. This is because norms which are standards of behaviour and conducts which are accepted in a given society (Kumssa and Mbeche 2004:845). Whereas values refer to beliefs, what is accepted or not accepted and for what is important, for a particular society (ibid). How they are important to play roles in development is that development is a process of change/ results primarily from internal stimuli as its discourse continues and is determined by resources and organization(Kumssa



and Mbeche 2004:850). As the development discourse continues in such community organizations as institutions of development, the development actors develop the awareness towards institutional significance for overall understanding, and how institutions can be selected and how the members patterns of their behaviour be motivated (Grief and Kingston 2011:4, Shirley 2005:614). Furthermore, in such motivational stimuli the individuals will be more willing to specialise, investment and communicate as well as share knowledge (North 1990: 34 in Shirley (2005).

Shirley (2005) points that (development) changes are supported by changes in society's dominant beliefs and norms; thus institutions are the products of human efforts to give structural meaning to an uncertain world with societies dominant beliefs system on how the world operates (North 2004 in Shirley 2005: 615). As Kumssa and Mbeche (2004) note in the national development process of economic production and social welfare need effective utilization and coordination of resources and institutions. As such positive development change cannot occur in either production or quality of life if resources and inputs are not utilized effectively (Jones and Yogo (1994) in Kumssa and Mbeche 2004: 849).

In such manner development change can come when resources are combined and the responsible development actors such as state, public and private enterprises and households are mobilized in accordance with the law in place (Kumussa and Mbeche 2004:848, Shirley 2005 :616). On top of that community organizations as community networks play an enforcement role in which behaviour within a group is governed by "rules" which are enforced by members of the group themselves and that enables them to develop rules to successfully avert the adverse consequence of development process (Grief and Kingston 2011:19).

As a point of departure community institutions with their diversities are vital organs of national development as individuals with different needs such as production, political, activities, and religious worship reaction and so on. Though Kumssa and Mbeche (2004) categorised community institutions as social and developmental, for this thesis, both are equally important for the national development course of action. This is because social institutions (organizations) carry out social relations of the given community and operates as a mechanism to accumulate and transfer traditions and values from generation to generation (Kumssa and Mbeche 2004:851). On the other hand within these organizations there are multiple social groups who are in one way or the other the actors of national development. Thus, such organized institutions play important role in the development process of any country (Kumssa and Mbeche 2004:851, Troilo 2011: 160 Bates 2006:12).

More importantly, social institutions as the gatherings of citizens in contemporary developing world they create a vital opportunity to empower the grass root in the development project (Hyden...1-2). In such a way one of the development issues that all actors in the overall development should pay attention is legal empowerment of the poor that gives a commanding power to play a role in the enforcement the law (ibid). To achieve

overall development, such as economic progress with equitable distribution of wealth, democratic rights enhancement and human rights protection the government as institution is so vital (Kemal 2006: 158, Hyden...). Kemal (2006) and Hyden (...) argue that in the development process the voice of the poor in the community individually and/or through community must be given a chance to be able to trust the development enforcer institutions and have access to decent services including legal institutions (Kemal 2006: 158, Hyden ...6).

Furthermore social institutions integrating the capacity of citizens to influence on the state demanding government responsiveness to the societies concern (Bates 2006: 12-13, Kumssa and Mbeche 2004: 85). According to Aldashev (2009) the effects of legal enforcement on development the outcomes are more scant (Aldashev 2009:261). Under such circumstances the roles of organized community institutions are instrumental to set a legal system that sets rules and standards and regulations for the operations of the society as law enforcement and dispute resolution are important partners of national development (Gray 1991, Aldashev 2009:258, Kumssa and Mbeche 2004: 852).

Besides well-organized community institutions strengthened by the set rules and standards, law enforcement mechanism and dispute resolution management can play a practical role in facilitating negotiations, managing relations when resource distribution and utilization arise dispute (Aldashev 2009: 258, Kumssa and Mbeche2004:251). Furthermore, such community institutions' capacity enables the citizens to choose criteria to evaluate the governance performance and then exploring the capacity of citizens to tie the hands of governments not to violet the law (ibid). Thus, well-informed citizens in the community institutions are capable to identify incompetent officials and check on them in accordance with the legal systems that have positive obligations to develop the nation.

Citizens' functioning and capabilities as Sen (1999) points when they are combined and act aggressively to restructure their societies can achieve tremendous development. For example, it serves to eliminate obstacles to economic opportunity and mobility through democratic participation and to alleviate extremes of poverty, inequality and insecurity (Bates 2006:13, Gordon 2010:443, Sen 1999:3). In such an equilibrium, the government with respect governmental institutions forced to be accountable to the citizens then becomes an agent of the principles that constrain from consuming public revenues and embezzlement of development funds (Bates 2006:13, Nwabuzor 2005:121, 128). The United Nations acknowledged that and suggested the following to be a policy initiative of a country:

*...assistance or advice to public institutions in the field of the rule of law including legal reform, elections, and human rights, public law issues hand and property rights, registration, national identification, citizenship... Corruption, money laundering, etc. (the UN General Assembly A/63/64: 12 March 2008/1.6:114)*

## **Chapter 7: Conclusion and Reflection Remarks**

## 7.1. Conclusion

This study has investigated the relationship between the rule of law and the national development course of action from the rights based approach. In different sub-topics of the study, the essential and the inseparable component parts of development such as democracy, human rights, corruption, good governance and freedom of expression are discussed from national development perspectives. The existence of an instrument that governs the interaction between the above mentioned concepts is very important for the concepts to have a meaningful role in the process of national development. And that governing instrument is the rule of law which is presented in this paper as an instrument for national development. Thus, in my concluding remark, I am going to answer the research question which is: to what extent does the rule of law serve as instrument for national development? When we look at rule of law from a developmental view point, it recognizes civil and political rights and also facilitates the establishments of peace and order; and this peace and order in turn facilitates the establishment of socio- economic and political transformations of which are essential to the full-fledged development of human personality. The study with critical investigations of the previous studies supported by the interviews of individuals finds that the importance of rule of law for national development is unquestionable. This is because rule of law serves national development process to extent that it governs government institutions and citizens equally. And this has been one of the finding of the study as rule of law can be reviewed through four major theoretical routes as such; through the mitigation of violence; through protection of property rights; through institutional checks on government; and through control of private capture and corruption (Haggand and Tiede; 2011:674).

The study finds that if rule of law is taken in to account, it can serve national development to the extent of better development practice in which citizens find themselves.

Furthermore rule of law advances the development in the process of changing it as the given nation requires. Such development provides restoring confidence and transforming the institutions that produce citizen security, justice and jobs as they are the major roles of rule of law (World Development Report 2011:8). Such instrumental roles of rule of law are so vital especially in the global south of the planet where poverty builds its tent, tribal and boarder conflicts are common experiences of the poor. As the respondents in their

interviews explained most of the focus countries of the study are the places where dictators, reign over the law and are the main sources of corruption that channels to the local governments. Human rights are in the graveyard, democracy and freedom of expression are muzzled. The ratified international laws and legislated local laws are decayed on the paper. Legal institutions are very weak and are not loyal to the constitutions of the nation but manipulated by authorities. Under such conditions the study observed that “justice delayed is justice denied” gets its full meaning that corresponds to the denial of development is the denial of rights to equal and equitable citizenry development which can be termed as development delayed is development denied.

The study finds that though, the global debate about development continues as a fashion, millions are still under the shadow of poverty that ranges from the death of treatable diseases and hunger to ordinary and serious crimes such as, corruption, open banditry, daring daylight raids on (Nwabuboz, 2005: 128) to name a few. And yet because of the absence of rule of law there is no institution and/or a body that should be accounted for. Therefore the research finds that such responsible institutions can be in place if and only if a nation builds a system governed by rule of law that gives legal guide lines to reduce the above mentioned development obstacles. This is because if rule of law is in place politicians, public officials and common citizens cannot stand beyond the control of the law. When the relationships between the government and the citizens are bound by a set of rules, with the key legal institutions, there can be apt environment that enables to establish socio-economic and political maturity. Thus the study postulates that development to prevail requires the political order with peace and stability. Peace and stability to prevail requires the legal political order. The legal political order to prevail requires the rule of law.

Yet again the rule of law to prevail requires good country management with a well-governed economy where laws are sound and stable and where the legal interpretation and enforcement of prescribed and constitutional obligations are consistent and trustworthy. This is a down-to-earth postulate to understand the functions of rule of law to what extent it serves national development as instrument. Thus the importance of the rule of law for national development agenda that deals with the overall poverty issues and problems that are enumerated above is at the front bench and its indispensability draws from this crucial fact (Shah, 1992:513). As it is a common knowledge that rule of law to function as an

effective law, there must be legal institutions such as well organised, trained, unbiased and unaffiliated judges, professional enforcers, and realistic practitioners. This is so crucial to implement the targeted development agenda in absolute legal and ethical manners with defined duties and responsibilities. It is from such important value that the core theoretical insight linking law to development runs through related channels: political rights, rights of freedom of expression, civil rights the effects of property rights on investment and the effects of contract enforcement on trade (Haggard, et.al 2008:206). This refers to the role of the legal institutions as enforcers (1960s that work by Coase (1960), Alchian (1965), Demsetz (1967, Alchian&Demsetz 1973), Williamson (1971, 1985) in (Haggard, 2008:at.el).

## **7.2. Reflections and final Remarks**

As a point of departure and of final remark, rule of law, which provides peace and order with equal treatments of all development actors within a given legal framework for the operations of developmental organizations, was/is not given serious attention. Though legal scholars acknowledge that the rule of law plays an essential role in a country's objective of development (Marryman, 1977: 458-459) and consider law as an engine for social reform and lawyers and judges could serve as social engineers, the reality on the development process remains poor. Thus, the study, based on its findings, suggests that a law conducive environment can have a strong and beneficial impact on overall national development.

This is because in the discourses of socio-legal issues that may lead to the downgrading or even keeping the poor out who do not impart a number of features unless the legal instrument is in place (Shah, 1992:514 Hyden...). In talking such challenges rule of law gives the poor a chance to voice and practice their rights to development. In providing such voicing and participating opportunities for the poor rule of law further fosters democratic and peaceful political participation. It helps to combat corruption. It gives legal rights and the protection of freedoms of public to express their grievances and check on the government officials. With such well-organized legal systems the capabilities of a person can be protected and flourished. Then inevitably, this leads to the freedom that a person has to choose his choice of functioning. Such functional choices enlighten personal features covering personal characteristics into functioning power of command over commodities availability of goods and services. This gives the term "development" the meaning of real

freedom. Sen(1999) attempts to claim “development as freedom” stating that on development integrates not only economic development but also freedoms like political rights, social opportunities, good governance with transparency guarantees and protective security which are achieved through the means of rule of law as instrument (Sen, 1999 1985, Marryman, 1977 ). In general rule of law serve as instrument for national development. This is because it is the rule of law that imposes legal limitations on and coordinates the acts of government officials. Furthermore law imposes legal limitations on and coordinates the behaviour of citizens (Tamanaha 2011:4). Tamanaha (2011) clearly points that a growing emphasis on national development agenda with rights based development approaches that enhances human rights protection, democratic political and labour rights, economic rights environmental protection and access to just for the poor are always governed and constrained by the rule of law as they are bundled with rule of law promotion.

As a sum up and final reflection, Global South states and development actors of all level should learn from modern nation-states and from their past mistakes. They should claim to be a democratic governed by rule of law and take idea of rule of law as a core principle and aspiration to be instrument for national development projects (Djelic, 2011:47). The developing countries should enhance and realize the conceptualization of rule of law for national development as it suggests the triumph of reason and democracy over arbitrary power; the legislator being neutral and competent with just, rational, and impartial legal order. Finally I strongly suggest for my generation and the generation to come in developing countries to strive for the realization of the modern concept of rule of law and its impact on overall national development. This should be the way forward to pave the path that may take the developing countries to peaceful, secured and sustained national development process.

### ***Rule of Law towards a Just, Peaceful and Secure World*** (The

United Nations Organization)

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## Appendix I: The Interview Guides

A) Activity (Profession)

b. 36-45

1. Name, sex,

c. 46-50

2. Family Status

d. 51-60

3. Nationality

e. 61+

4. Education Level

6. Current position

5. Age...

7. Experience

a. 30-35

8. The awareness about the roles of rule of law in relation to national development

9. To what extent does rule of law serve as instrument for national development?

10. How can we relate rule of law and national development?

11. What are the major rights based national development approaches?

12. To what extent can a policy maker or a policy enforcer use rule of law as instrument for national development?

13. How would you describe the current situation of rule of law and its instrumental role for national development?

14. How do you see the distribution of power and wealth in the reign?

15. How do you see your future?



