

RESEARCH ISSUE Brief

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Enforcing Contracts and Business Survival in Nigeria: Calling Legislative Attention to World Bank 2018 Findings

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Executive Summary

- This brief examined enforcing contracts and business survival in Nigeria with a view to calling Legislative attention to World Bank 2018 easy of doing business survey findings.
- It noted that a business contract is only as meaningful as its ability to be enforced swiftly and effectively.
- Regarding enforcing contracts, doing business measures the time, cost and quality of judicial processes for resolving a commercial dispute through a local first-instance court.
- The brief reviewed the shining experience of a few countries and drew lessons for the Nigerian states. Among the key lessons is that all states in Nigeria should implement reforms that makes it easier to enforce a contract. World Bank findings shows that Enugu has made the biggest strides on the ease of enforcing contracts by hiring additional magistrates and issuing a practice direction to resolve commercial disputes faster.
- Among many others, the brief recommended that the NASS judicial committees should push for innovative legislations that would help in the introduction of specialized commercial courts or divisions and fast-track procedures in small claims courts. Specialized courts tend to improve efficiency and result in faster and less costly contract enforcement.

I. The Problem

A business contract is only as meaningful as its ability to be enforced swiftly and effectively. Imagine a small business in Anambra state that recently bought some goods that turned out to be defective. It is now faced with the dilemma of whether to pursue a legal action which in Anambra means being tied up in litigation for 20 months or accept the consequences of a significant financial loss. These types of challenges constantly affect businesses and potential litigants across Nigeria. If small and

medium-size enterprises are to grow and succeed, an effective court system must exist to protect and enforce their basic contractual rights.

The courts adjudicate parties' rights and contractual obligations and ensure that any monetary awards are properly and efficiently enforced in favor of the prevailing party. If these obligations are overlooked, commercial activity may be stifled and businesses may avoid entering into contracts with parties they do not know and

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trust. Research has shown that weak contract enforcement raises the cost of borrowing and shortens loan maturities¹, with a resulting negative effect on investment and on GDP.² Weak enforcement systems have also been linked to late payments, which can lead to liquidity issues for companies and increase the likelihood of insolvency.³

What does enforcing contracts measure?

Doing Business measures the time, cost and quality of judicial processes for resolving a commercial dispute through a local first-instance court. The case study assumes that a seller delivers custom-made goods to a buyer who

refuses delivery, alleging that the goods are of inferior quality. To enforce the sale agreement, the seller files a claim with a local court, which hears arguments on the merits of the case. Before a decision is reached in favor of the seller, an expert is appointed to provide an opinion on the quality of the goods in dispute, which distinguishes the case from simple debt enforcement. Ultimately, the seller must commence enforcement proceedings after the period allocated by law for appeal expires, attach the buyer's movable assets and organize a public auction and sale of these goods to satisfy the court's judgment.

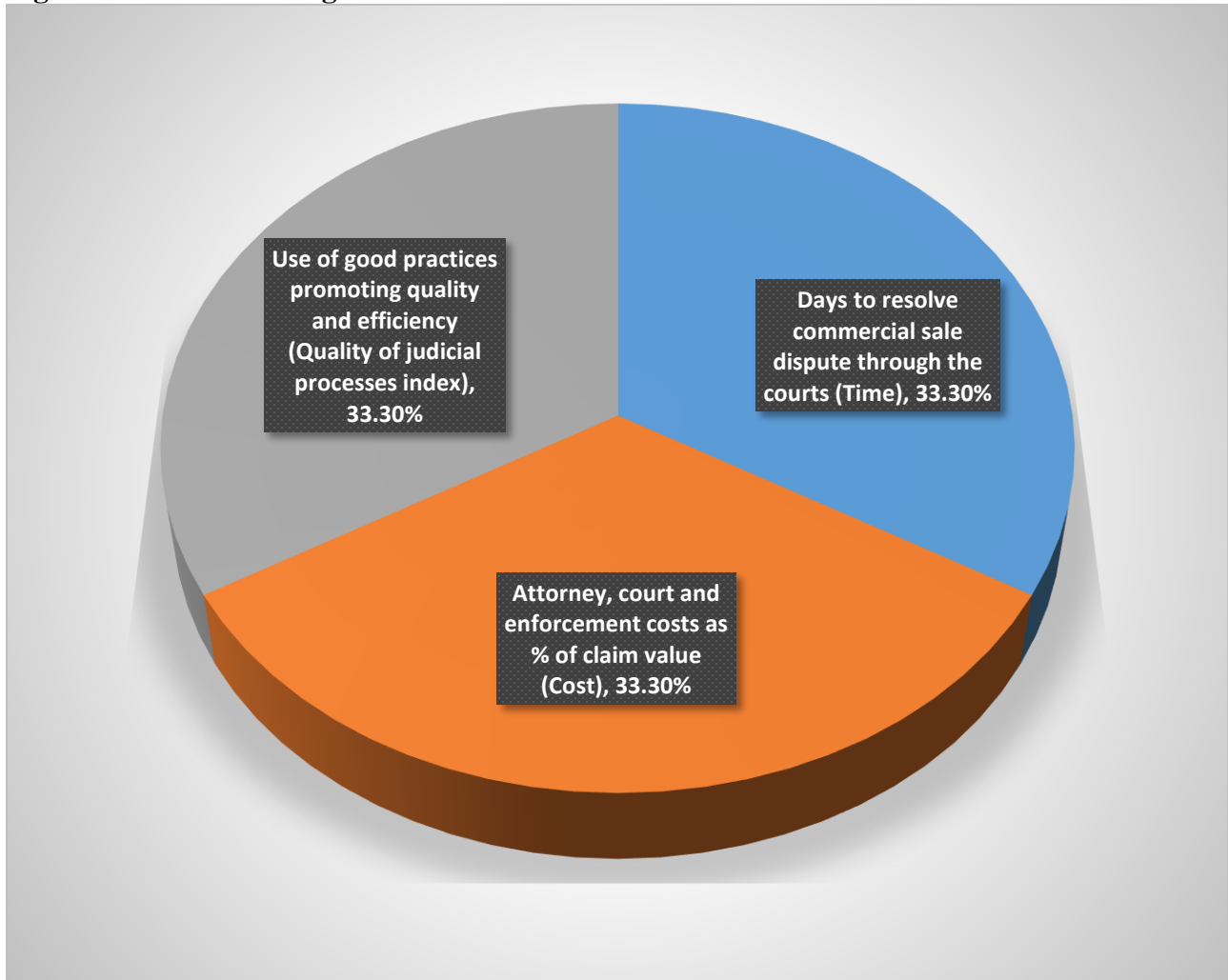
¹ Bae, Kee-Hong, and Vidhan Goyal. 2009. "Creditor Rights, Enforcement, and Bank Loans." *The Journal of Finance* 64(2): 823-860; Laeven, Luc, and Giovanni Majnoni. 2003. "Loan Loss Provisioning and Economic Slowdowns: Too Much, Too Late?" *Journal of Financial Intermediation* 12(2): 178-197.

² Bianco, Magda, Tullio Jappelli and Marco Pagano. 2002. "Courts and Banks: Effects of Judicial Enforcement on

Credit Markets." CSEF Working Paper No. 58; Luc Laeven and Giovanni Majnoni. 2003. "Loan Loss Provisioning and Economic Slowdowns: Too Much, Too Late?"; Djankov, Simeon, Oliver Hart, Caralee McLiesh and Andrei Shleifer. 2008. "Debt Enforcement around the World." *Journal of Political Economy* 116(6): 1105-1149

³ Intrum Justitia. 2013. "Intrum Justitia Annual Report." Stockholm: Intrum Justitia.

Figure 1: What enforcing contracts measures



Source: World Bank Doing Business in Nigeria Report (2018).

Doing Business also builds a quality of judicial processes index that measures whether a location has adopted a series of good practices in its court system in four areas: court structure and proceedings, case management, court

automation and alternative dispute resolution (see Figure 1 and Table 1). This index was introduced in 2015 and replaces the indicator on the number of procedures to enforce a contract.

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Table 1: Quality of judicial processes index

Court structure and proceedings	Case management	Ability to file initial complaint electronically	Alternative dispute resolution
Availability of a specialized commercial court or division	Regulations setting time standards for key court events	Ability to serve process electronically	Availability and regulation of arbitration
Availability of a small claims court or simplified procedure for small claims	Regulations on adjournments and continuances	Ability to pay court fees electronically	Availability and regulation of voluntary mediation or conciliation
Availability of pretrial attachment	Availability of performance measurement mechanisms	Publication of judgments	
Criteria used to assign cases to judges	Use of pretrial conference		
	Availability of an electronic case management system		

Source: World Bank Doing Business in Nigeria Report (2018).

How does contract enforcement work in Nigeria?

Pursuant to the Nigerian Constitution,⁴ the chief judge in each state is empowered to promulgate rules governing the state’s courts. Each state has instituted its own set of procedural rules for its high and lower courts. Enugu and Anambra’s court rules are the same and result from a collaborative drafting effort. States have also adopted varying pieces of legislation which affect the quality of the judicial process, notably laws that regulate the arbitration or mediation of commercial disputes.

In Nigeria both the High courts and the Magistrates’ courts (the lower courts) have subject-matter jurisdiction over breach of contract claims. Typically, High courts can hear matters of any amount, but the jurisdiction of the lower court is limited by a maximum monetary threshold that is determined by state law.

2. Cross country experience on enforcing contracts

- In the Slovak Republic, for example, the Bratislava District Court is obligated to decide a case on the first hearing; adjournments are allowed only for

⁴ Section 274 CFRN 1999 (As amended)

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serious reasons which are put on the record.

- In the Riga Central Court in Latvia a hearing cannot be postponed without the new hearing date being set.
- In the Swiss judicial district of Dorneck-Thierstein extensions are not generally granted more than twice.
- According to Doing Business 2018, three economies in Sub-Saharan Africa (Burundi, Cabo Verde and Liberia) have rules limiting the maximum number of adjournments that may be granted and limiting adjournments to unforeseen or exceptional circumstances, and such rules are enforced more than 50% of the time.
- Studies in the United States have shown that mediation is an economical option compared to the cost of adjudicating disputes and is cost-efficient for the courts, if the cases are settled.

3. Lessons for Nigeria

- ✓ Nigeria should learn from Burundi, Cabo Verde and Liberia to have rules limiting the maximum number of adjournments that may be granted and limiting adjournments to unforeseen or exceptional circumstances, and such rules should be enforced at all times. This will help to reduce the time and cost it takes to resolve a standardized commercial dispute.
- ✓ All states in Nigeria should implement reforms that makes it easier to enforce a contract. World Bank findings shows that Enugu has made the biggest strides on the ease of enforcing contracts by hiring additional magistrates and issuing a practice direction to resolve commercial disputes faster.

- ✓ Nigerian states should learn from the United States and the Slovak Republic to continue to modernize their civil procedure rules to introduce better case management measures such as frontloading evidentiary materials and holding pretrial conferences.
- ✓ Again, all states should implement rules limiting the number of trial adjournments and create specialized commercial courts.

4. What can be improved?

- ❖ The NASS judicial committees should liaise with the judicial arm of the Government to limit adjournments and introduce effective time limits. One way to enforce deadlines is to back them with penalty fees payable for each day exceeding the deadline.
- ❖ The NASS judicial committees should push for innovative legislations that would help in the introduction of specialized commercial courts or divisions and fast-track procedures in small claims courts. Specialized courts tend to improve efficiency and result in faster and less costly contract enforcement.
- ❖ There is need to perform a resource review to evaluate the need to hire more judges and staff. In the 2017 World Bank ease of doing business survey, several states reported that backlogs and delays in the trial and judgment phase are the direct result of insufficient staff. There is need to further promote Alternative Dispute Resolution (ADR).

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5. Conclusion

brief recommended that the NASS judicial committees should push for innovative legislations that would help in the introduction of specialized commercial courts or divisions and fast-track procedures in small claims courts. Specialized courts tend to improve efficiency and result in faster and less costly contract enforcement.

The views expressed in this Research Issue Brief are those of the author(s) and do not necessarily represent the views of the Institute and its Management.

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