

RULE OF LAW IN NIGERIA: A BATTLEGROUND FOR GOVERNANCE AND CORRUPTION

Barry Monday Omonode

Senior Lecturer, Department of Public Law Faculty of Law, Ambrose Alli University, Ekpoma, Edo State, Nigeria.

Abstract:

The pursuit of good governance is a central concern in evaluating the performance of modern governments. The absence of proper governance standards often results in a characterization of poor governance. In Nigeria, despite the return of constitutional democracy in 1999, the prevailing consensus suggests that there are ongoing issues associated with poor governance. The complex interplay between governance, corruption, development, and the rule of law has remained a focal point in the Nigerian context. This has led to a substantial body of literature discussing these issues, with governance problems invariably giving rise to questions of leadership. The leadership question has become a recurring and contentious topic in Nigeria, as it is intrinsically linked to governance. The political elite has been subject to criticism, condemnation, and disapproval due to the enduring socio-economic and political challenges.

Keywords: good governance, corruption, development, rule of law, leadership, Nigeria

Introduction

The concept of good governance has become one of the most determinants for evaluating the performance of governments in the modern world. The failure of a country to meet up to the qualifying criteria of good governance results in a judgment that there is poor governance. Consequently, the presence of wide spread systemic corruption and large scale insecurity of lives and property may be classified as a manifestation of poor governance.

In Nigeria, since the return of constitutional democracy in 1999, to promote good governance, the general perception appears to be that there are still many manifestations of poor governance. The relationship between governance, corruption, development, and rule of law has been at the front burner in the minds of Nigerians. This has led to plethora of literatures on this discourse¹ and it is the governance problem that led to leadership question. The leadership question has become a recurring issue on the Nigerian project, since it is hinged on governance. The governing class has been target of pillory, vilification, condemnation and disclaim in view of the pervasive and persistent socio – economic and political crisis.

The economic domain has been characterized by huge external debt overhang, net capital flight, disinvestments, collapse of social infrastructures, food crisis and insecurity, over – devalued national currency, pervasive poverty, homelessness and underdevelopment, unpopular repressive and alienating economic policies, corruption and suppression of the rule of law. The socio – political space is riddled with the collapse of social values, kleptocracy, political corruption, the manipulation of electoral process, unstable, weak and vulnerable political structures and

¹ F. Onuoha, “Corruption and National Security: the three – gap theory and the Nigeria Experience” Nigeria Journal of Economic and Financial Crimes (2009) 1 (2) 1 – 13. O. Oarhe& I. Aghedo, “ the open of a Nation:corruption and internal security in Nigeria”(2010) 3 African Security 127 – 147. O. Oluwaniyi “police and institution of corruption in Nigeria” (2011) 21 policing and society 67 - 83

institutions, as well as brigandage². This has led to kidnapping, terrorism, banditry and hue and cry for secession by various ethnic groups.

This paper seeks to examine the potent verifiable features which discern the challenges of governance. The World Bank has identified the poor governance as one of the features of challenges of governance. It identified the features of poor governance as follows;

Failure to make a clear separation between what is public and what is private, hence, a tendency to divert public resources for private gain. Failure to establish a predictable framework of law and government behavior conducive for development, or arbitrariness in the application of rule and law. Excessive rules, regulations, licensing requirements, which impede the functioning of markets and encourage rent – seeking priorities inconsistent with development, resulting in misallocation of resources.

Excessive narrow based or non – transparent decision making³. When the above features identified by the World Bank occur, they create an environment that is hostile to development. In essence, poor governance is the absence of good governance⁴. The paper further examines the challenges of governance on development, the challenges of corruption on development, the challenges of governance on rule of law and the challenges of corruption on rule of law. It concludes by making necessary recommendations that once the challenges of governance and corruption are eliminated, the country will witness in all spheres, development and rule of law, which will create the necessary peace and security.

Clarification of Terms

Governance:

The UNDP defines Governance as the exercise of economic, political and administrative authority to manage a country's affairs at all levels. It comprises the Mechanisms, processes and institutions through which citizens and groups articulate their interest, exercise their legal rights, meet their obligations and mediate their differences⁵

Therefore, governance involves the process of achieving all lofty goals of liberty and societal good. The UN sees governance as the formal and informal arrangements that determine how public decisions are made and how public actions are carried out from perspective of maintaining a country's constitutional values. It refers to the way a society sets and manages the rules that guide policy making and implementations⁶. This leads us to what is poor governance. The challenges of governance are determined whether it is poor or good governance.

Poor Governance:

Poor Governance and bad governance are nominally used interchangeably. But the scope of this paper is the use of the phrase, "poor governance". Poor Governance is the unfavorable relationship between those who govern and those who are governed as a consequence of decision – making.

² Dele Seteolu, "The Challenge of Leadership And Governance in Nigeria" Governance Nigeria and the World Centre for Constitutionalism and Demilitarization suit 4 & 5, EkoPlaze, ACME Road, Ikeja – Lagos, Nigeria. Edited by Sylvester Odion – Akhaine, 70.

³ World Bank, Governance and Development (the World Bank: Washington DC, 1992) at P.8

⁴ Ogundiya I., "Democracy and Good Governance: Nigeria's Dilemma" (2010) 4 (6) Afican Journal of Political Science and International Relations (2010) 201 at 204.

⁵ Farida Wazri (AIG RTD Former EFCC Chairman) A paper delivered at the professor Ambrose Alli Annual Lecture/Awards on the 14th October, 2009, Leadership and the Challenges of Good Governance in Nigeria available at: <http://www.proshareny.com> last accessed 12/02.2020. Governance, the UNDP further notes has three less economic, political and administrative. Economic governance includes decision making processes that affect a country's economic activities and its relationship with other economics. It clearly has major implications for equity, poverty and quality of life. Political governance is the process of decision making to formulate policy. Administrative governance is the system of policy implementation.

⁶ DhikruAdewaleYagboyaju and Adeoye O. Akinola, Nigerian state and the crisis of Governance: A Critical Exposition. Sage Journals Available at <http://journal.sagepub.com>. or <https://doi.org/10.1177/2158244019865810> last accessed on 12/2/2020 (first published July 24,2019).

This unfavorable relationship is created as a consequence of external factors or decisions such as violation of central or acceptable norms, such as those of liberal democracy and bad economic policy. Poor governance collectively encompasses governance in government and corporate settings. Poor governance encompasses a variety of situations from corruption, deceit and to passing of unfair policy. The World Bank defines poor governance as when a country “holds the figures of any or all of the indicators less than and close to 2.5⁷.”

Good Governance

The concept of good governance has become one of the most influential concepts for evaluating the performance of government in the modern world. Good governance is associated with a framework that promotes accountability, probity and absence of systemic corruption amongst others. Security of lives and property and development are also associated with good governance. Therefore, it is necessary to determine the meaning of the phrase, “Good Governance” in order to arrive at the import of the phrase “poor governance”. This is because, poor governance is a direct opposite of good governance.

The World Bank defines the essential features of good governance as follows;

Good Governance is epitomized by predictable, open and enlightened policy making, a bureaucracy imbued with a professional ethos acting in furtherance of the good, the rule of law, transparent processes and a strong civil society participating in public affairs⁸.

The United Nations Social Commission for Asia and the Pacific, defines good governance as follows;

Good governance has 8 major characteristics. It is participatory, consensus criticised, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision making. It is also responsive to the present and future needs of society⁹.

Both the World Bank and the UN Commission did not really define good governance but gave the features and characteristic of good governance. Conversely, poor governance and corruption have negative development and lead to failure of institutions, failure of polices and failure to comply with relevant laws and regulations. The sense in which failure is used is that the institutions have generally performed poorly.

However, the institutional mechanisms designed to promote good governance and reduce corruption in governance have also performed poorly due largely to perceived influence by the Executive arm of government, which is the Chief Executive. This has caused slide in development, thereby having uphill task in achievement of greater capacity to deal with challenge of production and its expansion, political administration and governance and economic development. It is important to note that it is the policy of government that drives a nation’s development effort, since any development must address the imperatives of the Millennium Development Goals (MDGs) of the United Nations for which countries are enjoined to strive to attain as a consensus for global action.

This global action must result in national development which includes; development of human capital, critical infrastructure, environmental sustainability, social inclusion, health, safety, literacy, economic growth and high GDP, economic growth and social well being of its citizens. The above are the indices of development. The bedrock for development is premised on the rule of law.

⁷ The World Bank governance indicators are; voice and accountability, political stability and absence of violence, government effectiveness, Regulatory Quality, Rule of Law, Control of Corruption. Available online <https://en.m.wikipedia.org> accessed 12/2/2020. ObyEzekwesili, Nigeria suffering Bad governance, corruption, has this to say; “Bad Governance is so endemic when there are no expectations of results from those that govern society and therefore, there is no demand for accountability” Africa News 22/1/2018.

⁸ Governance: the World Bank (Washington DC. World Bank Group, 1994) at P.1.

⁹ <http://www.unwscap.org/pdd/prs/projectactivities/ongoing/gg/governance>. last accessed on 15/2/2020. It must also be noted that in Africa there are international dimension to the question of Good Governance. Article 3 (g) of the Constitution Act of the African Union (AU) identified the need to promote democratic principles and institution, popular participation and good governance as one of the objectives of the AU. The AU adopted a development paradigm known as New Partnership for African Development (NEPAD) premised on among others, good governance.

Corruption:

The issue of corruption in Africa has often loomed very prominent, or at least constituted a major component of the causative factors that have shaped or played prominent role at each critical milestone on developments in African countries.

Based on the intensity of public concern and hue and cry about prevalence of corruption in Africa, the various countries have enacted legislation intended to stand out corruption in their countries. Nigeria is not left out¹⁰. The Word „Corruption“, “Etymologically, originates from the Latin verb CORRUPtus, which means to break¹¹. It has been defined as the “state of being or becoming decayed”, “perversion or “moral decay”¹². Corruption can thus be said to be conduct which is at variance with virtue and ethical standards or morality. It connotes impropriety and accordingly encompasses all forms of reprehensible, indecorous or infamous conduct especially when such is evinced in the performance of some official, quasi- official or fiduciary responsibility¹³.

The World Bank defines corruption as “the abuse of public office for private gains¹⁴. This definition is germane or apt since it emphasizes on the state and its actors or those steering the ship of public offices, which are inimical to development and rule of law. Transparency International (TI) goes further to define corruption as, “the abuse of entrusted power for private gain”¹⁵. The definition talks about “power” which has to do with “rule of law”. And how does the entrusted power for private gain effect development and of law, is the focus of this paper. This takes us to the next stage of the contact theme which are “development” and “rule of Law.

Development

The concept of development has become increasingly controversial and contested because of widespread failures to deliver “development” as promised or even a growing sense of anger and frustration that many people and communities’ lives have been damaged or destroyed in the name of development. However, many government and international donor documents and policies remain firmly wedded to outmoded or discredited concepts of rapid economic modernization either out of ignorance or self – interest and even if cloaked in current effort to sound progressive. It is therefore vital that government official understand the nature of evolving debates on development policy and their implication for governance¹⁶. Development is defined as; “a substantial human – created change to improved or unimproved real estate, including the construction of buildings or other structures. An activity, action, or alteration that changes undeveloped developed property into developed property”¹⁷.

Rule of Law

The impact of poor governance and corruption on rule of law stem from gross intentional suppression of the supremacy of law. This concept is without doubt one of the most basic in public law, in that other concepts cannot

¹⁰ In Nigeria for example there are the institution like; independent Corrupt practices and other Related offences Commission (ICPC) which came into being in 2000. . the Economic and Financial Crimes Commission (EFCC) which came into being in 2003.

¹¹ United Nations Handbook on Practical Anti – corruption measures for prosecutors and investigators, (2004) P.27 available at <http://www.unode.org/pdf/crime/corruption/handbook.pdf>. Accessed on 17/2/2020.

¹² The New Webster’s’s Dictionary of the English Language (1997).

¹³ Akin Oyeboode, “An overview of Corruption in Nigeria” in I. Ayna& A. Guobadia (eds), Political Reforms and Economic Recovery in Nigeria (Lagos, Nigerian institute of Advance legal studies (2001) 604.

¹⁴ <http://www.adb.org/documents/policies/anticorruption/anticorrupt300.asp?p=policies>. Last accessed 18/2/2020.

¹⁵ <http://www.transparency.org/policyresearch/surveysindicies/epi/2010/indetail>. Last accessed 18/2/2020.

¹⁶ David Simon, Recent Trends in Development Theory and Policy: Implication for Democratization and Governance, Governance and the world, (market edition), A publication of the Centre for Constitutionalism and Demilitarization (CENCOD) Edited by Sylvester Odion – Akhaine, P.118.

¹⁷ Garner B. , Black’s Law Dictionary. 10 Edition

operate without it, and it is regarded as a synonym for law and order. It was believed by the social contract theorist¹⁸, that the source of political power was derived from people and not imposed from above.

The concept advocates, the establishment of an ordered community where individuals are aware of areas in which they can freely operate without inference. The concept means the restriction of the arbitrary exercise of power by subordinating it to well defined and established laws¹⁹. It also means that all people and institutions are subject to and accountable to law that is fairly applied and enforced to the principle of government law.

However, without belaboring this paper with the meaning of rule of law, it will be devoid of the real substance, without stating, the meaning by A. V. Dicey²¹. The first meaning is that, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrariness; or prerogative, or even wide discretionary powers on the part of the government.

Secondly, it means equality before the law, or equal subjection of all classes to the ordinary laws of the land administered by the ordinary law courts²⁰. Thirdly, it means, the existence and enforcement of certain minimum rights usually guaranteed by the constitution.

From Dicey three postulations, it is obvious that before the rule of law can exist in a society, the following must be in place;

- A. Supremacy of law, written regular law made by the law maker.
- B. Certainty and regularity of law.
- C. Absence of arbitrary or wide discretionary powers of government or its agencies.
- D. Equality before the law.
- E. Administration of law by the ordinary law courts.
- F. Enforcement of some minimum right²³.

From the above, it must be noted that the overall benefit of the rule of law to the discourse is that, procedural justice, which recognizes the supremacy of the law and the need for it to be administered in accordance with certain procedural safeguards. This is similar to due process²¹ which finds expression in the concept of natural justice and requirement of certainty and predictability of law. The next question that comes to mind, which shall be examined later is how economic growth of a country, which is normally reflected in the well-being of its citizens in terms of high living standard, is a yardstick for measuring the rule of law in Nigeria.

The Challenges of Governance in Nigeria

There are critical governance problems as far as the Nigerian State is concerned. These are;

1. Leadership Challenge

Nigeria fundamental approach to leadership is troubling²². The leadership question is hinged on the interface of persons and institutions. In Nigeria, the primary goal of assuming leadership position is self – enrichment. Whereas, Nigerian leaders have the power to educate, inspire and provide the people with resources to advocate for the causes they believe in, but like bad parents, they have failed in their responsibilities to lead by good example. The book; “the problem with Nigeria²³, concludes that Nigeria’s problem is bad leadership and evidence on ground has consistently

¹⁸ John Lock’s theory of “social contract” in H. Malcolm Macdonald, Government under law, found in Kehind M. Mowoe, constitutional law in Nigeria (Malthouse Law books, 2008_ 16

¹⁹ <https://www.dictionary.com.>browse> rule of law is a principle under which all persons, institutions and entities are accountable to laws that are publicly promulgated and equally enforced. ²¹The law of the constitution, 10th ed. 202.

²⁰ Op.cit, 202 - 203 ²³Op cit.

²¹ See Section 2 of the Public Procurement Act Cap.P44 LFN.

²² LanreOlu – Adeyemi, The Challenges of Democratic Governance in Nigeria, International journal of business and social science, vol.3 no.5 (MARCH 2012).

²³ Chinua Achebe.

shown that he is correct. The leaders are responsible for the poor under development. In every country, it is the responsibility of the leadership to protect the political, social and economic interest of the citizens.

Leading the country involves making policies and finding solutions to problems, ensuring stability of the polity and guiding the society properly. But a large number of the political leaders lack the vision, the passion and the character to effectively govern the state and deal with the crumbling economy²⁴.

They do not have a clear understanding of their responsibilities, as some of them are insensitive to the peoples' sufferings. They lack good listening ideas. Listening is a way of showing that a leader cares about others. Due to the fact that power belongs to the people, no political leader in the advance democracies would function effectively without the support of the people. Thus, they constantly, have their ears on the ground for information that often guide them in policy formulation and implementations. The world leading democracies, are what they are today, because their leaders are innovative and always searching for solutions to their social, political and economic problems. But that is not the case with Nigeria, evidence of bad leadership is all over the landscape as the leaders have not gone beyond a promise of „change“, they are only good at drumming the country's problems without a solution. The institutions and infrastructures which are the bedrock of the economy, are allowed to rot away, leading to weak economy, rising unemployment, inflation, poverty and crime²⁵.

In the struggle among fractions of the political class to control the political domain, but they rely on the control of state structures to access economic rewards. The over politicization of the Nigerian state is also understood in the context of the unmediated struggle for power, influences and patronage.

The nature of political contest ensured the emergence of a local governing class without ideological commitment. Rather than pursue political contests within ideological frameworks, political contest terrain is for shallow, self – centered political gains²⁶.

The nature of Nigerian State evolved a predatory political class that was concerned with power, struggle, consolidation, alignment and realignment in the context of hegemonic control. The challenge of leadership is to evolve a political class based on ideology³⁰. The Nigerian State is governed by a predatory political class, the result is personal rulership, political corruption and under development.

The leadership question is hinged on the interface of structure and behaviors, dialectic of persons and institutions and actors who create, implement or interpret the laws that are binding on existing social institutions who play the state roles. The behavioral concern is the impact of personality trait, attitude and values on political governance.

Leadership is the process through which one individual consistently exerts more influence than others in the pursuits of group behavior. While political leadership is the decision on social policy and resource allocation as exerted by partisan representatives²⁷. The Nigerian State²⁸ lacks autonomy and enmeshed in leadership ideas.

2. Corruption

²⁴ Ibid.

²⁵ Ibid.

²⁶ Dele Seteolu, the Challenge of Leadership and Governance in Nigeria, Governance, Nigeria and the World, Edited by Sylvester Odion – Akhaine a publication of the Centre for Constitutionalism and Demilitarization, p. 74 ³⁰ Ibid.

²⁷ Okadigbo, C. Power and Leadership in Nigeria (fourth Dimension publishing co. Ltd, Enugu 1987).

²⁸ Constitution. These rights have been recognized by chapter 11. However, the chapter is couched in form of fundamental objectives and directive principles of state policy. See sections 17 – 19. These rights have also been recognized by international instruments one of such is the international covenant on Economic Social and Cultural rights which came into force on July 18, 1978. More importantly, the United Nations charter also gave recognition to these rights. The preamble to the charter states that the people of the UN are determined to promote social progress and better standard of life in larger freedom and to this end, to enquire international machinery for the promotion of the economic and social advancement of all people. See also African Charter on Humans and People Rights (Ratification and Enforcement) Act Cap A9 LFN. 2004. Article 1.3 of the charter of the UN promoting and encouraging respect for human rights and for fundamental freedoms for all without discrimination is one of the fundamental purpose of the organization. In this respect, the UN has a long history of drawing on both international human rights law and international human right law to protect people during times of armed conflict. It takes into account that the adoption of important international human right treaties, has contributed to affirm the idea that everyone is entitled to enjoy human rights whether in peace time or in war time. See Jake O. Effoduh, the UN and the law of war, in law of Wars and use of Force by Epiphany Azinge and Laura Ani, P.3.

Another great challenge to governance in Nigeria is corruption. In Nigeria, the understanding as to what constitutes corruption transcends officialdom, hence, discussing corruption broadly as a perversion or a change from good to bad will not be inappropriate. Also, Citizens thrill at the non – enforcement of the rules that define the institutional basis of social, political and economic change. Corruption has become the dominant social norm and reflections on the first four decades of political independence. There is no doubt that national decay, however, are receptive to corrupt friendly regimes, thus, celebrating the potent force of mala-governance and underdevelopment.

Unfortunately, after many years of independence, Nigerians still have the mentality that the Nigeria money belongs to no one and that any person who has access to it should convert it to his or her personal use. Corruption permeates every section of the Nigerian society. From millions of scam e-mail messages sent, each year, by people claiming to be Nigerian officials, seeking help with transferring large sums of money out of the country and to the police officers who routinely set up roads blocks, sometimes every few hundred yards, to extract bribes of ₦200 naira from commercial drivers, are all incidence of corruption.

3. Human Rights

Prior to the return of civil rule in May 1999, the human rights situation in Nigeria was very poor. However, it has improved today with the civil rule in force. But the drawback is that, the long military interregnum still affects human right situation. This is because, democracy has only succeeded in revealing the rots of human rights situation in Nigeria.

At present, fundamental rights of citizens still come under attack despite the advent of democracy. For instance, the protection and enjoyment of the rights to life and respect for human dignity are hampered by the non- availability of the necessary socio – economic infrastructures that can guarantee the realization and fulfillment of such right. Environmental Rights and Economic, Social and Cultural Rights, which include right to gainful employment, right to a higher standard of living, right to education, right to shelter, though recognized by the constitution³², are rarely protected and enforced.

The challenge is that these rights are non-enforceable, the court in interpreting section 4 (2) of the 1979 constitution which is *imparimateria* with section 4 (2) of the 1999 Constitution in the case of Archbishop Okogie V. AG Lagos State²⁹, the Court of Appeal stated; It is clear therefore, that the National Assembly has the duty to promote and enforce the observance of chapter 11 of the constitution. Until such authorities are established, it will be mere speculation to say which functions they may perform or in which they may be able to enforce the provisions of chapter II.

The practical effect of these rights can be seen in the UN Charter and African Charter. Despite all these, there are rights violations, brutality have also increased and the rights of innocent citizens in Nigerian are trampled upon whether in their homes, highways, offices or public places. Although the Military has gone back to barracks for over 20 years, the human rights situation has really not improved. It still presents the recurrent anomalies of extra – judicial killings, arbitrary arrest and detention without trial, torture and degrading treatment which are perpetually perpetrated on a daily basis. These are the challenges of governance as a result of the inability to stem the abuse. e.g. the arrest and detention of OmoyeleSowore and SamboDasuki³⁰.

4. Civil Strife

²⁹ (1980) FNR 445 at 455.

³⁰ Dasuki has been held in detention since 2015 while OmoyeleSowore has been held since August 3, 2019. The two courts have previously ordered the release of the two on bail without DSS complying with the order. The Attorney General made it clear the two defendants are not free from the charges against them. Local and international pressure on the Nigerian government appeared to have yielded fruit with the order. Release on bail of the journalist and activist and an influential former national security adviser SamboDasuki. Nigeria's Attorney General AbubakarMalami gave the order in a statement release in Abuja on Christmas eve, 2019. The statement over rides the DSS decision to ignore court order for release on bail the two. "The two defendants are enjoined to observe the terms of their bail and refrain from engaging in any act that is inimical to public peace and national security as well as their ongoing trial which will run its course in accordance with the laws of the land". Retrieved qz.com.last accessed on 27/4/2020.

The Nigeria Population in Africa stands at almost 200 million with not less than 250 ethnic groups. After several years of military dictatorships, Nigeria found herself in the main stream of Civil governance. While this development was seen by some people as an avenue to explore dividends and goodies of democracy, others saw it as an opportunity to express grievance. This has re-affirmed the position that for the past several decades, Nigerians have sought to build a stable multiethnic nation. However, nation building has been complicated by Nigeria's tremendous diversities, thus making the management of diversities to be more central than ever as a problem in Nigeria's political process. The interactions within the state have led to the formation of innumerable structures of su-nationalism and recurrent skirmishes which have greatly increased since the return to civil rule in 1999.

Furthermore, the transition to civil rule has hitherto underscored a host of repressed or dormant political force. Unfortunately, it has become increasingly difficult to differentiate between genuine demands by these forces on the state and outright criminality and mayhem. Presently, Nigerians are experiencing the rise of conflicts and violence. Some of the reasons are; the weak character of the Nigerian State and the inability of its weak institutions to engender order and security, poverty, military intervention in politics, citizens apathy to the state, elitist greed and manipulation of the electoral process and land space and resource availability, jurisdictional disputes between minorities, disregard for cultural symbols and pollution of cultural practices³¹. The inability for the leadership to stem the above, has become a huge challenge to governance.

5. Electoral Reforms

This is another challenge of governance in Nigeria. In order to ensure free fair and credible elections, section 153 of the Constitution³⁶ establishes the Independent National Electoral Commission. The question is whether the INEC has been able to conduct free, fair and credible elections is a big poser. The inability to undertake the task has led to plethora of suits relating to the conduct of election. That is why election petition by the provision of section 137 of the Electoral Act, 2010 may be presented by one or more of the following persons;

- a. A candidate in an election.
- b. A political party which participated in the election.

See the case of Ihiavbe V. Zakari³². There is hardly any election where a person will not challenge the returned candidate for the election.

Under this present republic which started in 1999, the case of Buhari V. Obasanjo³³, presents a situation that there has been malfeasance in the electoral process. To reform the electoral process to be in accord with what is obtainable in other climes has been an uphill task. Therefore, governance is dependent on the free, fair and credible elections.

The Challenges of Corruption:

Corruption indeed is an evil that has affected every segment of the Nigerian society and its destructive effects on the development efforts can only be imagined than accurately quantified. The question that arises at this juncture, is, why has the fight against corruption in both the private and public sectors of Nigeria not been successful or effective, despite the numerous laws and institutions that are established by the state for fighting and eliminating the evil? This is despite the convictions recorded in advanced fee fraud and allied offences against politically exposed persons, such as Tafa Balogun, Bode George, Cecilia Ibru and Lucky Igbinedion³⁴.

³¹ Ayodele B. the Nigerian state and Conflict Management in the Nascent Democratic project, "in A.A Agagu and R. F. Ola in Development Agenda of the Nigerian state (2004Ibadan FIAG publishers). See also Olu – Adayemi, O. "Corruption and the Depeening Crisis of Nigeria"s Economy and the National Development" journal of Economic and Financial studies, Department of Economics, Banking and Finance. AdekunleAjain University, AkungbaAkokoOndo State. ³⁶1999 constitution.

³² (2012) 12 NWNLR

³³ (2008) 13 NWLR (pt 1120) 26.

³⁴ FRN V. Balogun unreported Suit No: FHC/ABJ/CR/14/2005 (Federal High Court, Abuja) former Inspector General of Police and was arrested for stealing about ₦17billion of NAF fund, FRN V. Obabode George unreported Suit No: ID/71c/2009, FRN V. Lucky Igbinedion, unreported Suit No: FHC/En/2008 (Federal High Court Enugu).

One of the challenges of the fight against corruption by the various institution like EFCC, ICPC etc. is the failure of the legal framework to grant complete independence to the Agencies as they are subject to political and executive influence in exercising the mandate that is bestowed on them by law.

Also, the laws that create the institutions on corruption have conferred on them the legal capacity to sue and be sued in the onslaught against the evil, but has tied this capacity to the consent of the Attorney General of the Federation as provided in section 174 of the Constitution³⁵. The challenge is that most of the institutions to fight corruption have been inactive in the fight against corruption. Another challenge is that, the legal framework has ambiguous interpretation. It is worthy of note that section 98 of the Criminal Code³⁶ has retained *hocus bolus*, the 1904 Queensland Code³⁷. Also, there are structural and substantial defects with the extant laws that set up the fight.

Most of the institutions on corruption show that they are established and confined to the Federal Capital Territory Abuja³⁸. The absence of the extension across the federation has inhibited the benefit that these institutions would have recorded if established in every state and local government councils in Nigeria.

Another challenge is the immunity protection to certain categories of persons, such as the President, Vice President, Governors and Deputy Governors³⁹. This immunity clause is a clog on the wheel of Anti-corruption agencies to prosecute some persons in public offices as stated in section 308. This accounted for the late arraignment of the former Governor of Plateau State in the case of EFCC V. Dariye⁴⁰, for money laundering, official corruption and theft⁴¹. The challenge of the fight against corruption is that the institutions that are established cannot do well in identifying those that are suspects. They need volunteers of information. On this, the laws have rendered volunteers of information vulnerable to the agencies. It has placed the duty of secrecy on the offices of the various institutions of corruption not to disclose the identity of the informants. There is no corresponding duty that is out to shield or protect such volunteers, where they are discovered, harassed and intimidated, molested by persons that they have supplied information about to the agencies. This vulnerability has scared many people in the public from supplying or giving useful information to the agencies on corruption about persons they know to have been corrupt in the private and public sectors. Also, the work coming from investigators end up in courts through their colleagues, the prosecutors. They also go through hell to make their cases and obtain justice for the deprived poor. This is one part that is not within the sphere of control of the anti- corruption agencies.

Our judicial system is accusatorial not adversarial, meaning that the prosecution has to file a watertight case that, it has to prove beyond reasonable doubt. What this means is that any mere identification of loophole or technicality could be explored to thwart a case⁴². The challenge of the fight against corruption is in delimiting the prosecution in the office of the Attorney General of the Federation by sections 174 and 150⁴³ of the Constitution. Therefore, vesting the prosecution of cases in the office of the Attorney General of the Federation, would amount to an overloaded vehicle.

³⁵ Constitution of the Federal Republic of Nigeria, 1999.

³⁶ Criminal Code Act, Cap. LFN. 2004.

³⁷ See Commissioner of Police V. Ameachi (1958) NRNLR. 123.

³⁸ Such institutions include; the Code of Conduct Bureau, Code of Conduct Tribunal, Bureau, on Public Procurement and Fiscal Responsibility Commission.

³⁹ See section 308 of the Constitution of the Federal Republic of Nigeria 1999 (as Amended).

⁴⁰ (2005) NSCC.34.

⁴¹ See section 39 (1) EFCC Act, LFN. 2004.

⁴² Nuhu Ribadu, Fight Against Corruption in Nigeria: challenges and prospects for sustainability, premium Times 25 June, 2019 accessed online ion.premuimtimesng.com last accessed on 21/4/2020.

⁴³ Section 150 of the 1999 constitution provides: "There shall be an Attorney – General of the Federation who shall be the Chief Law Officer of the Federation and a Minister of the Government of the Federation:. Also section 174 of the constitution provides: "The Attorney General of the Federation shall have power to institute and undertake criminal proceedings against any person before any court of law in Nigeria, other than a court-martial, in respect of any offence created by or under any Act of the National Assembly". ⁴⁹Maman L. "Legal Reform in Law and Development Projects: Purpose and Lessons". BUJPL. Vol.1.No.1 2001 .p.7 ⁵⁰UN Agenda for Development, 1997.

There is the moral challenge in the fight against corruption. There is the erosion of moral values that regulates the conscience of individuals in doing the right or correct thing at all times whether checked or unsupervised. Corruption is perpetuated by people who occupy high positions, policy formulators and executors more than people who occupy less sensitive position or the poor. The challenge of the fight against corruption is visible on the attitude of most Nigerians who occupy public sector, who believe that the opportunity to enrich themselves has come. Some Nigerians believe that the time for them to have a fair share of the national cake has come during the pendency of the occupation of their office.

From the above, irrespective of the legislative efforts by the federal government, the fight against corruption will continue to fail if the identified challenges are not addressed. Hence, the effect will have impact on the development of the nation.

The Challenges of Governance and Corruption on Development

Traditionally, the idea of development as a concept is limited to the scope of economic development determined by increased growth of Gross National Product (GNP) per capita. Hence, if we are to go by this, it means development is measured by Gross Domestic Product (GDP) and gross national product⁴⁹. Education and human capital development are key remedies to the challenges of good governance and sustainable development in Nigeria. It is submitted that development in that sense, is in a narrow sense, because it does not take into cognizance other important factors necessary for ensuring holistic development. For there to be development there must be both human and social development to enable economic development to be realized. Human development emerged as response to the traditional equation of development with economic development only.

There are four components of human development these are; productivity, equity, sustainability and empowerment. While social development requires among others; Respect for all human rights and freedoms, democratic and effective institutions, combating corruption, transparency, representative and accountable governance, popular participation, an independent judiciary, the rules of law and civil peace⁵⁰.

Therefore, the main challenge of governance on development is failure of leadership in Nigeria. The leadership class is mainly concentrated in the class. The politicians who are in the ruling class are the leaders. Hence, politicians are more concerned with looting public funds, which ordinarily would have been meant for development, whether human capital or social development. In the political, civil, economic, social and spiritual arenas, previous generations have produced poor quality of characters that fade in the process of time, leaders have left our present generation in the same leadership vacuum. Furthermore, education remains the key to a country's human capital development. It is the basis by which human capital of a nation is developed and sustained and the rate at which a nation's educational system transfers knowledge and skill that affect development. Developing education results in economic growth, quantitative and qualitative labor force. Failure of government, in Nigeria, to invest in education leads to widening a development gap, including illiteracy, unemployment and inequalities.

In Nigeria, poor and inadequate financing of capital projects to erect standard and adequate facilities is owing to the virtual neglect of human capital, characterized by poor working condition of teachers and lecturers, hence the brain drain syndrome. All these affect the quantity and quality of both teachers and students. This in turn, affect economic backwardness, manifesting in low labor efficiency.

Presently, despite the COVID – 19, ASUU is on strike. The incessant strikes by ASUU are clear indices of how education and human capital have been neglected. With this, it is self – evident that the Nigeria education system is in serious crisis. On the other hand, the challenges of corruption on development are manifold. In 2015 the emergence of new government in Nigeria proved to be a great revolution against corruption in both the country and Africa as a

whole ⁴⁴. The former president, Olusegun Obasanjo has been accused of enabling corruption ⁴⁵ despite his achievements in setting up Anti-corruption agencies in the political realm. The challenge of corruption is that it undermines democracy and good governance by subverting processes. Corruption in election and in legislative bodies reduces accountability, a representation in policy making. Corruption in the judiciary suspends the rule of law. While in the public administration it results in the unequal provision of services. Corruption further erodes the institutional capacity of government as procedures are disregarded; officers are promoted without regard to performance.

Corruption undermines economic development by generating considerable distortion and inefficiency. While in private sector, corruption increases the cost of business through the price of illicit payments, the management cost of negotiating with officials and the risk of breach agreed detection. Corruption inflates the cost of business, distorts the playing field, shielding firms with connection from competition and thereby sustaining inefficient firms.

In the public sector, corruption generates economic distortions by diverting public investment into capital projects where bribes and kickbacks are more plentiful. Official may increase the technical complexity of public sector project to conceal such dealings, thereby distorting investment. Corruption lowers quality of standard of compliance with construction, environmental, or other regulation, reducing the quality of government services and infrastructure as is evident to Nigerians and it increases budgetary pressures on government. Corruption has weakened the Nigerian State and its ability to promote development and social justice.

The Challenge of Governance and Corruption to Rule of Law

The most critical part of governance comes from practicing rule of law in a state. To mention rule of law and governance mechanism together limit the power of certain politicians and institutions in a country. According to the World Bank Governance project data, rule of law is linked to voice, legality, accountability and judicial strength. Yet, the index shows different data for each country, which indicates that each country follows and practices the rule of law governance mechanism differently and according to the context of their country and region.

The rule of law is a necessity to combat corruption in every democratic society including Nigeria. Under the 1999 Constitution of Nigeria⁴⁶, it is provided that; "it shall be the duty and responsibility of all organs of government and all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provision of this chapter of this Constitution". Furthermore, section 15 (5) states in categorical terms that; "the state shall abolish all corrupt practices and abuse of power"⁴⁷. Also, Anti – Corruption strategies will usually have to consider whether to establish a separate institution to deal with corruption problems or whether to modify or adapt exiting institutions or some combination of both. A number of legal policy, resource and other factors should be considered in this regard⁴⁸. The UN Convention against corruption requires the establishment of such agencies,

⁴⁴ AbdullahiShehu, Event summary: the challenges of corruption in Nigeria, Henry Jack Society Lecture delivered on Tuesday 20th September, 2016, retrieved online <http://henryjacksonsociety.org>. last accessed 22.4.2020.

⁴⁵ ObasanjoOlusegun was accused of enabling corruption, thereby inhibiting foreign investment enhancing security threats and preventing human development in the country. Accordingly, citizens demonstrated their desire to eliminate corruption through the election of President MuhameduBuhari. One of the campaign promises of the newly elected president was to eradicate corruption in Nigeria, a promise which imbued the citizenry with immense hope for the future of the country. The citizens believe that the fight against corruption remains uncoordinated without a well established plan. Citizens believe the fight against corruption has become a witch-hunt against members of the opposition party.

⁴⁶ Section 13 of the 1999 Constitution of the Federal Republic of Nigeria

⁴⁷ Section 15 (5) of the 1999 Constitution of the Federal Republic of Nigeria

⁴⁸ United Nations office on Drugs and Crime. The Global Program Against Corruption: UN Anti – corruption Toolkit (Vienna, United Nations Office on Drugs and Crime, 2004).

unless they already exist in some form, either as preventive anti-corruption bodies⁴⁹, or specialize in combating corruption through law enforcement⁵⁰. The agencies involved in the anticorruption crusade in Nigeria are manifold⁵¹. However, despite the above established agencies and the constitutional provisions, to ensure that the state is rid – off of corruption and “abolish abuse of power” the rule of law is grossly undermined as a result of corruption. The effect of corruption on the rule of law is seen in the following instances; the lack of independence and political interference on the agencies meant to fight corruption. The Commission’s chairman enjoys no security of tenure and can be removed by the president at will without any form of consultation with National Assembly⁵². Also, allegation of political selectivity tarnished the EFCC’s reputation when President Obasanjo was in power and how Ribadu’s (former EFCC chairman) attempt to prosecute Ibori, former Governor of Delta State, led to his removal from the Commission⁵³. This clearly undermines, the rule of law.

Furthermore, there is constitutional role of the constitution of the Federal Republic of Nigeria, which undermines the rule of law, which makes it anti- corruption fight or war. This is the provision of section 308 of the constitution which shields the President, Vice – President, Governors and their Deputies from protection, while in office. This is the immunity clause. Rule of law means, equality of citizens before the law and not favoritism. The law should apply equally to the rulers and the people. The master of the Roll, Lord Denning⁵⁴ stating the position of the law on equality said;

To every subject in this land, no matter how powerful, I would use Thomas Fullers words over 300 years ago: “Be you never so high”, the law is above you.

In Nigeria, for example, since the return to democratic rule in 1999, several polices, institutional and governance reforms have been undertaken to address years of poor governance and corruption, which have adversely impacted development and rule of law. The regime of President Olusegun Obasanjo initiated several ideas to address the governance issues, such as Civil Service Reform, the privatization of key factors of the economy and banking sector reforms amongst other⁵⁵. A cardinal component of the reform is institutional and governance reforms which included public procurement reforms and its due process mechanisms for the award of contracts and the establishment of Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC)⁵⁶. The effort of government no doubt, in introducing these reforms, but the improvement on governance performance into beneficial effect in the quality of life of the general citizenry remains illusory. The touted macroeconomic successes produced by the economic reforms which centered on reduced interest rates, stable exchange rate etc. have continued to be dissociated from the human and infrastructural challenges at the micro and sectorial level have either worsened or remained daunting⁵⁷. The resultant effect is that these reforms have not resulted in the desired effect in an effective, accountable, corruption free and efficient civil service.

⁴⁹ Article 6, UN Convention against corruption 2004.

⁵⁰ Ibid. Article 6

⁵¹ EFCC, ICPC. Code of Conduct Bureau, NAFDAC, NDLEA, SON, Nigeria Customs, Nigeria Immigration Service, Due Process, Budget Monitory and Price Intelligence Unit.

⁵² See section 3 (2) EFCC Act which provides that; “A member of the commission may at any time be removed by the president if satisfied that it is not in the interest of the commissioner the interest of the public that the member shall continue in office”. After Ribadu’s removal, the former Attorney General, Michael Aondoakaa, Ibori’s close friend, bent on undermining the very notion of a government led war on corruption. They worked openly to undermine the independence of EFCC and to bring Ibori to justice. Even Ribadu and in the UK that money laundering against former Delta State Governor Ibori, was destroyed by the Attorney General. Section 174 (1) , (b) (c) and (2) of the 1999 Constitution.

⁵³ Human Rights Watch, August, 2011.

⁵⁴ Gourit V. Union of Post Office Workers (1977) 1 QB.729 at 761 – 762.

⁵⁵ Okonjo – Iweala N. and Osafo – Kwaakop; Nigeria’s Economic Reforms – progress and Challenges, (Washington D. C. the Brooking institution, 2007).

⁵⁶ Independent Corrupt Practices other Related Offences Commission Act LFN 2004 and Economic And Financial Crimes Commission Act cap E1 LFN 2004.

⁵⁷ Omar N. “Rethinking Public Sector Reforms in Nigeria” in F. Adewumi & W. Idowu (eds.) Public sector Reforms in Africa: Nigerian Perspectives, (Dakari Codestria, 2012 at PP.32 – 33).

The impact of corruption on the rule of law can be gleaned on the culture of tolerance for corruption. This has led to low success recorded by some anti – corruption agencies. The agencies charged with fighting corruption are handicapped by government"s lack of genuine political will. The height of this is state pardon granted to former Governor of Bayelsa State; DiepreyeAlamieyeseigshaand other convicts. The state pardon has been described by Nobel Laureate Prof. Wole Soyinka, "as an act of impunity and a symbol of corruption Mentality"⁵⁸.

The challenges of governance to the rule of law are highlighted as follows;

- a. Delegated legislation
- b. Special privileges
- c. Diplomatic immunity
- d. State of emergency and war
- e. Illiteracy, poverty and ignorance
- f. High level of corruption in government
- g. There is no clear separation of power
- h. Societal class and their interests
- i. A broken justice system
- j. Tribalism
- k. Insecurity and insurgencies
- l. Poverty and ignorance

Some of the Challenges will be discussed.

Delegated Legislation

In this case, top government officials are granted some discretionary powers, especially in the executive branch to perform some duties. This is in line with section 5(1) (a)⁵⁹. This opens the opportunity for them to use their privileged position against citizens, thereby resulting to abuse of power and the rights of the citizens infringed upon. See Director OF SS V. Agbakoba^{60,61}

Special Privileges

Some people enjoy special privileges and exception under the rule of law in Nigeria contrary to section 1 (1) of the 1999 constitution⁶⁸. These people have immunity against the law⁶², President, Vice President, Governor and Deputy Governor.

Diplomatic Immunity

Diplomats and ambassadors have immunity against the rule of law in the country they are serving. They are above the laws of that country⁶³.

State of Emergency

In cases of conflict of situation which require the government to declare a state of emergency, the government exercises discretionary powers. These discretionary powers infringe on the rights of people. Declaration of state of emergency entails extraordinary measures to restore public order and security of lives and property but it cannot

⁵⁸ Soyinka, "Alamieyeseigha"s pardon, symbol of corrupt mentality", the Punch, Thursday March 21, 2013, P.13. there were other convicts granted state pardon which were; Lt. Gen. OladipoDiya, Maj. Gen. TajudeenOlaareWaji, Late Maj. Gen Musa Yaradua and Late Maj. Gen, AbdulkareemAdisa. Also, the NBA described the pardon as "a bad signal in the anti – corruption campaign. "Civil Society, International Community and individuals have continued to condemn the president"s Jonathan"s act .through he acted within his constitutional power, culture of tolerance for corruption manifested.

⁵⁹ Section 5 (1) (a) 1999 Constitution of the Federal Republic of Nigeria.

⁶⁰ (1999) 3 NWLR.(pt. 595) 314.

⁶¹ Constitution of the Federal Republic of Nigeria.

⁶² Section 308 1999 Constitution

⁶³ Diplomatic and Immunities and Privileges Act Cap.D9 LFN 2004.

be used to dislodge democratic structures and democratically elected public officers as envisaged by the constitution⁶⁴

Conclusion

The paper examined the concept of good governance, as a critical factor for sustainable development of nation. The work also traced poor governance as a bane for underdevelopment and poverty in Nigeria. We argued that non-adherence to democratic values, corruption and ethnicity constitute operational bottle necks to good governance in Nigeria.

The paper examined poor governance, good governance, forms and manifestations of them, corruption and their relationship and inters- connection among them and the effects on the development and rule of law in Nigeria. It was found that leadership which is anchored on governance, provided the building blocks for corruption and failure of national and sustainable development. Analysis of the processes of governance also reveals the absence of formal or informal framework for the people of Nigeria to participate in the formation, design and implementation of policies and government programs.

The nature and character of political leadership, Nigerian State incapacity for effective governance, poor governance corruption as having a far reaching and devastating effect on sustainable development and the overall potency of law in the Nigerian State.

In the governance process, genuine leadership will need an honest courageous and credible followership which is less vulnerable to the manipulation of politics of the ruling elites. It should possess knowledge of sound judgment and committed to specific cause and ideas to transcend the current economic imperatives. We should involve a nationalist class, that will alter the texture of politics, balance economic imperatives, respond to the dynamic of globalization and consolidate democratic structures and programs that hinged on the people.

Corruption is a serious menace to effective democratic governance and sustainable development. Corruption is a major factor responsible for the nation's comatose state of development despite the abundant wealth. It is the reason why policy makers with executive immunity divert scarce public resources to uneconomic high profit projects that are detrimental to the provisions of infrastructure, such as good roads, portable water and power supply. The result and effect is an impoverished economy with enormous negative impact on the poor. As a result of corruption the citizens have lost trust in the political system, institutions and leadership. The conclusion is that corruption can only be tackled in Nigeria through a systemic approach.

It is therefore recommended that one of the major explanations for the failure of all development programs in Nigeria has been the absence of effective accountability and transparency that will ensure good governance. A sustained culture of accountability and transparency will help Nigeria to consolidate its democratic gains. It will also help to reintegrate Nigeria into the main stream of global economy and position her for other international opportunities. Also, the Nigeria law enforcement and anticorruption legislation should be strengthened. There is the need to curtail the current high rate of impunity, the lack of political will to fight corruption and the near collapse of law and order in the country so as to curb the menace.

All provisions that encourage political patronage by senior official such as constitutional immunity clause, which has continued to shield the current serving public officials from prosecution even in cases of strong evidence should be abolished. The judicial system should be strengthened and rule of law entrenched. There cannot be progress in the fight against corruption as long as there is impunity and injustice. Also all the legal framework to fight corruption should be amended especially the prosecution aspect. It should be decentralized to reduce the burden on the office of the Attorney General. And special court should be created for the trial of corruption cases.

⁶⁴ Section 305 of the Constitution of the Federal Republic of Nigeria, 1999. A retrospect to the case of Plateau State in 2004, where President Obasanjo/Olusegun declared a state of emergency. The Governor and his Deputy by the declaration went on suspension, and ceased to be in charge of the affairs of the state for six months in the first instance. An administrator to manage the affairs of Plateau State in the person of RTD General Chris Alli was appointed. Even the House of Assembly as the formal legislative body was suspended. This is clearly in contravention of section 11 (4) and (5) of the Constitution. Hence, it is illegal unconstitutional null and void.

Nigerians should rise up against ugly behavior and corrupt practices of their leaders which jeopardize developmental efforts. They should speak out and stand firm to ask non- performing leaders to resign. The civil society groups, labor, the bar and agencies of political education and socialization should be well organized.