

GOOD GOVERNANCE, CONSTITUTIONALISM AND THE RULE OF LAW: IMPERATIVES FOR SUSTAINABLE DEVELOPMENT IN NIGERIA

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Abstract: Constitutionalism, rule of law and good governance has remained topical and recurring issues in the discourse about African states. The ideals of those concepts however seem to have been continually and continuously been flouted by most African states. Some scholars have argued that the ideal of good governance has continued to elude most states of African descent because of the twin problems of endemic corruption and basic departure from the rule of law and constitutionalism. Thus African states have been accused of having “constitutions without the spirit of constitutionalism”, of having laws without respect for the rule of law and of “creating poverty out of God given wealth” due to lack of good governance. In the last one decade and a half there has been a growing consciousness for the enthronement of these ideals as they have been recognized as the necessary pre-requisites for the attainment of an overall human and capital development and growth of a nation- ideals which are much more needed in developing nations. Through the instrumentality of the African Union (AU) certain laws and initiatives have been put in place such as the AU Charter on Democracy, Elections and Good Governance (giving set guidelines for the conduct of elections) and the African Peer Review Mechanism (APRM) initiative of New Partnership for African Development (NEPAD) designed to monitor governments of African states in all the realms of their governance activities (the executive, legislative and judiciary). In the West African sub region there is the Economic Communities of West African States (ECOWAS) Protocol on Democracy and Good Governance geared towards the same goal. These have been acclaimed as good steps in the right direction of achieving good governance in the African continent and the West African sub region respectively. Nigeria is an African nation and in particular, a member of ECOWAS. This paper

examines the tripartite concepts of constitutionalism, rule of law and good governance in Africa taking Nigeria as the case study. It argues that there is a link between these three concepts as they will continue to be the indices by which the Nigerian nation will be measured in terms of their development not only in terms of economic or capital growth but also in the areas of human development and political wellbeing. The paper argues that although the current efforts of the Nigerian government towards the eradication of endemic corruption (stemming from lack of respect for the rule of law) and the establishment of machineries for good governance are efforts geared towards achieving sustainable development in the country; the activities of certain government agencies in Nigeria belie the goal. Taking a few case studies from the Nigerian experience, it posits that the continuing lack of respect for the rule of law and constitutionalism in Nigeria are the greatest impediments to the attainment of sustainable development in Nigeria. The paper therefore makes some suggestions for policy implications towards the achievement of the overarching goal of sustainable development in Nigeria.

Keywords: Constitutionalism, Good Governance, Human and Capital Growth, Rule of law, Sustainable Development

INTRODUCTION

The tripartite concepts of constitutionalism, rule of law and good governance will continue to dominate African discourse and discourse about Africa as they remain the basic indices by which its development will be measured in terms of sustainable development in the political, social and economic arena. It is a fact backed by figures from empirical studies that political power carries with it

immense power and privileges that those who occupy offices are often reluctant to let go.

Corruption thrives in the African states as African political leaders view the rewards of political office even in the face of under-development. Smith (2003) posits that it is unjust to enrich the public office holders. The African states have been plagued with kleptocratic leaders such as Mobutu Sese Seko of Zaire, Generals Babangida and Abacha of Nigeria who took corruption to another level during their reign in those African states.

Public morality and public accountability do not seem to have any place in African politics or governance as a sitting President could establish a private university to compete with the public ones which he is the Visitor. He could endow himself with any title and of course he could endow a private library with public funds as was the case of a former President of Nigeria.

In Africa it is sad but true that constitutionalism and its progenitor; the rule of law are not allowed to take their due course as constitutions can be amended, bent or interpreted to achieve whatever infernal aim a political leader might have designed to perpetuate himself or his cronies in office. Thus in African politics no governing party loses an election. This is not because such governments are popular, but African politicians are skillful in manipulating the electoral system to retain power. Opposition parties are not co-operative in their attitude because it is not in the character of African politicians to contemplate life outside office.¹

In Africa, despite constitutional provisions to the contrary, coups and military interventions had been employed by both the military and the civilian regimes either to perpetuate one sitting President or to dislodge same or to serve the interests of the military itself. An interesting episode on this was played out in 1967 by Sierra Leone. The ruling party of Albert Margai was defeated by the All Congress (APC) of Siaka Stevens. Margai engineered a coup to prevent Siaka Stevens from assuming office. Eventually another coup restored Steven to power. Stevens himself ruled Sierra Leone for seventeen uninterrupted years.

In the face of glaring constitutional provisions to the contrary, there have been attempts by African leaders to transit from *khaki* (military rule) to *agbada* (civilian rule). Sitting Presidents have also attempted to re-engineer the constitution to engender third terms for themselves.

The above instances represent the prevailing political situation in the continent of Africa since independence. These trends have not been whittled down by the wave of democratization witnessed in Africa in the 1990s; as recent events have shown that the Africa continent is still characterised by many negative elements which opposed the ideal of constitutionalism, rule of law and good governance.

The quest for constitutionalism, rule of law and good governance remains a major research problem in the African continent. Scholars have argued that the problem of underdevelopment in most African states stems from lack of constitutionalism, respect for the rule of law and lack of good governance. The problems of endemic corruption and insecurity can also be traced to lack of good governance.

These problems have confounded the fortunes of African states as investors have shied away from doing concrete business in Africa basically because of the lack of transparency in government policies. The apparent lack of the "rule of law which is important to guarantee protection of human rights, ensure governmental predictability, creates a climate conducive to private sector activity and domestic and foreign investment and to enforce adherence to formal rules of behavior" (Lawal; 2007) is also another factor which encourages corruption and in turn militates against good governance.

Against this background this paper will undertake the following course: (a) Examine the concept of constitutionalism, rule of law and good governance as they apply to the African continent. (b) Establish the link between these tripartite concepts as they appear in most states of the African continent. (c) Assess the efforts made so far be it individually or collectively by African states to achieve good and democratic governance by taking Nigeria as a case study. (d) Determine whether or not there are efforts that have been fruitful so far and what needs to be done (e) Proffer some policy implications for reforms in the African continent.

¹ We note the exceptions of Senegal and Ghana in the very recent elections.

Conceptual Framework

Constitutionalism is defined as the exercise of powers within the confines of the constitution. In other words the actual behavior of political or public authors must correspond with the limits set down by the constitution. Thus all public officials whether elected or non elected must follow the dictates of the constitution. There is no constitutionalism if the rules laid down by the constitution can be freely amended by public officers whenever they view them as obstacles to their agenda. (Nyondo, 2011)

The related concept which follows from constitutionalism is therefore respect for the rule of law. Effective rule of law resolves conflicts and fosters social interaction in accord with legal norms and widely accepted societal values. It also enhances predictability, equitable treatment, and a respect for basic human rights. It provides services in accord with societal demands and expectations; and helps curb the arbitrary exercise and abuse of power by other branches of government, elites, and other privileged groups. (Centre for Democracy and Governance: Technical Publications Series: 1998).

From the foregoing it is apparent that the development of any given society or nation will necessarily be stemmed in constitutionalism and the rule of law. The third concept in this study; "governance" therefore interrelates with the first two concepts. Governance is simply the act of governing. It refers to decisions that defines expectations, grants power or verifies performance.

For good governance to be achieved there necessarily must be popular participation of the people in decision making process, acceptance by the government of criticism as well as addressing the criticism positively, formidable checks and balances, respect of the rule of law as well existing separation of functions and powers by different organs of the government and consequently, the ability of the same government to effectively plan and adequately deliver quality services prompting improvements in socio-political, economic, environmental and cultural fields. (Adoga, 2011)

Theoretical Framework

This study finds a footing first in the social contract theory. The origin of the term "social contract" can be found in the writings of Plato. Thomas Hobbes expanded on the idea when he wrote the "*Leviathan*" wherein he propounded that in the earliest days there was no government. Instead, those who were the strongest could take control and use their power at any time over others. Hobbes' theory was that the

people mutually agreed to create a state, only giving it enough power to provide protection of their well-being. However, in Hobbes' theory, once the power was given to the state, the people then relinquished any right to that power. In effect, that would be the price of the protection they sought.

Jean Jacques Rousseau and John Locke each took the social contract theory one step further by disagreeing with Hobbes that the power relinquished by the people cannot be retrieved by them. Rousseau wrote *The Social Contract, or Principles of Political Right* in which he explained that the government is based on the idea of popular sovereignty. Thus the will of the people as a whole gives power and direction to the state. John Locke also based his political writings on the idea of the social contract. He stressed the role of the individual. He also believed that revolution was not just a right but an obligation if the state abused their given power.

We hold that the very idea of constitutionalism is based on the social contract whereby the people put down their will in either a written or unwritten form for the state (public officers) to be guided by that will and for them to respect such will which is the rule of law and to achieve good governance.

The second theory which this study proposes to rest on can be found in the "new institutionalism" theory. The concept of political and institutional development, from which the idea of "good governance" originates was first elaborated in the 1960s. In the broadest sense, institutions are simply rules. They are established law, custom or practice. In that regard they are classified as either formal (constitutional rules) or informal (cultural norms). The reason why institutions matter is that laws, customs and established practices in institutional and organisational settings can play a powerful role in shaping the behaviour of individuals which means that institutions are the foundation of all political behavior. It is therefore apparent that without institutions there could be no organized politics. The main points of the institutional approach can already be found, for example, in the writings of Jean-Jacques Rousseau. His criticism of Hobbes, Locke, and others for assuming that the behavior of possessive individuals in a particular historical and social context expressed the natural preferences and traits of all human beings is an institutionalist's claim that behavior and preferences are not coincidental but are dictated by the individual's antecedents which in a way are also institutions. The political institutions responsible for good governance are often found in the doctrine of separation of powers: the executive,

legislature and the judiciary. These institutions are apportioned regular functions and have roles to perform towards the achievement of good governance.

Methodology

This study will make use of in-depth content, historical and descriptive analysis of primary and secondary sources of available literature such as text books, articles sourced from the library and from the internet on the concepts of constitutionalism, rule of law and good governance. Furthermore the research will make use of empirical data of other published studies on the concept of constitutionalism, rule of law and good governance in the African continent. Finally the study will make use of secondary sources like monthly / quarterly or annual reviews of regional and sub regional bodies involved in constitutionalism, rule of law and good governance.

Definitions of the Key Concepts:

Governance

The United Nations Development Programme (UNDP) classified governance into three (3) political, economic and administrative (UNDP 2001) and defines the term as “The exercise of economic, political, and administrative authority to manage a country’s affairs at all levels. It comprises mechanisms, processes, and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.”

According to the World Bank, governance means “The way “ ... power is exercised through a country’s economic, political, and social institutions.” (World Bank’s PRSP Handbook 2008; Kaufmann, D., et al (2007)

Thus good governance will refer to a system whereby the government is based on good leadership, respect for the rule of law and due processes, respect for the three arms of government with checks and balances, the accountability and contestability of the political leadership to the electorate as well as transparency in the operations of government and also in the public and private sectors.

Good governance requires fair legal frameworks that are enforced impartially by an independent judiciary and its decisions and enforcement are transparent or carried out in a manner that follows established rules and regulation. Since accountability cannot be enforced without rule of law and transparency, accountability is a key requirement for good governance. The government, the private sector and the civil society must all be accountable to the public

and their institutional stakeholder. (Sharma, S. D., (2007),

According to the UNDP, the characteristics of good governance defined in societal terms include the following: (a) *Participation* - All men and women should participate in decision-making, either directly or representatives, such participation must be built on freedom of association and speech. (b) *Rule of law* - Legal frameworks should be fair and enforced impartially, particularly the laws on human rights. (c) *Transparency* - Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them. (d) *Responsiveness* - Institutions and processes try to serve all stakeholders. (e) *Consensus orientation* - Good governance mediates differing interests to reach a broad consensus on what is in the best interests of the group and, where possible, on policies and procedures. (f) *Equity* - All men and women have opportunities to improve or maintain their well-being. (g) *Effectiveness and efficiency* - Processes and institutions produce results that meet needs while making the best use of resources. (h) *Accountability* - Decision-makers in government, the private sector and civil society organisations are accountable to the public, as well as to institutional stakeholders.

Strategic vision - Leaders and the public have a broad and long-term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical, cultural and social complexities in which that perspective is grounded (UNDP Policy Document (1994)

The UNDP notes that: “Good governance is, among other things, participatory, transparent and accountable. It is also effective and equitable. It promotes the rule of law. Good governance ensures that political, social and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in decision-making over the allocation of development resources. (UNDP Policy Document: 2003).

From the above one may surmise that the major components of the definition of good governance are namely: contestable political leadership, accountability and transparency of those in political office and the respect of basic guarantees of freedoms for the citizenry; with all acting within the confines of the rule of law.

Within the context of the above analysis an analytical framework for this paper emerges. Good governance can be said to be a product of: good and contestable public leadership, public accountability/ transparency and respect for the rule of law.

Contestable Political Leadership

Plato in "The Republic" was of the opinion that only rational men may rule. Political leadership must be left to those virtuous persons who have philosophical insight. This is the first strains of the Elite theory. Karl Marx however posited that the oppressed proletariat are moving towards ascendancy to leadership having destroyed by revolution, the bourgeois elite. This contention has been countered by the trio of Pareto, Mosca and Michels who argued that the insertion of the masses into the political process as leading actor was empirically impossible.

In this context means political leadership will means using and controlling public resources towards achieving public goals: be they political, economic or social. The means by which such leaders are elected must also be democratic.

Accountability

Accountability has been called the defining feature of modern liberal democracy. Accountability makes the abuse of political power less likely, while at the same time helping to empower governments to serve the ends that democratically elected governments are legitimately asked to pursue. According to the UNDP (2003) , accountability will be shown by the following indices: (a) Availability of local budget information (b) Public record of decision making (c) Formal procedure for ensuring public feedback (d) Identification of responsible public official

Transparency

Transparency is widely recognised as a core principle of good governance. As the UNDP has observed, transparency means "sharing information and acting in an open manner." Transparency:

"...allows stakeholders to gather information that may be critical to uncovering abuses and defending their interests. Transparent systems have clear procedures for public decision-making and open channels of communication between stakeholders and officials, and make wide range of information available." (UN-HABITAT, 2004)

Free access to information plays an important role in promoting transparency. Who produces what information, and for what purpose, become key issues when competing interests converge on a particular issue. It means that in the operations of the business of government business is carried out in an

open, easy to understand and explicit manner, such that the rules made by government, the policies implemented by the government and the results of governments activities are easy to verify by the ordinary citizen.

The key to transparency in modern times has been in the legislations of certain laws which promote access to information from the public domain (state) to the citizenry. African nations today now have the Freedom of Information Act. Nigeria passed its FOI Act in May 2011. Whether or not information will be freely accessed is however another ball game.

Rule of law

The rule of law simply refers to the supremacy of the law as opposed to the arbitrary power of government or individual. It refers to a government bound by law. Aristotle considered whether it was better for kings to rule with discretion or according to law, and determined that in a state governed by law "God and reason alone rule," whereas "passion perverts the minds of rulers, even if they are the best of men." (Barnes, J. Princeton: 1995)

That renowned scholar, Professor A. V. Dicey, posits that the concept of the rule of law, has three clear-cut meanings namely: (a) Absolute supremacy of the law as the basis for measuring the conduct of individuals and

group. This means that the basis for measuring the people's conduct cannot be based on the whims and caprices of those in government; but on express, written and non-retroactive laws of the society. (b) Absolute equality before the law. A second characteristic, which Lord Dicey attributed to the rule of law is the absolute equality of all citizens before the law. (c) The liberties of the citizens such as the right to life, to freedom of expression and assembly as well as freedom of movement, are perceived as inherent rights of the citizens that are to be interpreted and protected by independent judges sitting in courts. (Dicey: 1982: 213)

The rule of law is predicated on the absolute independence of the judiciary and its freedom from temptations to corruption. It indicates that the judiciary must be free from all machinations, coercion or force from the other arms of government and also from the public. It entails that citizens are accorded the right of fair hearing and that the judge(s) or tribunal are impartial.

As we can see from the above the rule of law is one of the fundamental or central pillars of good governance. Essentially a democratic government is built upon law: the law is clearly spelt out in written

form. The law establishes institutions, specifies how disputes between the institutions of government, differences between those institutions and the citizenry and differences between individuals are to be settled.

The relevant questions establishing the link between the rule of law and good governance to our mind may be formulated as follows: (a) Are those who exercise power following the laid down rules and regulations for carrying out their duties? (b) Are the actions of those who exercise power backed by law?

Constitution/ Constitutionalism

Constitutionalism means the practice and acceptance of government by means of a constitution. Constitutionalism therefore implies not just the adoption of a document or fundamental principles as the guiding rules by which a given country is governed, but a widespread willingness and readiness on the part of those who govern and those who are governed to abide by both the letter and the spirit of the fundamental laws.

Constitutionalism therefore describes both a political reality of government limited by law, a psychological and social disposition on the part of individual citizens to be limited and bound by law. Constitutionalism can therefore be said to be the foundation of democracy and good governance, which are basically the tangible results of the working of a constitution and the respect for the constitution and law.

Looking at the concepts of Constitutionalism and Rule of Law on the one hand and governance on the other hand one can confidently say that these concepts are interrelated and interconnected. Indeed one can say that the conceptual framework for this topic has a basis or foundation in the the public choice theory which views the design of an efficient constitution from the social contract point of view. The social contract assumes that all individuals in a society had entered into a contract to form a civilised society. In exchange for the said contract the people have to surrender their personal will which is the consideration they give for the government giving them equality or human rights.

The idea of government based on the rule of law is often rooted in the constitution of a state. Ditto the structure of government. The basis for achieving accountability and transparency may also be based on the constitution or any number of written laws to which the government and the public is expected to comply with. The idea of good and contestable leadership will be based on the constitution and the

various electoral laws which a state is bound to follow. The conceptual framework as treated above therefore emerges for discourse on how the twin concepts of constitutionalism and the rule of law can ease into creating or engendering good governance especially in the African continent.

African states and good governance

One may be tempted to ask the question: Why the much ado about good governance?

Nkom (2000) posits that "the concept of governance refers to the use of political power to manage a nation's public affairs and to shape its economic and social environment in line with perceived notions of public interest and societal progress". (Nkom, 2000:75).

Landell-Mills and Serageldin (1992:310) said: "good governance depends on the extent to which a government is perceived and accepted as legitimately committed to improving the public welfare and responsive to the needs of its citizens, competent to assure law and order and deliver public services, able to create an enabling environment for productive activities and equitable in its conduct".

Good governance therefore means the positive exercise of political power to attain positive societal goals and development while bad governance could be taken to be synonymous with the negative exercise of political power, usually for the private, sectional or group interests of the key political actors.

The imperative nature of good governance can be appreciated when we discover that the World Bank considers the installation of "good governance" in the States of Sub-Saharan Africa as a pre-condition for the sustainable development of their economies. (Peter Burnell : 2008).

The question may then be asked: Looking at the ingredients of good governance as highlighted above can one say that African states have scored highly on the scale of good governance?

Good governance, conceived here as a system of administration that is democratic, efficient and development-oriented.

The *raison de'itre* of government is to provide good governance. Rotberg (2009), described governance as "the delivery of high quality political goods to citizens." Political goods, he argued, include "security and safety, rule of law, participation and human rights, sustainable economic opportunity and human development." Most African leaders have failed to meet the benchmark of the above requirements.

Rotberg (2003: 1) provides a depressing but accurate description of leaders in Africa when he said: "The state of governance on the continent is indeed worrying.

The Economic Commission on Africa (ECA: 2009: 1-2) in its 'African Governance Report' avers: "Democratic culture has yet to be institutionalised, as vestiges of authoritarianism threaten the democratic process and the politics of consociationalism and politics of accommodation are not yet rooted in the polity. Thus, political tension, conflict and crises are emerging patterns of electoral politics in Africa".

Adejumobi, (2000:66) opines: "While the early 1990s ushered in an era of multi-party democracy, the reality on the ground shows that there has been a huge deficit of substance. Put differently the ritual of elections every four or five years and the recognition of opposition parties is largely diminished by electoral chicanery, intimidation, muzzling of the media and entrenched corruption. Without detracting from the successful advances at consolidating democracy in countries such as Ghana, Cape Verde, Benin, Botswana, Mauritius and South Africa, it is essential to be mindful of the high prevalence of undemocratic forces. The expectations of a new era of governance in places like Rwanda, Ethiopia, Eritrea and Uganda have been overtaken by the desire of political elites to monopolise the structures of power. Thus, the increasing tendency to use elections as a means of sustaining perpetual rule remains a huge drawback to the project of entrenching good governance standards."

Since independence the African states have been embroiled in various force and coups d'état as a means of gaining power or undermining democratically elected governments. Despite pertinent Treaties, Declarations and Constitutions, Africa experienced so many coups and counter coups between 1956 and the 1980s. Can we say therefore that political insecurity is one of the factors responsible for lack of good governance in Africa?

By the 1980s and 90s, all coinciding with the period of economic management difficulties, structural adjustment programmes were introduced by the International Financial Institutions. The fundamentals of these SAPs programmes have to do with the indices of good governance. Needless to say that although these programmes recorded some successes in some areas; they remain however (to quote a former Secretary General of the UN, Dr. Boutros Boutros Ghali) unpopular to the average man on the street. Can we say therefore that lack of economic

buoyance militates against the achievement of good governance in Africa?

The difficult progress of the Continent until the late 1990s towards democracy is evidenced by the reluctant recognition of the rights of opposition parties and opposition forces, press freedom as well as the right of the Civil Society to participate in decision making and to express its opinion. Disputes over election results with the attendant allegations of fraud sometimes degenerating into show of force and no remedy except in the law court often characterized democratization process in Africa. Can we say therefore that lack of free and fair elections is responsible for lack of good governance in Africa?

There had been spates of ethnic conflicts (for example Sudan vs. South Sudan, Jos, Plateau state of Nigeria, indigenes and settlers, Ife/ Modakeke, Osun state of Nigeria), wars (for example in Sudan, Eritrea) genocidal trends (Hutus vs. Tutsis in Rwanda and Burundi), insurgencies and terrorism (Niger – Delta militants and Boko Haram in Nigeria). Africa currently portrays the image of a continent synonymous with violence, a continent structurally characterised by long standing conflicts that have claimed lots of human lives and occasioned untold de-stabilisation of States and societies. Can we conclude therefore that ethnic rivalry/ clashes, civil wars, genocidal trends are also responsible for lack of good governance in Africa?

The African nations have also been challenged by judicial and legal insecurity which derails the basic principles of a state of law, undermines the environment for investment and renders precarious the legal protection of citizens. Corruption that hydra headed monster has often been found to be at the root of such judicial and legal insecurity. Can we surmise that corruption is also responsible for lack of good governance in Africa?

The above represents the true state of governance in Africa since the early 1990s when most nation states of African origin "democratised". As has often been said democracy has not been a vaccination for good governance in Africa. Indeed one might say that the brand of democracy practised in Africa does not seem to have good governance as one of its contents. This might be so because the processes leading up to the so called "democracy" are often flawed with so many irregularities. For example it is sad but true that elections are not often free and fair in Africa.

Leaders are not elected through the popular will of the people but often selected by the few ruling elites.

There is often a preponderance of prebendalism or patron/ client relationship between leaders and their successors. These and numerous other flaws ensure that corruption thrives as a selected leader will often do the will of his godfather than that of the so called populace who elected him. Of course where corruption thrives; good governance flees. It also ensures that leaders are often disposed to bend the law to suit their selfish end. The result is that the rule of law has been jettisoned and even though African nations have constitutions there is no constitutionalism. Put in another way, we submit that there is indeed a link between constitutionalism, rule of law and good governance.

The Nigerian Experience in Good Governance Through the Nigerian Legislature

Successive government in Nigeria have put in place various mechanism to engender constitutionalism and the rule of law so as to achieve good governance. However the question whether or not those mechanisms has succeed in bringing about good governance in Nigeria rest on the fact that the hydra headed monster corruption has permeated virtually all the three arms of government that are charged with the responsibility of governance. The Legislature is often touted as the first of the triumvirate as it is the organ responsible for laying down the laws of the land. Traditionally, the role of the Nigerian legislature is to make laws for the order and good governance of the Nigerian society. Thus because of the pivotal role of a legislature within the Nigeria it is proposed here to make a brief assessment of how the Nigerian Legislature has fared in its discharge of not only its traditional role of law making but also its constitutional oversight function on the two other arms of government.

The Legislature and Good Governance in Nigeria

Section 88(2) (b) of the Constitution confers investigative power on the National Assembly for the purposes stated therein, which include “*to expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it*”. In the spirit of this provision, the National Assembly has engaged in series of investigations into administrative ineptitudes, executive inefficiencies and depletion of public coffers by public officers and politicians. Six instances of such legislative investigations have been selected as case studies to illustrate the role of the National Assembly in fighting corruption in the polity. (Akinrinmade, Osifeso, Kolawole et al 2013)

The National Integrated Power Project Probe.

By a Resolution of the House of Representatives in 2008, the Power and Steel Committee of the House was mandated to probe an alleged \$16 billion fraud committed in the power sector between April 1999 and June 2007. The Committee held public hearings and also undertook a tour of the various electricity project sites across the nation. The Committee’s Report submitted to the House alleged that many of the contractors who collected huge amounts of money on the rural electrification projects awarded by the Rural Electrification Authority were fictitious and others failed to perform the contracts. The Report indicted many high profile personalities in Government and some workers of the Rural Electrification Authority and recommended them for investigation by the Economic and Financial Crimes Commission (EFCC) and the Independent Corrupt Practices Commission (ICPC).

No sooner than the Report was submitted that the Committee was alleged with N100 million bribe. By this twist, the Power and Steel Committee itself became a subject of probe by the House Ethics and Privileges Committee. The Ethics Committee’s Report stated that “from the totality of the testimonies before the Committee and from all the surrounding circumstances, the Committee arrived at the following: that the allegation of N100million bribery is unfounded and untrue”.

The House was then left to decide what to do with the initial Report on the NIPP. It dilly-dallied on it for a while and then referred the Report to some wise men, a Seven-man Committee of the House, to review and advice upon. At the end, members of the House Committee on Power and Steel were charged for N5.2 billion bribe while the Report on the \$16 billion scam was jettisoned. Three years later the charges were struck out. (Akinrinmade, Osifeso, Kolawole et al 2013)

The Pension Probe

Following series of complaints from beneficiaries of the Police Pension Fund Scheme the EFCC launched an investigation which revealed that billions of naira of pensioners’ money had been misappropriated by some individuals managing the scheme. This led the Federal Government to set up a task force headed by Alhaji Ibrahim Maina. However, in what appears to be an ironic twist of fate, even the Maina-led Task Force was alleged to have compromised its mandate by dipping its hands into the loot recovered. The House of Representatives in exercise of its oversight functions set up a probe into the activities of the Task Force. It was a clear case of the hunter becoming the

hunted. The ensuing cat and mouse game saw Alhaji Maina refusing to honour the invitation by the House on ostensible security reasons until he escaped out of the country. He cast aspersions on the credibility of the legislators, alleging that he was being indicted because they were uncomfortable with his reform agenda. (Akinrinmade, Osifeso, Kolawole et al 2013)

The SEC Probe

The Ad hoc Committee on the Capital Market conducted a probe of the activities of the Securities and Exchange Commission following the collapse of securities in 2008. Astonishing revelations of market manipulations, mismanagements and sharp practices were exposed in the widely televised investigation. The Director General of the Stock Exchange Commission was alleged of mismanagement. The Chairperson of SEC, Mrs Aruma Oteh, was alleged to be a culprit. Mrs Oteh was to later turn the table of the investigation and public sentiments in her favour when she alleged that the probe was induced by her refusal to honour some financial requests by the Committee members in respect an overseas trip in exchange for a kid glove treatment in the probe. (Akinrinmade, Osifeso, Kolawole et al 2013)

Oil Subsidy Probe

One of the notable events in the aftermath of the oil subsidy removal by the Federal Government in 2012 was the House of Representatives' inauguration of an Ad Hoc Committee on Petroleum Subsidy Probe Panel on the allegation of corruption in the administration of the oil subsidy management. The subsidy probe was an emotive issue among Nigerians because of its economic implications. The Senate President, Senator (Dr.) David A. B. Mark, in his address to the members on the resumption of the Plenary session of the Senate on Tuesday, 10th January, 2012, said, "Distinguished Colleagues, you will recall that this Senate had earlier directed its Committees on Petroleum Resources Downstream, Finance and Appropriations, to look into the management of the subsidy scheme. We are yet to receive its report. Let me assure Nigerians that the Senate will not shy away from using its legislative instrument to bring to book all those found to have abused the subsidy proceeds."

However, in spite of its initial promise and seeming courage of the Committee to get to the root of subsidy scandal, Nigerians' expectations were dashed with revelations by one of the indicted actors in the saga that the Committee's chairman, Farouk Lawan collected Six hundred million naira bribe from Constitutional duties and put its integrity to undertake

a probe in much doubt. (Akinrinmade, Osifeso, Kolawole et al 2013)

The Bureau of Public Enterprises (BPE) Probe

The report of the Senate *Ad-hoc* Committee on the Investigation of the Privatization and Commercialization Activities of the Bureau of Public Enterprises (BPE) from 1999 to 2012 is a product of legislative investigation with categorical findings on corruption. The probe was instituted at the exit of the Chief Olusegun Obasanjo government with the mandate of reviewing the activities of the Bureau in the implementation of the privatization and commercialization policy of the government. The findings of the Committee are revealing as to the spate of corruption and malfeasance within the Bureau and the executive. The Committee indicted some individuals, including the Ex-President. (Akinrinmade, Osifeso, Kolawole et al 2013)

The 255M Bullet Proof Car Probe

The latest in the never unending drama concerning the display of high impunity on the part of public officers in Nigeria is the purchase of two bullet proof Mercedes Benz cars in favour of the Nigerian Minister of Aviation. A committee of the House of Representatives was set up to investigate the matter and it came out with its report two weeks after. The key findings were that the cars were bought for the Minister without their being listed in the 2013 budgetary allocation for same. According to the reports of the committee "...spending public funds on unbudgeted projects attracts three years in jail and a fine of N100, 000 as stipulated by the ICPC Act." The committee therefore recommended that "The President of the Federal Republic of Nigeria should review the continued engagement of the Hon. Minister for Aviation, Princess Stella Oduah, having contravened the 2013 appropriation and approved revised thresholds by exceeding her approval limit of N100m with the purchase of 54 vehicles valued at N643m."

Despite the fact that this report has been submitted to the President there has been no reaction to same and the Minister still remains in office. The National Assembly has passed anti-corruption laws and reviewed them from time to time to catch up with emerging trends. It is the role of the executive and the judiciary to fill in the gaps and ensure that the laws are obeyed. However, from the instances cited above it cannot be said that its investigative powers have been equally successful in entirety.

To a large extent, they have unearthed misdeeds and negligence of the executive arm of government,

tested the true worth of ascribed reputations, enlightened the public of the activities of political and public officials, and resulted in pragmatic legislations. A cursory survey of the probes raise more questions, not of propriety but of the attendant self-destruct problems. Only a few of such probes has been conclusive, fewer has been litigated and none has been successfully litigated. Beyond the sensations and publicity that greet the probes, they have been rather diversionary and divisive. The National assembly has thus turned itself to a persecutor. The trend of recent probes shows that they have been deployed as an assault instrument hauled at others across the political divide rather than for constructive ends. The probes were never conclusive as members of the investigating panels were also accused of duplicity in the matter. The probes have succeeded in showing the members of the public that the law against corruption is meant for only the lowly in the society, the high and mighty are above the law. This in turn acts as a disincentive to members of the public. (Akinrinmade, Osifeso, Kolawole *et al.*: 2013)

It thus appears that despite good intentions and attempts at achieving good governance in Nigeria, the Legislature has not been able to successfully perform its oversight function on the executive.

The next pertinent question is what efforts (if any) have been made so far towards achieving good governance in the African continent and from which Nigeria must borrow one or two leaves from?

The Organisation of African Unity (OAU) was formed to accelerate the de-colonisation process of the continent, and promote development and cooperation among African states. (OAU 1992: 4). Akokpari (2004: 1) opines that “the failure of the Organisation for African Unity (OAU) to address Africa’s developmental challenges, including the crisis of governance, led to its demise”

Theoretically the Organisation recognized the basic tenets of good governance but was unable to enforce these tenets especially as incidences of flagrant abuse of the rule of law was a common occurrence in the 1980s especially during the era of successive and pervasive military rule in the continent.

Realising the need for good governance; politically, economically and corporately as well as an attempt to address Africa’s post-cold war legion of challenges, the successor organisation, the African Union (AU) through the Heads of State and Government (HGIC) Summit adopted the New Partnership for Africa’s Development (NEPAD) in Lusaka, Zambia, in July 2001.

The New Partnership for African Development (NEPAD) is premised among other things on good governance now recognised as an essential precondition for development. NEPAD is a strategic policy framework for Africa’s renewal and rebirth. It aims “to eradicate poverty and to place countries, individually and collectively, on a path of sustainable growth and development, and at the same time to participate actively in the world economy and body politic”. The five core principles of NEPAD are: good governance; peace, stability and security; sound economic policy making and management; effective partnerships; and domestic ownership and leadership.

The dual initiatives of NEPAD and the AU have incorporated a peer review mechanism, popularly referred to as the African Peer Review Mechanism (APRM), by which African heads of state exercise some form of surveillance over their colleagues in a bid to ensure good governance. The APRM is a process by which designated institutions such as the judiciary, the executive and legislature are periodically reviewed as to their progress in matters of governance. This is achieved by assessing the adherence of states to certain principles of governance set out by both NEPAD and the AU. The review process is done under the auspices of the AU.

The key purposes are to ensure the compliance of African states with certain standard practices of governance agreed upon by the AU summit in July 2002; as well as to assist states to improve upon their policies and policy-making and thereby maximise the attainment of their commitment to acceptable codes of good governance.

The APRM uses the following indices: political, economic and corporate governance values, codes and standards as outlined in the Declaration on Democracy, Political, Economic and Corporate Governance. The APRM initiative is very laudable but will it work?

First, critics of the initiatives have said that NEPAD and APRM are not African grown but rather the initiatives of the international financial institutions who have refused to let go of African nations after the unpopular era of the SAPs and as such this initiative may as well not measure what it is expected to measure (Bond 2003: 12).

Second, this researcher is also skeptical about the viability or effectiveness of the APRM. Generally, African leaders seem to share membership in a cryptic club. Professor Sandbrook (1984) has humorously yet aptly characterised African

Presidents as having a "...presidential brotherhood", in which there is little inclination to castigate but greater tendency to empathise with members". We surmise that one should not suffer an heartbreak if this mechanism does not work.

Akokpari (2004: 17) also argues that because "...membership in the APR is voluntary and certain to keep Africa's notorious dictators out ... and African leaders have already begun a process of manipulating the APRM by not only redefining what it can or cannot do, but also defining the concept of good governance in ways that diverge from conventional wisdom..."; the APR might not be able to achieve good governance.

An appraisal of the APRM reveals that since its inception in July 2001, shows that between January 2006 and January 2011, 14 member countries has been peer reviewed : Ghana, Rwanda, Kenya, Sudan, Algérie, Benin, Uganda, Nigeria, Burkina Faso, Mali, Mozambique, Lesotho, Mauritius and Ethiopia. The reports highly favoured states which are yet unable to meet the indices of good governance.

In 2007, the AU also adopted the African Charter on Democracy, Elections and Good Governance. Article 23 of the Charter frowns against unconstitutional takeover of power and also imposes sanctions against same. Unfortunately, the Charter is yet to come into force as it has not received the required number of ratification. Apart from this, there has been no sanctions against errant nations except in the cases of unconstitutional take-over of power through coup de tats as was done recently in the case of Mali.

In 2011, the UN Economic Commission on Africa (UNECA), an independent assessor carried out a survey on good governance in Africa and came out with a report. The UNECA: 2011 report on good governance in Africa makes very germane findings including the following: (a) That there have been positive developments including a general improvement in the quality of elections, the successful reversal of unconstitutional changes of government, momentous political change in North Africa and the achievement of independence in Southern Sudan. The AU and regional organizations have taken a strong lead in rejecting unconstitutional action and promoting a return to democratic government, with support from the international community. (b) However there are also problems, there continue to be long-standing and unresolved conflicts, combined with more recent conflict; much still needs to be done to ensure that elections are universally free and fair, and to improve other

indicators of political governance including checks and balances, tools of accountability, the rule of law, and civil liberties..... (UNECA 2011:7)

The West African sub region has also made an attempt towards addressing the issue of good governance. This was done through the instrumentality of the ECOWAS **Protocol on Democracy and Good Governance**. This Protocol contains relevant commitments by the ECOWAS states on their preparedness to abide by the basic indices of good governance.

Article 32 provides that member States will recognize that good governance and press freedom are essential for preserving social justice, preventing conflict, guaranteeing political stability and peace and for strengthening democracy. By Article 33, member states also commit themselves to guarantee the rule of law involves not only by the promulgation of good laws that are in conformity with the provisions on human rights, but also by establishing a good judicial system, a good system of administration, and good management of the State apparatus.

The fact remains that the issue of good governance remains a recurring topic in Africa. It links up at all times with sustainable growth and human development. Thus this paper will conclude by making some implications for policy implementation towards good governance in Africa.

Conclusion and Implications for Future Policy Implementation towards good governance in Nigeria

The lofty ideals of the rule of law, constitutionalism and good governance are ideals to which every nation must succumb. Most African nations are however still hovering at the threshold of good governance having failed to imbibe the tenets of good governance in their national affairs. Nigeria falls squarely into that category. It therefore becomes an imperative that Nigeria must be ready and able to propel themselves towards the achievement of good governance, economically, politically and socially. Thus we agree with UNECA, 2011, Report on governance in Africa that the following points may impact on future policy implementation in Africa and particularly in Nigeria towards the attainment of good governance. (a) The Nigerian government must put in place proper machinery to ensure that elections are free and fair. There must be institutions put in place to ensure that there is no arbitrary change in government either by the military or any other militant group. (UNECA: 2011:33) (b) Nigeria must improve other indicators of political governance including checks and balances, accountability, the rule of law, civil

liberties and human rights; (UNECA: 2011:33) (c) This populous country called Nigeria must continue to promote the implementation of the APRM as an instrument of shared values. In this wise corruption must be tackled from all aspects of political governance of nations and in its stead must be entrenched transparency and good governance. (UNECA: 2011:33) (d) It must continue to give political support to the efforts of continental and regional institutions, for example NEPAD/ APRM to improve all aspects of political governance. (UNECA: 2011:33) (e) Nigeria must find ways of resolving the ethnic conflicts and other factors causing political instability in Africa. Nigeria is presently weighed down by the *Boko Haram* acts of terrorism, communal clashes and ethno/religious violent crisis. In this regard we submit that it must take urgent steps towards the implementation of the AU Charter on Democracy Elections and Good Governance.

The ECOWAS states of which Nigeria is a member must also ensure that the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security must be ratified and implemented with full sanctions against erring nations or sub nations.

Nigeria is not lacking in good laws, what is lacking is the political will to carry out the implementation. To this end we advocate that the Nigerian government must exhibit and practice out the goal of achieving the virile implementation of its laws especially the Anti-graft laws to enable it build strong institutions for engendering sustainable development in the country.

REFERENCES

- [1] Adejumobi, S. (2000) "Elections in Africa: A Fading Shadow of Democracy?" *International Political Science Review*. Vol.21, No. 1, January, 2000.
- [2] Akinrinmade G.O., Osifeso, B.Y., Kolawole, A.K.A., Ayanleye O.A & Johnson Odusanya, A.O.. (2013) An Assessment of the Role of the National Assembly in Fighting Corruption in Nigeria. Conference paper delivered at the 48th Nigerian Association of Law Teachers, held at the University of Ilorin, April 2013
- [3] Bond, P. 2003. *Can NEPAD survive its Proponents, Sponsors, Clients and Peers?* Organisation for Social Research in Eastern and Southern Africa (OSSREA) Newsletter 21(3):
- [4] Nkom, S. A.: "Culture, Empowerment and Local Government with Reference to North Western Nigeria" in Adedeji, A. and Ayo, B. (eds), *People-Centered Democracy in Nigeria?*
- [5] Rotberg, Robert I. : (2009), *Governance and Leadership in Africa: Measures, Methods and Results*. Journal of International Affairs, (2009), Vol. 113
- [6] Sandbrook, R. 1984. *The Politics of Africa's Economic Stagnation*". Cambridge: Cambridge University Press.
- [7] Adejumobi, S. : 2000, *Between Democracy and Development in Africa: What Are the Missing Links?* Being a Paper Presented to the World Bank Conference on "Development Thinking in the Next Millennium", Paris 26-28 June 2000.
- [8] AIDE MEMOIRE, 2011, *Governance in Africa*, 19/10 2011. Available <http://www.uneca.org/gpad/events/2011NorthAfrica/ENGAideMemoireEN.pdf> on 12/04/2012.
- [9] Akokpari, J. K., 2004, *The AU, NEPAD and the Promotion of Good Governance in Africa*, Nordic Journal of African Studies 13(3): 243–263 (2004); University of Cape Town, South Africa. Available at <http://www.njas.helsinki.fi/pdf-files/vol13num3/akokpari2.pdf>.
- [10] Belton, R.K., *Definitions of the Rule of Law: Implications for Practitioners*. Accessed from http://www.carnegieendowment.org/files/CP55_Belton.FINAL.pdf on 12/04/ 2012.
- [11] M.O. Ibrahim Foundation: *Governance in Africa* <http://www.moibrahimfoundation.org/en/press-release/media-centre/press-releases/overall-governance-performance-scores-in-africa-driven-by-gains-in-economic-and-human-development-bu.html>
- [12] Okechukwu, O.: *Bad Governance in Africa*. Available at http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=okechukwu_oko. Accessed on 12/04/2012.
- [13] Rotberg, Robert I. : (2003), *The Roots of Africa's Leadership Deficit*. Available at www.worldpeacefoundation.org. on 12/04/2012.
- [14] NEPAD Report On Governance *9TH African NEPAD Report On Governance* . Accessed on the 12/04/2012 at <http://www.oecd.org/dataoecd/40/9/39696978.pdf>
- [15] Organisation of African Unity – OAU. 1992. *OAU Charter and Rules of Procedure*. Addis Ababa: OAU. Accessed from <http://www.oau.org>.
- [16] United Nations Economic Commission for Africa (UNECA: 2009) *African Governance Re-*

- port II, (2009) Oxford University Press
<http://www.uneca.org/gpad/publications/2009EN.pdf>
- [18] United Nations Economic Commission for Africa (UNECA/MRDE: 2011), *Report on Good Governance in Africa. : The Mutual Review of Development Effectiveness in Africa: Promise & Performance: A joint Report by the UN Economic Commission for Africa (UNECA) and Organisation for Economic Cooperation and Development (OECD)*. Available at <http://www.uneca.org/gpad/publications/mdre2011/MRDE2011EN.pdf> on 12/04/12.
- [19] UNDP *Definitions of Governance from UNDP; Available at* <http://unpan1.un.org/intradoc/groups/public/documents/un/unpan022332.pdf>. Accessed on 12/04/2012.
- [20] ECOWAS: “Protocol on Democracy and Good Governance”. Available on the AfriMAP website <www.afrimap.org>. accessed on 15/04/12.
- [21] 1999 Constitution of The Federal Republic Of Nigeria
- [22] Economic and Financial Crimes Commission Act
- [23] Independent Corrupt Practices Commission Act

