
RULE OF LAW IN NIGERIA AND CHALLENGES OF GOOD GOVERNANCE

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ABSTRACT

Attempts to institute good governance in Nigeria have always proven problematic. It is agreeable that colonial rule imposed a type of governance in the country that was anti-people in nature. By the time the colonialists left, the local political elites have imbibed the culture of this type of governance that puts premium on gaining political power without considerations to accountability, rule of law and constitutionalism. This paper argues that there is a deficit of rule of law and good governance in the country today. This deficit can be corrected through a viable and virile civil society, but much is dependent on the role of a qualitative leadership.

INTRODUCTION

One of the fundamental reasons why the state was created according to the social contract theory was to give the state powers by the citizens to care for them, in fact to do for them the things they could not achieve individually. According to Johari (1989:107) citing Thomas Hobbes, life in the state of nature was brutish, nasty and short. The abhorrence of this form of life propelled man to surrender rights to a constituted assembly of governance. The implications of the constitution of the state were for it to enhance good life or well being of the people. Since the advent of democracy in Nigeria, the citizens at different political eras gave their mandates to people who were constituted into leadership to steer the affairs of the state, above it all to champion the course of good governance. It is however amazing, that the quality of governance in Nigeria has not been able to improve while the state exhibits authoritarianism, civil dictatorship, lawlessness, corruption, arbitrariness etc. It is against this backdrop that this paper examines rule of law and the nature of governance in Nigeria.

THE RULE OF LAW

The rule of law according to Igwe (2002) relates to the supremacy of the laws and their equal application to every person and institution of society, regardless of status, class or circumstance, and to the extent that such laws are fair, just and promotive of personal liberties, which are fundamental requirements for a truly democratic and civilized, life and formidable check upon tyranny and arbitrary rule, (Igwe, 2002:387). The first modern political philosopher to give an adequate explanation on the principle of the rule of law was A.V. Dicey (1883 - 1922). According to Dicey, the rule of law means "the absolute supremacy of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, or prerogative or even of wide discretionary authority on the part of government." This conception perceives the rule of law as a principle that seeks to curb governmental powers by insisting that governance should be in accordance with the laws of land and not according to the arbitrary whims and caprices of those in authority. It also

implies that no man can be punished except for a proven breach of the law.

BASIC PRINCIPLES OF THE RULE OF LAW

The rule of law rests on some interconnected and mutually reinforcing principles. These include the following: The first principle relate to supremacy of the law. That is to say that the law is supremacy. No body is above the law. No matter how highly place, or law, all are equal with eyes of the law. It therefore means that the law is a no respecter of persons. Anyone who contravenes or goes against the law is subject to the law. The supremacy of the law ensures that arbitrary rule is curbed. The courts, the constitution exercise restraints on the power of sovereign authorities to prevent arbitrary rule. Closely related to the above is the idea of equality before the law. As earlier stated, the rule of law ensures that all are equal before the law, no matter how highly placed. This principle allows for the guarantee and safeguard of fundamental freedoms and liberties of the people. It means that no one can be unjustly arrested and detained without first granting him/her fair hearing. The rule of law is further encapsulated under the idea of constitutionalism which refers to the restrain of governmental powers. If the powers to the government are not checked, it will promote excessiveness and arbitrary use of power leading to dictatorship. The essence of constitutionalism is to ensure that those in authority are not corrupted by power. There is therefore a system of checks and balances that prevents any organ of government from becoming dominant and powerful. Finally, the rule of law recognizes fundamental freedoms and liberties of individuals. In fact, the constitution (which is an embodiment of all the fixed rules, customs and tradition-the basic laws of the land) is expected to guarantee and safeguard these freedoms and liberties. It is significant that some of these freedoms or rights have already been discussed in preceding chapters. To what have these fundamental principles of the rule of law been applied in Nigeria's democracy? Has Nigerian democracy been a precursor of the rule of law? Let us consider some of the basic principles of the rule of law and subject to Nigeria's democratic experience.

GOOD GOVERNANCE

In recent times, the concept of good governance has gained currency in social discourse. Lucidly speaking, good governance according to Boeninger (1992) has to do with the capacities of a political system to exercise authority, will legitimacy, adjudicate conflicts as well as carry out effective programme implementation. This definition implies that good governance is the effective process of leading the society, with the capacity for efficient service delivery in terms of policy implementation. Kukah (1998) has clearly stated that good governance is meant governance that is responsible, accountable and transparent in policy formulation and implementation. As a policy framework, good governance imposes demand on policy makers in their exercise of power. It encompasses an effective state that is a state that has enabling political environment for effective distribution of resources to improve the living condition of the ordinary people. In this sense good governance suggests the use of political authority and the management of the resources of society to better the lot of the people. Buttressing Kukah's views, Jega (1994:101 – 102) has stated that good governance as a desirable social and political process involves the following basic elements:

- *Responsibility and responsiveness in leadership and in public service;*
- *Accountability in the mobilization as well as in the utilization of resources;*
- *Discipline, effectiveness and efficiency in handling public (as well as personal) affairs.*
- *Selfishlessness and impartial service to the people; and*
- *Popular participation and empowerment of the people in the conduct and management of their own affairs.*

What the above conceptualization means is that good governance has to do with policy making and policy implementation by systems of laws and guidelines which are segregated into specific operations to achieve the over all development of the society. Good governance therefore involves a whole gamut of things: respect for the fundamental human rights of citizens, judicious use of resources that is devoid of waste and fraud via other corrupt practices. Besides, good governance requires respect for principles of accountability and transparency. It also encapsulated issues of equity, equality, justice and fair play in the distribution of goods, and services so as to promote and enhance the quality of life of the people irrespective of their class, status, religion or other parochial consideration.

THE ROOTS OF BAD GOVERNANCE IN NIGERIA

The genesis of the undemocratic and bad governance in Nigeria has roots mainly in the colonial experience of the country. The colonial rulers in Nigeria socialized the Nigerian political leadership in an authoritarian form of governance by monopolizing economic and political power in their own hands for the interests of the foreigners. But they still in the end expected the Nigerian political leadership that could take charge of the affairs of governance in 1960 to become democrats in due course. Hence Nigeria at independence inherited a colonial state that was weak and could hardly perform the essential functions of the state of ensuring law and order, establishing the enabling environment for the tapping of natural resources in order to cater for the material and social life of the generality of the, people. The weakness of the Nigerian state is mainly a derivative from the low level of production forces underpinning production, especially science, technology and industrialization. The limited development of productive forces as an aftermath of our colonial economy has in turn limited the autonomy of the state from the dominant social forces/classes. The state therefore finds it difficult to mediate in the conflict in the society between classes and within classes. Consequently, politics becomes tantamount to warfare. A high premium becomes placed on power and security lies in a leader or group getting, more and more power. There is then hardly any restraint holding or using power. Understandably, the Machiavellian approach of "the end justifies the means" has gained prominence in the governance process in Nigeria.

THE APPLICATION OF THE RULE OF LAW IN GOVERNANCE IN NIGERIA

The rule of law according to Ayua (1986) is a dynamic concept and principle which is employed only to safeguard and advance the civil and political rights of the individual in a free society, but also established social, economic, and cultural conditions under which his legitimate aspirations and dignity may be realized. The rule of law is built on certain notion,

which has been discussed above. The first is the notion of supremacy of the law. This suggests that the laws of the nation as contained in the statute books namely the constitution, must be seen as sacrosanct. It also means that those who have sworn by the constitution to uphold the social contract they have entered into with the people in the process of governance adhere strictly to it. Unfortunately that is not the case in Nigerian democracy. The leaders behave as if they are naked emperors and have nothing binding on them. The consequences are that we have leaders who deliberately and perversely undermine the democratic system. If they are elected (or selected) as president they seek to control the legislature and the judiciary. They later assume a "larger than life" role in imposing their limited world view on the nation in outright disregard of the laws governing the people. In Nigeria therefore, the supremacy of the law as a constituent element of the rule of law is a practical falsity in our democratic practices. That is why the immunity clause in section 308 of the 1999 constitution is an official license for the president and governors to breach the law at will!

Another element of the rule of law which has been greatly bashed in Nigeria's democratic experience since 1999 is the idea of equality before the law. Are Nigerians really equal before the law? Can the poor cohabit with the rich? Are the poor not trampled upon before the law? It has been provided in section 14 sub-section (1) of the Nigerian constitution (1999) that the Federal Republic of Nigeria shall be a state based on the principle of democracy and social justice. Can the families of those six innocent young Nigerians who were slaughtered by the police in Apo village in Abuja in August 2005 claim justice in Nigeria? After several years of the struggle for Justice has the Nigerian government heard of their cry of anguish? Can the poor claim justice in Nigeria? Can the former and serving governors who stole millions of naira from the public till of their states be subjected to justice and same treatment as ordinary Nigerians? Can there be a rule of law without adequate security for Nigerian people? In the face of growing insecurity (assassinations, armed banditry, extra-judicial killings by the police etc) is there any law, and order in Nigeria. Can citizen Uzoma Okere who was brutalized, tortured and stripped naked by the personal aide of a naval chief (rear Admiral Henry Arogundade) on 3rd December 2008 claim justice? It is inconceivable how Uzoma Okere for instance, was subjected to severe physical molestation on account of her not giving way for a navy admiral's convoy. This was not only callous, barbaric but an unnecessary display of high headedness, under a democratic setting like ours.

The conspiracy of silence maintained by the president and his chief law officer (the attorney general of the federation) further showed how unrealistic their claim of observing the rule of the law. What we have in Nigeria today is the rule of anarchy, rule of the jungle or rule of the guile (Dare, 2008). An order in which the majority of the people therefore have no stake and see no justice is ultimately unviable. For as long as there is no just order standing on negotiated consensus, our democracy cannot be a precursor of the rule of law, and our continuous claim to it would be merely pretensions. The application of the rule of law in Nigerian democracy is clearly bound up with class relations. The rule of law is therefore part

of the superstructure adapting itself to the necessities of an infrastructure of productive forces and productive relations. As such, it is clearly an instrument of ruling class. It defines and defends the ruling class claim upon power and authority, resources and property relations. It determines who controls that, when and how and mediates class relations and the struggle for power with a set of appropriate rules and sanctions, all of which ultimately confirm and consolidate existing class hegemony. Hence the rule of law in Nigeria is another mask for the rule of a class - its stronghold in the control of power under any given regime (democracy or authoritarian rule). The application of the rule of law in Nigeria has established an unwholesome social and political order in which the rich prey on the poor, the politician prey on the electorate, the government prey on workers and peasants, the police prey on the hapless and defenseless citizenry. The political party in power pounces on the legislature etc. The whole country has become a huge carcass for bite whose flesh tigers and lions, dogs and leopards, crocodiles and maggots engage in a deadly and ceaseless scramble.

THE WAY FORWARD FOR NIGERIA

Basically, to ensure good governance anchored on the rule of law has to do with the development of an active and virile civil society. Civil society refers to the people's own organizations outside government that interacts and relate on the basis of social values and culture of the society. These are organizations that operate outside the purview of the state and they include the media, voluntary associations, student unions, community development associations and other associational groups and Non-Governmental Organisation (NGOs), in general. According to Stephan (1988:3 - 4) "civil society is an arena where manifold social monuments and civic organizations from all classes attempt to constitute themselves in an ensemble of arrangements so that they can express themselves and advance their interest. Chazan (1992:281) has added to the discourse on civil society when she stated that "it is that segment of the society that interacts yet is distinct from the state." The importance of civil society in electoral politics rule of law and democracy in Nigeria can be gleaned from the experience of Western Europe. There, the French Revolution is said to have taken place as a result of intellectual and literary exchange of ideas for social and political change in salons and coffee houses in France. The reality of the experience of Western Europe in general shows that civil society emerged as a counter weight to monarchical and semi feudal institutions that continued to treat the political arena as the private domain of King (Woods, 1992:79). As important as civil society is to the consolidation of a viable democratic system in Nigeria, its activity could either be integrative or disintegrative of society. The activities are integrative when they are seen as acting as a critical check on authoritarian rule. So the nurturing of civil society within the Nigerian polity could be the most effective means a controlling repeated abuses of the state power, holding rulers accountable to their citizens and thus, establishing the foundation for a sustainable democratic system of government in Nigeria. Arguing further on the potentialities of civil society, Diamond (1996:5 - 17) provides some advantages or benefits of an organized civil society in democratic governance in the following context:

- i. An organized civil society serves as a watchdog to check the excesses of government

to expose and curtail or put a stop to human rights violation, abuse of the rule of law and infringements of constitution provision.

- ii. Civil society organizations can supplement the role of political parties in stimulating political participation, increasing the political efficacy and skill of democratic citizens, and promoting an appreciation of the obligations as well as the right of democratic citizenship.
- iii. Civil society is considered a crucial arena for the development of other democratic attributes such as tolerance, moderation, a willingness to compromise and respect of opposing viewpoints, which are better experienced in organizational participation in civil society.
- iv. It serves to enhance the bargaining power of interest groups and provides inclusive mechanisms for them.
- v. Participation in civil society organizations will cut across the weaken long-standing regional, religion, ethnic or partisan clearages and thus create a new type of citizenship in which individuals will more likely associate with different types of people with divergent political interest and opinions. It thus provides alternative for negotiation and compromise in a multifaceted society.
- vi. It helps in recruiting and training new political leaders, not only in technical and administrative skills but also in normative standards of public accountability and transparency. As time goes on, members of civil society organizations gain skills and confidence that will quality them for service in government or party politics.
- vii. Civil society organizations also disseminate information, thus helping citizens to collectively pursue and defend their interests and values. It thus provides citizens useful information about government activities that does not depend on what government says it is doing. By contradicting the official story, civil society organizations make it more difficult for government to cover up repression and abuse of power.

The above analysis by Diamond provides civil society organizations in Nigeria variety of ways' to consolidate the country's democracy. For example, it is obvious that Nigeria's democracy lacks the legal and bureaucratic means to check corruption but the civil society with its free, robust and inquisitive institutions has the capacity for pressing for institutional reforms which can fill the gap. Furthermore, civil society provides the basis for limiting state power and provides the nation with the most effective means of exercising control over democratic institutions.

Accountability, probity and prudent management of resources by the leadership is key to good governance. In order to attain this, the political and administrative leadership must govern by examples of control, responsibility, responsiveness and accountability. This therefore calls for a qualitative leadership that is focused, committed, disciplined, and mentally resourceful to champion the course of good governance in Nigeria.

CONCLUSION

The future of democracy rule of law and good governance in Nigeria depends largely on the capacity of the political system to eliminate all the problems that had bedeviled the establishment and consolidation of democracy in the country. The greed, inefficiency, and gross mismanagement of the country's resources by the leadership engender poverty. This poverty must necessarily be eradicated if we are to move forward on the development and democratic spheres. Again, nepotism, and tribalism constitute the bane of Nigerian politics. For example, today, different sections of the country are clamouring for power at the centre. This has thrown up the issue of zoning in the policy. The fear is that the zoning principle has the potential of creating disunity thereby deepening ethnic politics in the country. Moreover, we are of the opinion here that to ensure rule of law in Nigeria has to be done within an environment of an active and virile civil society. It is this civil society that could provide the culture and the leadership that is expected to uphold the tenets of good governance. Given the history of the underdevelopment of Nigeria and given that a viable state can only be built on a sound economic framework, rule of law, a self reliant economy becomes imperative. In the final analysis, we have also seen that there is the need for a sound and qualitative leadership that has the capacity to champion the course of good governance.

REFERENCES

- Agu, G.A. (2009) *Democracy, Human Rights and Rule of Law in Nigeria: Myths and Realities*. Makurdi: Destiny Ventures.
- Boeninger, R. (1991) "Governance and Development: Issues and Constraints" *Proceedings of the World Bank Annual Conference on Development Economics*.
- Chichana, (1998) "Intervention" in Ademiwa and Alabi (eds) *Democratisation of African Parliaments and Political Parties*. Washington DC. World Bank Institute.
- Diamond, L. (1996) "Rethinking Civil Society" in Brown, B.E. and Macridis, B.C. (eds) *Comparative Politics; Notes and Readings*. New York: Wadsworth.
- Gana, A.T. (2001) "Civil Society and Consolidation of the Polity" in *Nigerian Journal of Political and Administrative Studies*. Vol. 1 No. 1.
- Jega, A. (1994) *Governance and the Nigerian Economy*, Ibadan: Polygraphic Ventures Limited.
- Kukah, M.H. (1998) "Democracy and Good Governance" in Ayodele E. (ed) *Africa: National Unity, Stability and Development*. Ibadan: Sibon.