

GOOD GOVERNANCE: ENFORCEMENT OF LAW AND ORDER

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Good Governance: Enforcement of Law and Order

1. BACKGROUND

The world is in a troubled state and a large part of our globe is faced with many vicissitudes. In Africa, Europe, the Middle East and part of Asia, the world is confronted with a high dose of insecurity, unemployment, bankrupt governments, tribal and religious insurgencies, etc. The challenges of governance, leadership and breakdown of law and order have become normal phenomenon in most parts of the world. Our nation is a major culprit. We can therefore, never get tired of discussing these issues as they affect all of us, the future of our children and our nation.

Governance and government, although used interchangeably are two different but interlinked concepts. I am comfortable with the usage of these two words by the UK's Department for International Development (DFID). Government, according to the Department is "the state and the state institutions with the authority to make decisions on behalf of the entire community". Governance, on the other hand, is "all the processes, organisations and institutions, including the government and those outside government that should contribute to the state's decision making". Good Governance has some major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and also follows the rule of law.

Good governance is crucial and plays an important role in the development of a country in ensuring economic growth, a stable environment and the advancement of sustainable development. Its importance should be overstressed as it is

regarded by many as an important factor in eradicating poverty, promoting economic development, national security and enhancing human development.

In governance, there are various actors, government is one of them. Other actors are those that play a role in decision making or influence the decision making process. In a democracy like ours, governance will involve the three arms of government (executive, legislature and the judiciary). It will also include such institutions such as the media, trade associations, international donors, civil societies, religious bodies and other opinion leaders and moulders.

2. CURRENT STATE OF GOVERNANCE IN NIGERIA

Good governance is idealism and is a journey. Every responsible society works towards it. It is appropriate to measure the progress we have made as a nation on our Good Governance journey, firstly by looking at our performance vis a vis our own set standards and secondly by locating where we stand in the comity of nations under general universal key performance indices.

In the 1999 Constitution of the Federal Republic of Nigeria, the entire Chapter 2 is devoted to the Fundamental Objectives and Direct Principles of State Policy. This chapter itemised the purpose of the state and what should constitute the underlying principles of actors in government.

Under the chapter, Section 14(1) states that “the Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice”. Section 14(2)

goes further to declare that “the security and welfare of the people shall be the primary purpose of government”.

According to Section 16(1) of the constitution:

“The State shall, within the context of the ideals and objectives for which provisions are made in this Constitution

- a) Harness the resources of the nation and promote national prosperity and an efficient, a dynamic and self-reliant economy;
- b) Control the national economy in such a manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity;
- c) Without prejudice to its right to operate or participate in areas of the economy, other than the major sectors of the economy, manage and operate the major sectors of the economy;
- d) Without prejudice to the right of any person to participate in areas of the economy within the major sector of the economy, protect rights of every citizen to engage in any economic activities outside the major sectors of the economy”.

Section 16(2) states further as follows:

“The State shall direct its policy towards ensuring:

- a) The promotion of a planned and balanced economic development;
- b) That the material resources of the nation are harnessed and distributed as best as possible to serve the common good;
- c) That the economic system is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or of a group; and
- d) That suitable and adequate shelter, suitable and adequate food, reasonable national minimum living wage, old age care and pensions, and

unemployment, sick benefits and welfare of the disabled are provided for all citizens”.

From the above, it is apparent that Nigeria has a clear view of its destination on the governance journey. We hoped for a nation where security and prosperity are assured. We envisioned an egalitarian society where citizens are empowered with opportunities to be their best and where food, shelter and clothing is assured to every citizen as a minimum. We projected for a state of equal opportunity for all. We anticipated a country where there is balanced economic development and not lopsided and where our leaders would utilize our common resources for the ultimate good and benefit of all. But how far have we gone on this journey? How have we fared?

To achieve all these lofty stated objectives as a country, Nigeria is lucky to have been endowed with abundance of human and natural resources. However, she is still struggling with the issue of good governance. Faced with problems such as poverty, corruption, national insecurity, religious and non-religious crises, lack of the enforcement of law and order amongst others, it is clear that Nigeria is far from achieving the objectives. After over 50 years of independence, comprising of decades of military rule, and fourteen years of transition to democracy since 1999, we still have not seen the realisation of the principles of good governance.

The country is presently in a state of insecurity, which can be observed in the increase in crime rates, emergence of political and religious violence, such as regular bombings, the increase in ethnic and communal conflicts among others. Kidnapping of citizens and expatriates has become the new kind of crime in

Nigeria. It is almost impossible to pin point any achievement of the mechanisms in charge of enforcing law and order and this has drastically reduced the standard of living of the people. Atrocities are committed with impunity, with few instances of arrest and convictions. Furthermore, with official unemployment rate at 23.9 per cent, over 60 per cent of the population living on less than a dollar per day, about one per cent of the population with over 80 per cent of private wealth, it is clear that we are far away from attaining the objectives stated in Chapter 2 of our constitution.

According to 2012 Ibrahim Index of African Governance (IIAG) released by the Mo Ibrahim Foundation, Nigeria ranked 43rd out of 53 countries measured in Africa. Nigeria had an overall score of 42.0, far below the regional average of 51. IIAG is based on four broad indicators namely safety and rule of law, sustainable economic opportunity, participation and human rights and human development. These indicators aptly captured the objectives and directions enumerated in chapter two of our constitution.

NIGERIA RATING IN IIAG FOR 2012

Indicators as at 2011	Score (maximum of 100)	Rank (out of 53 countries)
Safety & Rule of Law	41	44 th
Sustainable Economic Opportunity	41	37 th
Participation & Human Rights	39	37 th
Human Development	48	39 th

Source: www.moibrahimfoundation.org

Drilling down on Human Development Index, Nigeria occupied an unenviable 156th position on the 2011 World Human Development Index and 134th on

Corruption Perception Index portraying us as one of the most corrupt nations on earth. This seems to corroborate the Ibrahim Index of African Governance's ranking.

Ayn Rand of blessed memory (died in 1982) in her masterpiece 'Atlas Shrugged' (1957) seemed to be referring to Nigeria when she wrote that:

***'When you see that trading is done, not by consent, but by compulsion;
When you see that in order to produce, you need to obtain permission from men who produce nothing;
When you see that money is flowing to those who deal, not in goods, but in favors;
When you see that men get richer by graft and by pull than by work, and your laws don't protect you against them, but protect them against you;
When you see corruption being rewarded and honesty becoming a self-sacrifice
– you may know that your society is doomed'.***

3. ENFORCEMENT OF LAW AND ORDER

Of all the attributes of Good Governance, the most relevant to our discourse today is the concept of the Rule of Law; it is the cornerstone for the enforcement of law and order. Rule of Law should ensure that the process of law making is participatory and that the law is made for the good of the common man. Fair legal frameworks are necessary for good governance. While this discussion here today is not to focus on the process leading to law making, we shall concern ourselves with the enforcement of law and order. An impartial and unbiased enforcement of law and order requires a willing government, an active participatory citizenry, an independent judiciary and incorruptible police force.

The ability to enforce law and order without fear, bias and discrimination is an attribute of good governance. This stresses the power of the rule of law as it emphasises that no one is above the law. It is a general belief that enforcement of law and order is a competitive advantage for any nation and there is a correlation between good governance and the nation's level of enforcement of law and order.

Two institutions and arms of government that are very important in the enforcement of law and order are the Judiciary and the Police.

The Nigerian Law and its Judiciary

The judicial system has failed woefully to satisfy and protect the aspirations of the people. Some certain judgements made by the courts have cast a doubt on the intention and objectives of certain laws, and on the sincerity, integrity and competence of some judges.

In few instances where high profile cases led to convictions, a new vista has been opened in our judicial system in recent times in form of plea – bargain and state pardon. Plea-bargain for example, has now become another tool for promoting corruption where highly connected notable criminals are either given light or no sentence in exchange for returning some of their loot. Apparently, once a crime has been brought to trial and plea-bargain made, the accused is asked to return some of the loot, giving a light sentence and released to return home to sin no more.

Though the power to pardon and release convicted criminals are vested in the President, Governor of a state and chief judges, the indiscretion in the exercise of such a privilege has however assumed embarrassing dimensions in recent time. For example, Major Bello Magaji, a homosexual rapist who was jailed by the Supreme Court for five years for serially sodomizing four teenage boys was recently pardoned. It is known especially in most countries such as United States and United Kingdom that sex offenders are hardly granted pardon. Mr. Diepreye Alamiyesieigha, a former governor of Bayelsa State and Mallam Shettima Bulama, former Managing Director of the defunct Bank of the North were also among the notables granted presidential pardon recently. Alamiyesieigha was impeached and convicted for corruption and sentenced to two years imprisonment on charges of money laundering. His investigation required collaboration of the government of Nigeria with other governments such as Britain, United States, South Africa, Bahamas, Seychelles as well as the World Bank under the Stolen Assets Recovery Initiative (STAR). Interestingly, the former governor is still a wanted man in the United Kingdom for money laundering. Mallam Bulama was convicted after investigation and prosecution by the Economic and Financial Crimes Commission (EFCC) for crimes committed as head of a Nigerian bank. The crime he committed is purely an economic crime that does not deserve pardon, as it encourages perpetration of such crimes as well as ridicules the government's judicial system.

In Nigeria, making arrests and securing convictions on high brow cases are difficult. Small thieves are the ones faced with the wrath of the law. There are so

many unresolved cases of financial crime where no single conviction has been secured. This is evident in the few number of prison inmates in comparison to our population and rate of crime. In a country where crimes have increased drastically, and a population of more than 160 million people, only 12, 000 prison inmates have been convicted with a total prison inmates of 51,000. Of those convicted, the statistics would point to most convictions as non-notables and with low values in terms of economic measurement.(Source: ThisDay March 21, 2013; Page 56).

Quite a number of wonder banks were operated and closed down by authorities without any serious arrests, trial or convictions. Nigeria also witnessed a tremendous collapse of the capital market in recent years. A forbearance scheme has been put in place with the focus on how to revitalise the market without any punishment for all those who contributed to the failure of the market in the first instance. The case of the establishment of AMCON is very similar.

In few cases where convictions have been obtained, the weight of the punishment in relation to the gravity of the offence cast a doubt on the seriousness of our laws and the legal system. A good case in point is in the fresh pension fraud cases. Mr. John Yakubu Yusuf was arrested and charged with misappropriation of the sum of N33 billion from the Police Pension office. He was found guilty and sentenced to two years imprisonment on three count charge, with the option of paying N250, 000 fine on each count charge totalling N750, 000. He was to forfeit the sum of N325 million and thirteen choice properties in Abuja and Gombe. Abdulrashid Maina is currently faced with an allegation of N469 Billion Pension Fund mismanagement and N273.9 Billion funds diversion. He

was even reported to be seen in presidential entourage and has not been arrested till date. This only shows that the country condones corruption.

Let us situate the above against few examples from other countries where crimes are easily detected, swiftly decided and maximally punished. United States New York businessman Sholam Weiss paid a restitution of \$125 million in addition to another \$123 million in penalties and was sentenced to 845 years in prison for skimming \$400 million from the National Heritage Life Insurance Company in 2000, which cost many of its 25,000 customers their life savings. He was convicted 78 count charges on multiple fraud and money laundering. Weiss is due to be released on November 23, 2754, implying a life sentence. Another defendant in the same case, Keith Pound, bagged a 750-year sentence and payment of the sum of \$139 million in restitution. He died in prison in 2004 at the age of 51.

Bernard Madoff was a Wall Street asset management capitalist. On June 29, 2009, he was sentenced to 150 years imprisonment, the maximum allowed on a one count charge. He was arrested December 11th, 2008, a day after he confessed to his children. He pleaded guilty to 11 federal felonies and admitted to turning his wealth management into a massive Ponzi scheme that defrauded thousands of unsuspected investors of billions of dollars. Thus, within seven months, his case was decided and concluded.

Norman Schmidt was sentenced to 330 years in prison for a multimillion-dollar investment scam in 2008. In China, Cao Wenzhuang, who was accused of accepting more than \$300,000 in bribe was sentenced to death for corruption and approving counterfeit drugs. In the United Kingdom, James Ibori, ex governor of

Delta State, arrested in Dubai, was sentenced to 13 years in prison after pleading guilty to money laundering and conspiracy to defraud. The same Ibori was earlier set free in Nigeria after his arraignment on 77 count charges.

I have taken these few examples on financial crimes because this is the sector I am familiar with. All of the examples go to show that crime does pay in Nigeria. Firstly, it takes a long time to secure arrest, trial or convictions in high profile cases that should ordinarily be used to demonstrate the rule of law. Secondly, sentences passed in few cases where convictions were secured do not correlate with the weight of the offence. In all cases, it shows that it 'pays' to commit offence or a crime in Nigeria. However, it must be immense.

The Nigerian Police Force

Sections 214 and 215 of the 1999 constitution deal with the issues relating to the Nigerian Police. According to Section 214 (b), "The members of the Nigeria Police shall have such powers and duties as may be conferred upon them by law". Hence, unlike the sections that deal with the Armed Forces, the Constitution of the country did not spell out in clear terms what the duties of the police force are. An indication of their powers can only be deduced from Sections 215 (i) (3) and (4) respectively for the federal and the state governments. The sections state: "The President or such other Minister of the government (the Governor of a state or such commissioner of the government of the state) may give to the Inspector General of Police (Commissioner of Police, for the state) such lawful directions with respect to the maintenance and securing of public safety and public order as

he may consider necessary, and the Inspector General (or Commissioner of Police) shall comply with those directives or cause them to be complied with”.

Section 215 (5) gives absolute powers over the police to the President and it states that “the question whether any, and if so what, directions have been given under this section shall not be inquired into in any court”. Even though, Section 215 (4) gave the state governors the power to direct the commissioners of police in their state, such powers have been effectively taken away by section 215 (4) which contained a proviso that the Commissioner of Police may request that the matter on which the state governor gave a directive be referred to the President or such minister of Government of the Federation as may be authorised in that behalf by the President for his directions. One of the implications of these provisions is that under the absolute control of the President, the Nigeria Police is not a people’s police and may actually be used against the people and for bad governance.

However the Nigeria Police Force was given its powers through a specific enabling statute, the Police Act. Section 4 of Police Act states the primary duties of the police as follows:

- a. Prevention and detection of crime.
- b. The apprehension of offenders.
- c. Preservation of law and order.
- d. Protection of life and property.
- e. The enforcement of all laws.
- f. Regulation within which they are directly charged.

g. Military duties within and outside Nigeria as may be required by law.

The challenge facing the Nigeria Police Force started with the misadventure of the military into governance. Following the series of military coups, the Nigerian police numbered about 12,000 were regarded as a threat by the military and thus underfunded and marginalised. Through the years, the Nigerian police force has become ill-trained, ill-motivated and ill-equipped and the image of the police became attributed to bribery and corruption.

The transition to democracy showed approximately 140,000 police officers in the Nigeria Police force. This total amounted to just one police officer for every 820 Nigerians or more. This is well below the recommended United Nations benchmark of one police officer for every 400 citizens. The rising level of crime only added 40,000 police officers to the force. The increase in the number of police officers did not attribute to an increase in the funding to train, equip and manage the force. The result has become an overstretched police force whose capacity for maintaining law and order was further depleted by their deployment for special assignments of attachment to prominent citizens and institutions. The Nigerian Police and other security agencies play important roles in the enforcement of law and order. However, their presence has still not translated into noticeable good governance in the country.

The absence of an appreciable level of good governance in Nigeria despite the laws and regulations in place by the leaders is a strong indication that people do not follow the rules, enforcement is not strictly in place or it is being taken for

granted. It is observed that some political leaders misbehave and believe they are above the law.

Significantly, with the return to democracy in 1999, the enforcement of law and order has been a subject of debate. Questions have been raised about the capacity of people rooted with the mandate to enforce the laws of the land. The Nigerian Police, as presently structured and constituted to discharge its duties, has failed miserably. It is unpopular and distrusted by the same people whose lives and property it is supposed to protect, which has resulted into a situation of jungle justice, self-help, refusal to volunteer information to aid arrest, amongst others. In another dimension, there have been so many cases of police brutality, police inefficiency and corruption. The crime rate has increased rapidly and the Nigerian police have proven helpless or perhaps overwhelmed. The situation of corrupt police force with policemen collecting bribes openly is also very common. The promise to 'flush out the bad eggs' has still not happened as innocent people are afraid to volunteer information to the police.

Police inefficiency can also be seen in many cases of unresolved murders and the spread of impunity. Moreover, people believe that many Nigerian police men are likely to take to their heels than confront criminals with superior fire power.

Overall, the judiciary and the police are part of the larger society. Consequently, just like the leadership issue, we get the type of judiciary and police that we deserve.

Other Factors

Apart from the Nigerian Police not doing their job and the challenge embedded in the judicial system, other factors affect the enforcement of the rule of law and the level of security in the country. For example, increase in poverty and unemployment attracts violence and criminality. When people feel despondent, out of employment or assailed by poverty, they then attempt to initiate in criminal activities.

Furthermore, corruption in our environment cannot be overemphasised; it is our primary silent killer. It prevents proper prioritisation of needs where the security agencies are abandoned and resources appropriated are stolen or misapplied thereby limiting the capacity to deliver good governance while giving way for insecurity.

Governance is often linked with other factors such as participatory development of human rights and democratization. These highlight and appraise the legitimacy of government. That is, the degree of democratization, accountability of political and official elements of government, competence of governments to formulate policies and deliver services and respect for human rights and rule of law. All these are very low in Nigeria.

4. THE WAY FORWARD

a. Promote the culture of accountability and transparency

For effective enforcement of law and order, it is a prerequisite to have a transparent legal system. Public institutions should run with a high level of openness and accountability to enhance efficient management of public resources and to promote private markets. Lack of transparency around policy and decision making by government officials and institutions would encourage misallocation of resources. Furthermore, access to information can empower citizens to monitor the use of public resources and the quality of government services. In its Doing Business Report, 2013, the International Finance Corporation (IFC) reported a case study in Uganda where the government published in the newspapers, the monthly transfer of school grants to local governments. This availability of information to stakeholders led to the share of grant funding lost to corruption to reduce from 80 per cent to 20 per cent. Another study of Brazilian municipalities shows that mayors are less corrupt where citizens can gain access to municipal budget reports especially where the mayor is likely to seek re-election. The system introduced by the current Minister of Finance under the administration of former President Olusegun Obasanjo where states and local government monthly allocations from the Federation Account were published in the print media and government websites were a good step in the right direction. The same thing goes for the enactment of the Freedom of Information Act. Citizens and civil society organisations need to be empowered to know how to effectively utilise these tools to ensure that public officers act in the best interest of the citizens and to realise the ideals of good governance.

b. Improving the policing system

Furthermore, there is much to be done to improve the effectiveness and efficiency of the Nigeria Police. There is no doubt that the Police require more manpower to improve the ratio of police to citizens. In addition, there is need for continuous education and capacity building for men and officers of the Nigerian police not just to be abreast of sophistication in the crimes in the country but also in policing relations in a democratic setting. The Nigeria Police needs to work hard to earn the respect and trust of the citizens, so that they can truly be seen as friends of the populace who they are paid and armed to protect. In addition, there is the need to overhaul the tools available for an average policeman. Further still, improving on the environment in which they work, the tools available and welfare of the police and the environment they live will all help in promoting effective policing of Nigeria.

c. Step up security at porous borders

Majority of Nigeria's land borders are largely unprotected and this gives room for all kinds of dangerous activities like guns and ammunitions smuggling, bomb materials importation, easy access for foreigners to be used for criminal activities and amongst others. These borders need to be secured and all kinds of activities checked.

d. Strengthen judicial system and other key institutions

The judicial system should be well structured. Individuals should not be above the law or more powerful than the system. The institutions need to be well

strengthened and become levelers for all irrespective of the person's status or position in the society. This will keep corruption at arm's-length as it is one of the factors that affect insecurity. The sponsors of insecurity should not be able to walk free. This will drastically reduce the number of people who flout or break laws, as if found they would be duly prosecuted. Furthermore, education of the masses can provide awareness for the rule of law.

The judicial system is also supposed to provide an effective commercial dispute resolution. However, the compliance with contractual obligation is not the norm. Businesses are at risk when resolving a commercial contract. The time, cost and complexities of resolving contracts discourages businesses. However, this can be prevented if there are adequate monitoring and managing of court cases. In the 2013 edition of Doing Business, the International Finance Corporation, stated that Nigeria ranked 98th out of 182 countries it surveyed, in the ease of enforcing contracts. An interesting part of the report is that it takes an average of 457 days to enforce contracts in Nigeria with costs associated with enforcement taking up to 32 per cent of total claim. If Nigeria is to attract more direct investment and promote a conducive environment, especially for small and medium scale enterprises, it needs to aggressively pursue a reform in its process for obtaining and enforcing judgements.

Furthermore, there is the need to accelerate the process of law reforms in Nigeria. Some laws are archaic and outdated, which makes conviction difficult for offences committed under such laws. A good example was non – admissibility of computer printout as bank statement in the court of law. In some other

circumstances, the penalties associated with crimes look so ridiculous and do not serve as deterrent to offenders.

Finally, just like the police, the judiciary also need a lot of assistance. Some state governments are doing a lot to improve on all issues that affect the dispensation of justice in their domain. Such issues as the welfare of judges and the judiciary workers, providing resources and modernising tools in the court system, proving alternative corridors and processes to reduce delay in going through the court system, etc are some of the positive efforts in the right direction. The federal government and every state that have responsibility for efficient adjudication must see this as very important. Apart from all the above, appointing competent and qualified personnel, without political interference, and continuous training will be the best step towards efficient delivery of justice in Nigeria.

e. Building Enduring Institutions

To attain appreciable level of good governance and seamless enforcement of law and order, we need to build enduring institutions. Without enduring institutions, those vested with authority and instruments of governance at all levels would continue to act with impunity and arbitrariness. Absence of sound laws and robust legislation confer awesome powers on political office holders and public servants, which make it easy to get away with all kinds of repressions, misdemeanours and recklessness. This perhaps explains why our President seems to be the most powerful person on earth with high capacity to dispense favours and bring down perceived enemies. It is this same permissiveness that makes every one of us a 'big man' in Nigeria, behaving with reckless abandon and in

manners suggestive of being above the law. We drive against traffic and commit all sorts of atrocities on the road, people kidnap others without consequences, rape cases go on for years even where arrests are made, because our institutions allow for selective justice and because it is easy to delay and deny justice. This phenomenon is the greatest reason for jungle justice and people taking laws into their hands. Until we have frameworks and institutions that run close to being auto form and where citizens know that there would not be sacred cows, achieving good governance will remain a mirage.

5. CONCLUSION

Enforcement of law and order lies in the heart of good governance. It is evident that it is a crucial factor in its development. A country without law, the enforcement of law or effective and efficient use of a police force is in danger of being categorised as having bad governance. Law enforcement serves as one of the basis of good governance as no country can exist effectively without the enforcement of law and order. The continuity in government and the survival of the people depends heavily on proper enforcement of law and order against violators. The law of the jungle will prevail in the event of lack of proper rules and regulations or the mechanisms in place to enforce them.

We need to encourage whistle blowing by institutionalising the process that encourages reporting of violation of laws and protect the whistle blowers. We must enhance the ability to report cases of robbery, embezzlement, etc without fear of reprisals, or any form of attack including loss of lives and livelihood.

Finally, we all have the responsibility to contribute to good governance through the enforcement of law and order. This is simply by doing what is right at all times in our own small circle of influence. Where processes, rules, regulations and laws have been instituted, let us strive to operate within them. Let us not operate above the law nor bend or circumvent the process. As a good example, in the university environment, there are rules and regulations for the conduct of admissions, promotion of staff and award of degrees. How much of these do we bend to the detriment of the system and our larger society? As we bend the rules of employment and promotions, we throw up mediocrity which undermines the system in form of declining productivity. As we admit students who did not pass entrance examinations or possess minimum entry requirements over those that are qualified, we undermine good governance in the university; we end up producing ill equipped graduates as we award degrees to undeserving elements that use the certificates to hold sensitive positions in the future and exhibit mediocre performance. As public servants and office holders, you are confronted with similar circumstances in our various institutions and offices. How have you handled them?

As leaders and followers, let us all strive to respect our own laws. With that as the minimum, we will attain peace, harmony, security and respect for each other. There lies the road towards good governance.

Thank you for this opportunity and for your attention. God bless you all.