ESTABLISHING A CULTURE OF CONSTITUTIONAL LAW AND ENHANCING THE CRIMINAL JUSTICE SYSTEM FOR NATIONAL DEVELOPMENT IN NIGERIA: A JURISPRUDENTIAL APPROACH

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Abstract

This paper focuses on the issue of judicial officers, adherence to constitutional law and the criminal justice system as conditions for national development in Nigeria. The problem is that the government and citizens struggle to obey the rule of law that will fast-track national development through social justice, equity in resource distribution, fairness and accommodation in a multi ethnic and multi religious society. There is crisis because the prevalent tendency in handling socio-legal matters is to use brute force, might is right, jungle justice, self-help, politicization, manipulation, corruption, needless inter-service rivalry, human rights abuses, subversion and sabotage by cabals deep inside the seat of power, cult of personality of the elites and demagogues, siege mentality of the ruler, discrimination on religious and tribal grounds, hate speech, secession, state sponsored terror, militia violence, terrorism and other very rambunctious, bellicose and life-threatening approaches to sociopolitical order. This is very worrisome. So this work focuses on conceptual templates for reconstructing judicial process, criminal justice and constitutional framework in contemporary Nigeria. A judicial process commits us to an appraisal of the operation of the rule of law in Nigeria and the need to ensure that this is established and grounded in Legal Doctrine. Can we say such is applicable to the Nigerian legal system or the sociopolitical system as a whole, that it is completely fit for purpose; picture perfect for the task of national development? This issue brings to our attention the unending struggle to balance out demands of the Legal Act and the institutional framework in a society. To attain this balance, we need to conceptualize a socio-legal and developmental approach to law and society. This approach will contain key ingredients such as access to justice, rule of law, constitutional reforms, judicial reviews among others. All of these aims are to make the judicial process more structured and systematic. The practical effects of these efforts are to increase judicialization and justiciability as well as blend domestic and international laws for the good of humanity. These are some of the main jurisprudential tasks of the Judges in collaboration with other stakeholders in the society.

Keywords: Judicial Officers, Constitutional Law, Criminal Justice System, National Development, Nigeria, Judicial Process

Introducing the Problem: Jurisprudential Formulation of the Role of Judges or Jurists in the Judicial Process for a Developmental Socio-Legal System

Let us look at what the Judges do in the Judicial process to contribute to national development. In the society laws are central to peace and development because they are laid down rules by the political and legal authorities, which are binding on all members of society. Laws are effective in two ways, by firstly, setting norms and standards of behavior and secondly, setting rules and regulations for interrelationships and adjudication among human beings.[1] How does law operate in human society? Law, justice, peace and security are geared towards establishing and sustaining the social and political order. It may be noted that the social order appears different from political order

[1] Taslim O. Elias, "Judicial Process and Legal Development in Africa", *Africa and the West.* Isaac James Mowoe and Richard Bjornson (eds). New York: Greenwood, 1986, 189-213.

even though both are similar in that they work together to govern human personal and social actions. Social order presumes regularity, stability, predictability and organisation arising from kinship and friendly relations.[2] Organization and control of social life are central to social order,[3] within, and among ethnic groups as a system of control. The political order is a means of social control based on the obedience to law and order as well as adherence to the rule of law by government and the citizens. The core of the socio-legal system is negotiation and bargaining arising from balancing the conflicts and interplay of interests existing among individuals and between individuals and the society. The judicial process is one of the arbiters of this harmonization of conflicts of interest. Laws and institutions are central to Statism. This state-centric idea of law is a legacy of the Westphalia treaty of 1600s that sees the State as the center of the universe; laws and institutions are to be established and sustained by the state so as to protect its government, territory and perhaps citizens.[4]

Construed jurisprudentially, the 'organic' nature of the State makes it a delicate creation of mankind that is animated, rational, autonomous and adaptable. Hence, the State is seen as a legal body or in the words of the renowned English Jurist Thomas Hobbes, it is an Artificial Person. The State is thus organic in the sense that it can adapt to the human nature of the sovereign law or leader that embodies it. So the institutions of the State also possess this quality. This tendency can be positive or negative, hence the need for ethical constraints, checks and balances, especially of the judiciary, which is itself, not entirely immune from the logic of legal reasoning and self-regulation also. This 'organic' element opens the pathway to realism as the actual state of human nature at the personal or social levels. Realism is the linchpin of Statism. What is the role of Judges and the judicial process in tackling this ancestral problem? Why is this important?

To start with the judicial process is a broad jurisprudential concept that embraces all the judges do when operating in the society. It refers to the way judges use theoretical, conceptual and physical tools to regulate the legal profession and society at large. Some of the most important issues or questions facing Judges under this auspice are:

i. How are general laws applied to particular cases in law making, law enforcement and adjudication?
ii. How do we manage conflicts of interest or impartiality when society gives weight to interests?
iii. How can judicial function be balanced with political interests?
iv. How does a Judge's philosophy or jurisprudence affect decisions on social and political issues or questions?
v. How do the Courts manage disputes that have not been accommodated or anticipated by the norms of law?
vi. What is the linkage between judicial function and the sovereign Will of the people or citizens?[5]

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[2] James Vander Zanden, *Social Psychology.* New York: Random House, 1977: 153-173; Jon Elster, *The Cement of Society. A study of social order.* Cambridge: Cambridge university press, 1991: 1.
[3] Robert Anchor, "War and the social Order," *Humanities in Society.* 5(1&2), 1982: 11.
[4]Mohammed Ayoob, "Security in the Third World: The Worm about to turn", *International* Affairs, 60(1), 1984: 41; Nizar Messari, "The state and Dilemmas of Security: The Middle East and the BaIkans", *Security Dialogue*, 33(4), 2002, 415-427.
[5] Jeremy Bentham, "Introduction to the Principles of Morals and Legislation", *The Great Legal Philosophers*, Clarence Morris (ed). Philadelphia: University of Pennsylvania Press, 1991, 280; Eugene Elrich, "Fundamental Principles of the Sociology of Law", *The Great Legal Philosophers*, Clarence Morris

Put simply, the major element of the judicial process is about establishing the rule of law or equality under the law that is capable of providing access to justice for all. The judicial process offers the sub-structure and super-structure of the national judicial system which is based upon or grounded in Legal doctrine and also empirical research or reality. This is the issue of regulation or the interface between the 'letter of the law' and 'spirit of the law' or the reconciliation of theory versus practice.[6] The idea is that judicial process follows the "weight" that society gives to "Interest" or put simply Judges and other stakeholders are to follow tendencies or inclinations that best provide holistic and proactive jurisprudential solutions to socio-economic problems or issues. As such judicial function is aimed at clarifying the concepts of the legal and institutional frameworks through an appraisal of their "Binding Force" such that their causality and logical or empirical features are identifiable and applicable conceptually and physically.

Thus construed jurisprudentially, juridical reforms, judicial process, judicial oversight, jurisdiction, adjudication and judicial function are simply and concisely efforts to offer an approach to sustaining a developmental (proactive and progressive) socio-legal system. In such a system, the approach to the question at hand is to marry the Law with the Will of the people or their sovereignty so that their institutions and representatives can be more reactionary, responsive and responsible for the good of all in the society. A society, if it is to function smoothly requires a creative combination of theory and practice in a way that encourages coordination, communication, cooperation and collaboration among stakeholders such as the Bar and Bench of the Courts as well as the various tiers of law enforcement and legislators in the society. These are the intuitions that ought to ensure that the members of society do not depart from the law. [7]

An effective socio-legal developmental solution would seek to offer a jurisprudence that is holistic and human centered in nature. There seems to be a need for an alternate jurisprudence or jurisprudential approach that views the law institutionally and incrementally for a social and developmental purpose in the Nigerian society. The truth is that "Courts deal with past facts and look to the future for limited purpose only . . . this leaves the judicial process in a hind-sighted and retributive position".[8] It is also true that "law and development go along hand in glove. Municipal law has tremendous effect on

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(ed). Philadelphia: University of Pennsylvania Press, 1991, 450, 451, 452, 456 & 460; Benjamin Nathan Cardozo, "The Nature of the Judicial Process," *The Great Legal Philosophers*, Clarence Morris (ed). Philadelphia: University of Pennsylvania Press, 1991, 530; Thomas Hobbes, "Leviathan", *The Great Legal Philosophers*, Clarence Morris (ed). Philadelphia: University of Pennsylvania Press, 1991, 117; Rudolf Von Ihering, "Law as a Means to an End", *The Great Legal Philosophers*, Clarence Morris (ed). Philadelphia: University of Pennsylvania Press, 1991, 412-414; Immanuel Kant, "Fundamental Principles of Jurisprudence as the Science of Right," *The Great Legal Philosophers*, Clarence Morris (ed). Philadelphia: University of Pennsylvania Press, 1991, 255; Friederich Carl Von Savigny, "of the Vocation of our Age for Legislation and Jurisprudence", *The Great Legal Philosophers*, Clarence Morris (ed). Philadelphia: University of Pennsylvania Press, 1991, 299.

[6] Jeremy Bentham, "Introduction to the Principles of Morals and Legislation", 280; Elrich, "Fundamental Principles of the Sociology of Law", 450, 451, 452, 456 & 460; Cardozo, "The Nature of the Judicial Process," 530; Hobbes, "Leviathan", 117; Ihering, "Law as a Means to an End", 412-414; Kant, "Fundamental Principles of Jurisprudence as the Science of Right", 255; Von Savigny, "of the Vocation of our Age for Legislation and Jurisprudence", 299.

[7] Bentham, "Introduction to the Principles of Morals and Legislation", 280; Elrich, "Fundamental Principles of the Sociology of Law", 450, 451, 452, 456 & 460; Cardozo, "The Nature of the Judicial Process," 530; Hobbes, "Leviathan", 117; Ihering, "Law as a Means to an End", 412-414; Kant, "Fundamental Principles of Jurisprudence as the Science of Right", 255; Von Savigny, "of the Vocation of our Age for Legislation and Jurisprudence", 299.

[8] Russell Fox, *Justice in the Twenty-First Century*, London: Cavendish 2000.

the developmental process within a country".[9] This developmental approach to law at one level brings to our attention the constitutional approach to law, which emphasizes the spirit and letter of the foundation of the human society as a system guided by legal and administrative frameworks. When the social contract that forms the basis of Nigeria's commonwealth is previewed, it would be clear that Nigeria as a nation appears to be weak. Natural and positive laws constitute the substrate of Nigeria's corporate existence as a nation, so it is better to propose a social and progressive concept of the law whereby lasting solutions need to be based on negotiation, legislation, deliberation and interaction, rather than on force, dictatorship and intimidation. Let us review the rule of law as a *Grund Norm* of any meaningful social and human development in a country.

The Rule of Law and the Paradox of Legal and Institutional Frameworks as a Threat to the Sustenance of a Developmental Socio-Legal System?

The doctrine of the rule of law is ultimately bound with the practice of constitutional democracy and human social development. As Sagay posits, there can be no democracy without the rule of law and by common agreement. Thus, the doctrine of the rule of law could be said to be intimately bound with the practice of democracy.[10] The Nigerian leaders most times pay lip services to adherence to the rule of law and constitutional provisions. A good example is the government's inclination for disregarding and outright disobeying court orders and judgments. Nigerians living in different parts of the country cannot afford to be perceived or treated as second class citizens in their own country. All Nigerians ought to be rightful and free acting citizens anywhere they reside in the country. There should be no discrimination, rather equity, fairness, mutual respect and equal rights under the law should be allowed to be the directing principle of the developmental socio-legal system.

In other climes where democracy is a bit more strongly rooted, a more independent and incorruptible judiciary/court system, professional police and armed forces, cohesive and articulate civil society and vibrant private sector gives democracy the power and beauty that it has. In Nigeria, law enforcement agencies like the police are the arrowheads of the forces bent on abusing human rights and civil liberties especially of innocent citizens, suspected offenders and political opponents of the ruling party.[11] So is there equality before the law in Nigeria? It appears that those who are accused of stealing billions of naira as governors or public office holders are more equal than any other person in the country. Bail is granted to them on liberal conditions. Some of these persons are saved by immunities, clauses of mon-liability and plea bargains, technicalities, poor prosecutorial abilities, intimidation of Judges, etc.

To appreciate the issues better let us have a theoretical analysis of the problem: There seems to be a paradox of legal and institutional framework that poses a threat to development and the rule of law. The legal framework is the law that establishes and empowers an organization to act lawfully. Ordinarily a legal framework may be well thought-out, properly enumerated and fit for purpose. Two ways that an institution can be compromised are; first, if the Law or Act enabling or bringing that institution into life is not perfected or well codified. Another more serious way an institution can be threatened is if there are socioeconomic, cultural and political circumstances that militate

[9] Elias, Taslim Olawale, "Judicial Process and Legal Development in Africa," 189-213.
[10] Sagay, Itse. *The Travails of Democracy and the Rule of Law, in Democracy and the Rule of Law,* Ibadan: Spectrum Books Ltd, 2000.
[11] Ali M Ali. "*All too little too late*", Lagos: This Day, August 30, 2007: 6

against its smooth performance. Given this situation, such an institution may not be able to deliver on its mission and mandate due to disequilibrium at the levels of agency (human nature) and practice (real life challenges). Such shortcomings are clearly challenges adversely affecting key Nigerian institutions (social, educational, economic, paramilitary and military). An institution is created by purposive or purposeful human efforts of enactment for the purpose of enforcement. Yet it is greater than any individual or group. The institution accomplishes what no individual human being is capable of achieving against other men or even nature, or at best makes that achievement easier, faster and cooperative. Any institution is easily known by the values (interest, importance, norms, standards, preferences) it upholds and defends. It defends these values deeply because inevitably, they are generally accepted by its members and who have thoroughly internalized or imbibed them formally and systematically and purposively.[12] An institution must be rational, reliable, viable and predictable so that it is capable of responding to the needs of the people that formed it. Establishing an institution precedes sustaining the institution or institutionalizing its practice. Most institutions are often threatened by factors such as historical deficits, alien origin, inefficiency, and poor leadership and therefore are seemingly not able to consistently guarantee the adequate protection, peace and well-being of citizens. If our institutions are incapable of attaining the goals of decision making and practical action for the common good, then their perversion and denigration pose a threat to collective survival.[13]

Some Threats to Judicial Performance and National Development in Nigeria

Nigeria faces some challenges to national development and judicial process occasioned by disturbing trends of human rights abuses, terrorism and violence which lead to conflicts and insecurity. Other real threats to peace and development include violence caused by resource scarcity, unemployment, food insecurity, widening poverty, culture of bribery and corruption, economic meltdown, extreme polarization, political oppression, environmental degradation, religious extremism, ethnic and regional inequalities and a surging youth population.[14] These are all signs that national governments over time continue to struggle with controlling their territory,[15] administratively, socially, politically and legally from a developmental perspective. As such there are several factors militating against the effective and successful judicial performance. Corruption is key here.

Corruption

Let us start with corruption. The term: "corruption" is not capable of a straightforward and clear cut definition or what Okorie refers to as "straight jacket definition,"[16] so it

[12] Harry. M. Johnson, *Sociology: A systematic Introduction*. London: Routledge and Kegan Paul, 1961: 15, 16, 20 & 21; George F. McLean, "Institutional Patterns in Social Transformation", *Democracy and Values in Global Times.* George F. McLean and Robert Magliola and Joseph Abah (eds). Washington D.C.: Catholic University of America, 2004, 209; Calvin P. Van Reken, "The Church's role in social justice", *Calvin Theological Journal.* 34, 1999:198.

[13] Philip Ogo Ujomu, "Democratic Institutions, Participation and the problems of social engineering in an African nation-state", 31-33.

[14] UN Panel Report, "Poverty, Infectious Disease and Environmental Degradation as Threats to Collective Security", 2005, 31(3), *Population Development Review*, 595; Ibrahim Lawan Bashir, "Towards an Effective Nigeria Police Force", *Policing In Nigeria: Past, Present and Future*, Tekena Tamuno et.al (eds). Lagos, Malthouse, 1993, 569.

[15] UN Panel Report, "Poverty, Infectious Disease", 595; Ibrahim Lawan Bashir, "Towards an Effective Nigeria Police Force", 569.

[16] Okorie, C. Kingsley, "Terrorism and the Challenges of National Security: The Nigerian Experience," Justice Okoronkwo, N, and Justice Abosi, F. C., and Prof. Chukwumaeze U. U. (eds). *Contemporary issues*

may not be easy to define corruption, yet, the crisis associated with it is not difficult to recognize.[17] The word corruption is originally from the Latin verb: *rumpere*, which means to break. Arising from the foregoing, corruption means the breaking of a certain code of conduct for the personal benefit of the perpetrator.[18] The World Bank defines corruption as:

> The abuse of public office for private gains; Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantages or profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets, or the diversion of state resources.[19]

Corruption facilitates crime and terrorism as it undermines governance at all levels, the economy, health sector reforms, social order and sustainable development in all regions of the globe.[20] Pernicious non-state actors, such as criminals and terrorists, intentionally penetrate the state, often entering legislative bodies to shape laws to their favour.[21] These, therefore de-legitimize state institutions, facilitating the rise of parallel structures that challenge state forces. Corrupt officials, through their positions allow illicit actors to operate and generate revenues which are usually plied back into criminal activities. Corrupt officials have been known to provide information and documents needed for criminals and terrorists to operate successfully.[22] Corruption at border posts, ports and in consulates have broad security and economic implications, financial recklessness leading states into bankruptcy. Some of the funds recklessly mismanaged are derived from state "security votes", joint state/local government accounts and money laundering.[23] These have been known to facilitate the entry and movement of many forms of illicit trades and these have had far reaching implications for the stability and encouraged the trafficking of drugs and trade in arms.[24] A further implication for security is that terrorists who have bribed unscrupulous officials can easily cross borders and wreak havoc on established security positions.

In short, corruption comes in the various forms of bribery, graft, nepotism among others and ultimately leads to the abuse of power, deteriorating fiscal and economic management, arbitrary policy change, deficit financing, and a chronic unrecorded leakage of funds, which blurs off the line between private and state property; erodes

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on Law and Society: Essays in Honour of Justice B. A. Njemanze, High Court of Imo State, Owerri Imo State, 2014, 1

[17] Tanzi, Vito "Corruption around the World: Causes, Consequences, Scope and Cures", *IMF Staff Papers*, 45(4), 1998: 1-4.

[18] Tanzi, "Corruption around the World",

[19] Agbu, Osita, "Corruption and Human Trafficking: The Nigerian Case", *West Africa Review,* 4(1), 2003: 1-13

[20] Nigeria is constantly ranked as one of the most corrupt countries. In 2013, Nigeria ranked 144th of 177. See "Corruption by Country/Territory: Nigeria", Nigeria Transparency International (www.transparency.org), 2013. (Accessed 24-1-2019).

[21] "Criminal Politics: Violence, 'Godfathers and Corruption in Nigeria", *Human Rights Watch*, October, 2007, 32

[22] "Criminal Politics: Violence",

[23] "Chop Fine": The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria", *Human Rights Watch*, January, 2007: 3-18.

[24] "Chop Fine".

public trust, invites incompetence and violates the laws and rules that stabilizes the state and society.[25] In some cases, officials even provide key operational services. Within Nigeria's democracy, corruption ensures the prevalence of god-fatherism, ethnic domination, money politics, distraction and alienation of the legislature making them distant from the people they are representing due to pecuniary gains.[26] Corruption among the tiers of the legislature- the National Assembly (NASS) have obstructed this strategic body from intervening meaningfully in the daily concerns and social justice of the represented.[27] There is also a lack of political, moral and financial independence of the Judiciary as an arm of government, which thus denies justice to the aggrieved and occludes established means for seeking redress. The prolonged delays and possible compromise in the judicial activities of election tribunals are sufficiently revealing of the delay of justice and absence of access to the rule of law which reflects the character of Nigeria's purported democracy at this moment[28] that suffers a mostly from bad governance especially politically.

Bad Governance

The earliest Greek jurists and legal philosophers such as Socrates,[29] Plato[30] and Aristotle[31] among others were very concerned about how human beings should live their lives in the society under a government. How ought human beings to govern and relate with one another. So many political philosophers over the ages attempted to proffer responses to this question but to varying degrees of success. So, it remains a perennial and fundamental question. Human life cannot attain its fullest development without a proper system of governance. Governance has to do with management of public affairs.[32] Governance and government are different ideas. Governance is all about the way that societies or organizations handle decision making, involvement and accountability. Good governance has eight key features as follows; participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and one that follows the rule of law.[33] As such, good governance slows down both corruption and other social vices, allowing the greatest good of the greatest number as the basis of making decisions. To this end, governance and development are intertwined as both focus on the well-being of the human being, especially at the ethical and social levels. On its part, development is all about improving the human being and the human

[25] "A Rain of locusts", The News, 18 July, 2011, 14-20

[26] Nigerian Politicians are among the World's best paid. "Nigeria Boils Over", *The New York Times,* 12 January, 2012. A legislator earns about $189.000 per year. "Nigerian Lawmakers top salaries chart", *Daily Trust* (Abuja), 22 July, 2013.

[27] Nigerian Politicians are among the World's best paid.

[28] The then Chief Justice of Nigeria (CJN) Marian Aloma Mukhtar lamented the steady decline in funding for the judiciary. According to the Justice, "over the years funding of the Court has remained a challenge…statistics show that funding has witnessed a steady decline since 2010, from N95 Billion to in that year to N85 Billion in 2011 and N75 Billion in 2012, while in 2013 it dropped to N67 Billion." See "Poor Court Funding and Judiciaries Independence", *Daily Trust,* 1 October, 2013.

[29] Socrates; (c. 470 – 399 BC) was a classical Greek (Athenian) philosopher credited as one of the founders of Western philosophy, and as being the first moral philosopher. Socrates: https://en.wikipedia.org/wiki/Socrates -Accessed 28-12-2018.

[30] Plato; (c. 428/427 or 424/423[b] – 348/347 BC) was a philosopher in Classical Greece and the founder of the Academy in Athens, the first institution of higher learning in the Western world. Plato: https://en.wikipedia.org/wiki/Plato -Accessed 28-12-2018.

[31] Aristotle; (384–322 BC) was an ancient Greek philosopher and scientist born in the city of Stagira, Chalkidiki, in the north of Classical Greece. Along with Plato, he is considered the "Father of Western Philosophy". Aristotle: https://en.wikipedia.org/wiki/Aristotle - Accessed 28-12-2018

[32] Anifowoshe, Remi, "Public Governance in Nigeria", being Lecture notes of the Strategic Business School, Lekki-Lagos, March 2009, 2

[33] Anifowoshe, "Public Governance in Nigeria", 3

condition, so at the heart of development is the effort to create laws, practices and opportunities for the human person to build up his innate potentialities and creations. The need to meet the demands of/and articulation of developmental social order is nothing, but to achieve the security, protection, safety, defense and preservation of the lives and property of people in a society. This goal is assured by identifying and distributing properly certain roles, rights, duties and benefits that accrue from effective social co-existence among people. This proper allocation of goods, duties and burdens among the members of a society ensures that everyone is responsible and committed within a social environment that is secure and safe under the rule of good governance.[34] Nigeria has a problem of bad governance, coupled with a bloated administration, judicial officers working in a hostile and compromised environment beset by poverty, corruption, inequality, discrimination and marginalization among others.[35]

The Abuse of Human Rights

The word "right" is derived from the Latin word: *Rectus*, which in the noun form means that to which a person has a just and valid claim. [36] This connotes the capacity of doing an actor or interest to be benefitted by the holder of such right. Some rights are called – "Human Rights", which have been defined as 'rights' which all person everywhere and at all times equally have by virtue of being moral and rational creatures. Human rights are basically rights which inhere in every human person by virtue of common humanity.[37] In this connection, human rights are both natural and universal.[38] This assertion receives better clarification when a distinction is drawn between human rights and legal rights. Human rights have their source in natural law and therefore, they are not the gift of any authority or government. However, human rights may be confirmed or crystallized by positive law or legal instruments. The idea of human rights is a highly contested category subject to diverse interpretations. Yet, basic elements that comprise human rights are rights that enable man to realize himself. To talk about 'right' in human rights is to say that such claims or guarantees can be 'exacted' as something one is entitled to or invoked. *The Nigerian Constitution of 1999, as amended at Chapter four*, lists the following as human rights: right to life;[39] right to human dignity;[40] right to personal liberty;[41] right to private and family life;[42] right to freedom from discrimination;[43] right to fair hearing;[44] right to freedom of thought, conscience and religion;[45] right to freedom of expression;[46] right to peaceful assembly and association;[47] right to freedom of movement[48] and right to acquire and own moveable property.[49]

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[34] Anifowoshe, "Public Governance in Nigeria", 4

[35] These factors have bred the emergence of militant groups based on ethnic and religious identities such as the emergence of the Movement for the Emancipation of the Niger Delta (MEND), in the South-South and the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) in the South East and others.

[36] Obiaraeri Nnaemeka Onyeka, *Fundamental Themes on International Human Rights*. Zubic Infinity Concept, Owerri, 2015, 126

[37] Obiaraeri, *Fundamental Themes*, 126.

[38] Obiaraeri, *Fundamental Themes*, 126.

[39] Sec*tion 33* of the Constitution of Nigeria 1999 as amended.

[40] *Section 34* of the Constitution of Nigeria 1999 as amended.

[41] *Section 35* of the Constitution of Nigeria 1999 as amended.

[42] *Section 37* of the Constitution of Nigeria 1999 as amended.

[43] *Section 42* of the Constitution of Nigeria 1999 as amended.

[44] *Section 36* of the Constitution of Nigeria 1999 as amended.

[45] *Section 38* of the Constitution of Nigeria 1999 as amended.

[46] *Section 39* of the Constitution of Nigeria 1999 as amended.

[47] *Section 40* of the Constitution of Nigeria 1999 as amended.

[48] *Section 41* of the Constitution of Nigeria 1999 as amended.

Beyond this, *the United Nations Declaration of Universal Human Rights of 1948* contains 30 articles cataloguing the rights of a human person or society. The articles clearly focus on the concern for fellow human beings and clearly raised issues about positive and negative rights, mainly on the issue of freedoms, and the link between these rights and specific forms of social order. So the question that arises is: whether human rights in a democracy are different from those in communism? It is assumed that a human society that respects freedom and rights of humans is most likely to foster peace and development economically.[50] Human rights are rights set out in domestic and mainly international instruments such as the *European Convention on Human Rights and Fundamental Freedoms of 4 November 1950* and the *European Court of Human Rights*.[51]

Nigeria faces developmental challenges due to serious human rights deficits arising from its troubling approach to the rule of law and social justice. Nigeria's human rights tendency looks bleak, given the country's colonial past, neo-colonial statist-corporatism, socio-political dynamics of multi-ethnicity, resource distribution issues and multi-religiousity. Examples of violations in Nigeria include extra-judicial killings, torture, arbitrary arrest and detention, as well as terrorism. These issues raise serious human rights concerns, and the possibilities of domestic and international protections.[52] Wellman insists also that we must repudiate the phenomenon, and affirm the wrongness of terrorism because "one reason that terrorism is prima facie wrong is that the terrifying act is almost inevitably harmful. Worse still, terrorism necessarily violates the most fundamental of all human rights, the right to be treated as a human being."[53]

With regard to freedom and rights in the democratic experience in Nigeria, it is noticed that there are few sustainable strategies for addressing the critical values of respect for basic rights and distributive justice. There are concerns about disorder, public mistrust and corruption that arise from the shortfalls and contradictions in democratic consolidation.[54] In Nigeria's democratic experience, the institutions of democracy provide for participation yet factors such as hijack and apathy, become hindrances to the attainment of the core values of democratic governance. The truth is that participation in Nigeria's democracy can be induced by money or manipulation. It seems that ignorance of the populace poses a danger to democracy. The reality of intolerant approach to using political power triggers a neglect of the rule of law and censure of the media, judiciary and legislative organs.[55] This denial of freedom and human rights of citizens *via* governmental actions and also the unresponsiveness of same government or elected leaders open windows of weakening of the core values of providing security and infrastructures for the sustenance of a democratic society.[56]

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[49] *Section 43* of the Constitution of Nigeria 1999 as amended.
[50] Abdulrahman O. Akano, "The Police, Rule of Law and Human Rights: Police Perspective", *Policing in Nigeria, Past, Present and Future,* Tekena Tamuno, Ibrahim L. Bashir, Etannibi E. O. Alemika, Abdulrahman O. Akano, (eds). Lagos: Malthouse Press, 1993: 442-443.
[51] Francois Tulkens, "Human Rights, Rhetoric or Reality", *European Review*, 9(2), 2001: 125-127
[52] Funmi Olonisakin, "Changing Perspectives on Human Rights in Africa", *Africa in the Post-Cold WarInternational System* Sola Akinrinande and Amadu Sesay (eds.), London: Cassell Pinter, 1998: 95-97.
[53] Carl Wellman, "On Terrorism Itself", *Journal of Value* Enquiry, xii(4)*,* 1979: 254 & 257.
[54] "Nigeria Boils Over" *The New York Times,* 12 January, 2012
[55] "Nigeria Boils Over".
[56] "Nigeria Boils Over".

Ethnicity and Tribalism in Nigeria

In Africa, ethnicity is seen as the Achilles heel of any African nation effort to adapt and advance democracy as a means to establishing any viable system of law and socially responsible conduct. Eme Awa rightly states that "where societies are poorly integrated and primordial feelings are prevalent as in the states of Africa, the representatives of the various ethnic groups in the civil service may perceive the national interest mainly in terms of the welfare of their particular groups."[57] According to the International Crisis Group, "ethnicity undermines the fundamental values without which we cannot build a sane, serious, democratic society."[58] Ties of kinship, friendship and interest connect human beings all over and such ties are teleological in nature- they are consequential at the levels of rule and actions. Tribalism is the extreme and obsessive protection of one's tribe to the detriment of the whole nation. This attitude usually retards national growth. Tribalism promotes such evils as social injustice, inefficiency, moral decadence, un-productivity and mediocrity. Tribalism thwarts every effort towards unity and integration. When a tribe becomes very large then it can become an ethnic entity or group.

Ethnicity seems to be the bane of the Nigerian quest for democracy due to its links to class struggle among elites and inefficiency and corruption in politics and economy. So, it will not be untrue to say that in Nigeria for instance, there are only two real classes that impact variously on the social and political dynamics of democracy; these are the rich and the poor. The rich national elites have managed and distributed the limited resources with the end result of playing on ethnic complexities in Nigeria, thus aggravating the situation of conflict, insecurity and disorder in the Nigerian polity. The lack of shared beliefs among the rulers themselves, as well as between the rulers and the ruled, as well as between the various segments of the Nigerian society ensured that insecurity, indifference and conflicts remained endemic in the nation.[59]

Uneven Development as a Threat to the Criminal Law System in Nigeria: The Courts of Primary Jurisdiction as Custodians of Both Legal Justice and the Nigerian Constitution for National Development

The Criminal and Penal Code Acts form the substantive criminal legislations of the Federal Republic of Nigeria. While the Criminal Code Act applies to the seventeen (17) Southern states of Nigeria, the Penal Code Act is applicable in the nineteen (19) Northern states and Abuja Federal Capital Territory.[60] Historically, the Criminal Code Act was a federal legislation passed by the Federal Parliament while the Penal Code was a regional legislation passed by the Northern Region legislative body. With the creation of States in Nigeria,[61] these pieces of legislations were replicated by the respective legislative organs of the newly created states and became part and parcel of state law under the Nigerian federal system while retaining their federal or national character. Today, all the Southern and Northern states of Nigeria have broadly similar criminal law legislations on account of the influence of the applicable Criminal and Penal Code Acts.[62]

[57] Eme O. Awa, *Emancipation of Africa*. Lagos: Emancipation Consultants and Publishers Ltd., 1996: 2.
[58] International Crisis Group, "Curbing Violence in Nigeria (ii): The *Boko Haram* Insurgency", Africa Report No: 216, 3rd April, 2014, 1.
[59] International Crisis Group, *Op cit.*
[60] Peter Ocheme, *The Nigerian Criminal Law*. Kaduna: Liberty Publications, 2008: 15.
[61] Ocheme, *The Nigerian Criminal Law*, 16. This began with the creation of the twelve state structures by the Military under General Yakubu Gowon in 1967.
[62] Ocheme, *The Nigerian Criminal Law*, 16.

As the primary substantive criminal law statutes in Nigeria, the Criminal and Penal Code Acts criminalize a wide variety of conducts, which includes a long list of acts and omissions constituting offences or crimes under Nigerian law. These ordinarily, accord with the history of criminal law in Common Law jurisdictions because of Nigeria's British colonial past. While the Criminal Code traces its origin to England, the Penal Code owes its origin to India.[63] In spite of this position, there are different classifications of crimes or offences ranging from simple offences, misdemeanours and felony on one hand, to indictable and non-indictable offences on the other hand.[64] The substantive law of crimes or offences deals with the definition and punishment sections but not the procedure for charging and convicting the alleged criminal. Just like other modern legal systems, the Nigerian Criminal Law System is subordinated to the Constitution as the supreme law of the land and subject to the adjudicatory jurisdiction of the Courts or Judiciary. Albeit, anti-terrorism legislation derives its impetus from the criminal law, it is rather clear nevertheless, that it goes beyond the confines of the criminal law as a result of its extra-legal components and ramifications. Judging by specific terrorist activities or acts occurring in Nigeria and elsewhere, there is no gainsaying the fact, that acts of terrorism are crimes *simpliciter* particularly from the angle of the nature of the harm done to the victim and the nature of the act perpetrated by the assailant.

However, while the criminal law is legally speaking limited to deal only with the legal aspects of the crimes committed, for instance where death or grievous bodily harm is caused, criminal law is utterly powerless in dealing with the extra legal aspects of terrorism and other extra-legal 'baggage' of the crime such as using it to achieving political ends or creating general fear and panic in the population. In addition, the Criminal and Penal Codes does not criminalize the acts and omissions that constitute hate and dangerous speech, cybercrime, money laundering and lots of other related offences. Alubo, is of the view and so does this work, that although murder, hijacking, arson, *et cetera*, constitute crimes under the Criminal Code, Penal Code applicable in the Southern and Northern Nigeria respectively, conviction for such crimes would not be for terrorism.[65] However, these extra-legal aspects of these crimes or offences are criminalized in other pieces of legislations created solely for combating terrorism and which shall be considered.

The system of laws as a whole, needs to engage all stakeholders, so that we have a 'complete' idea or process, rather than being an imposition which eventually contained a number of shortcomings, which led to its massive criticism. For instance, it granted sweeping powers to law enforcement agencies in very many sensitive issues, which in turn infringed upon areas, which are established judicial responsibilities, leading to clear usurpation of the judicial functions of Government vested in the Judiciary under Section 6 of the 1999 Constitution of Nigeria as Amended. Perhaps, the lesson that is yet to be imbibed, is that no matter how well drafted a piece of legislation, even when done with all the best intentions in the world, where a proper implementation architecture is lacking to assist in effectively and efficiently driving its enforcement, it will still amount to a glorious waste of time. Let us briefly examine the *Terrorism Prevention Act* (TPA) as a case study.

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[63] Ocheme, *The Nigerian Criminal Law*, 17.

[64] Abubakar Sadiq Ogwuche, (ed). *Compendium of Laws Under the Nigerian Legal System*. 2nd ed. Lagos: Tama production, 2008: 316.

[65] Alphonsus Okoh Alubo, "The Prevention of Terrorism Under International Criminal Law: Imperative and Challenges", *Contemporary Issues in International Law- Essays in Honour of Francis Fedode E. Tabai, JSC*, M.O.U. Gasiokwu (ed). Enugu: Chenglo, 2006, 227.

The Courts of Primary Jurisdiction, include Judicial Estates or JUDEX[66] such as the Customary Courts, Magistrate Courts, State High Courts, Federal High Courts Special Election Tribunals, Other Special Courts/ Tribunals, Appeal Courts and the Supreme Court which are created under the Constitution of the Federal Republic of Nigeria. An example would suffice here; the Federal High Court is created by the Federal High Court Act, as a court of limited jurisdiction with similar powers to a State High Court, vested with the sole jurisdiction to try offences and impose penalties under the TPA Act[67]. The Federal High Court plays a dominant role in terrorism litigation and sundry criminal cases in Nigeria; hence reliance on it. The court has original jurisdiction to try Civil and Criminal Matters arising from the operation Companies and Allied Matters Act.'86. The Federal High Court is the court with appropriate jurisdiction.[68] What are some challenges facing the Courts generally?

Considering the present congested nature of the Federal High Court and in fact almost all other courts, the number of years it takes to get judgment under the present Nigeria judicial system, one would have expected that provisions would have been made, enabling the creation of special courts especially for trial of terrorists and terrorism related matters. There is a need to minimize the possibility of a usurpation of the judicial powers of a judge, where for instance, the properties of a suspect could be searched and sealed up, without the necessity of applying for a warrant to that effect. Perhaps, what seems to be more worrisome is the possibility of an abuse where the input of the Judiciary acting as a valve to check excesses is clearly dispensed with under *section 25* of the TPA Act.

Judicial enforcement by the Judiciary (such as the Federal High Court) is making sure that a rule, or standard, or court order, or policy is properly followed by the judiciary. Unfortunately, the Nigerian courts are unwilling to follow any rule that places strict liability. In Nigeria, most of these criminals and terrorists do not receive adequate punishment for laws that make it clear that any person who engages in any of the prohibited activities (without lawful authority) shall be guilty of a crime and the offender shall on conviction be sentenced to varying ranges of imprisonment. This is a very potent enforcement strategy.

Furthermore, the National Assembly derived its powers under *Section 4(2)* of the 1999 Constitution (as amended), which empowers the National Assembly to make laws for the peace, order and good government of Nigeria.[69] One remarkable feature of the TPA 2011, 2013, 2022, is the perennial problem of the usurpation of the judicial powers vested in the Courts by virtue of *section 6* of The Constitution of Nigeria, 1999 as Amended and the resulting violation of the rule of law.[70] Such lack of judicial oversight, prosecutorial imbalances, gaps and overlaps when seen holistically and also specifically, give room for abuses, negligence and other shortcomings in combatting criminality and

[66] Hon. Justice Taslim Olawale Elias, "Foreword", *Thoughts on Law and Jurisprudence*. Lagos: MIJ Professional Publishers, 1990: ix-x.
[67] *Section 32* of the Terrorism Prevention (Amendment) Act 2013
[68] *Section 32(1*) of the Terrorism Prevention Act, 2011
[69] *Section 4* of the Constitution of Nigeria, 1999 As Amended provides generally for the Legislative Powers of the Federal Republic of Nigeria; *Section 11* of the Constitution of Nigeria, 1999 As Amended makes provision for Public Order and Public Security of Nigeria.
[70] This is clearly believed in academic circles to be capable of breeding tyranny.

terrorism in Nigeria.[71] So under the provisions of *section 28(1)* of the TPA Act, a person is arrested in connection with an offence under the Act, he may be detained for a period of up to 24 hours with access only to a medical doctor and legal Counsel of the detaining agency. This provision is however, incompatible with the provision of *section 36(6)(d)* of the 1999 Constitutional of Nigeria, which guarantees access to Counsel and fair hearing. However, in Nigeria the problem of judicial adaptation of such international court decisions which directly has bearings on Nigeria, still surfaces. So it means that we should admonish the Judicial Officers that, "the stability and quality of a democratic constitution is often determined by the degree of importance a society attaches to the judiciary and the powers it gives to it.[72] This can be measured in several ways. The first is whether the judiciary is independent, that is, if it is not beholden to any special interest or to either of the other two arms of government (executive and legislature). As Davies points out:

> The independence of the judiciary is desirable in any organised society that cherishes the idea of the rule of law and human freedom and, in order to ensure this, the appointment, promotion and dismissal of judges are usually placed in the hands of a neutral body such as a national judicial commission whose members are paid through a special fund.[73]

The competence and integrity of the Bench is the second criterion. Judges must be competent, learned and of high integrity in order to command universal respect and approval.

> . . . A lawyer should practice justice with dignity, not only by being clear and unafraid, but also by the adoption of methods that make for the dispensation of justice.[74] (Hon. Justice T.O. Elias, The Hague June 8, 1990)
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> A judge should be a person of great knowledge, of unimpeachable character and of moral fibre . . . It is the duty of every Judex, after his appointment, consciously to stand clear of all odium…And therein lies his test. For a Judex is also a man.[75] (Hon Justice Kayode Esho, 1974, 1990).

A third factor is the availability of adequate facilities and personnel, that is, whether there are sufficient judges and courts to meet the needs and demands of the public. All indications since independence reveal that Nigeria's judiciary is struggling to define itself by of these factors. While a detailed analysis of the character and operations of the

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[71] Amnesty International has further argued that brutal crackdowns resulting in human rights abuses such as tortures and unlawful arrests perpetrated by the Nigerian Security forces could constitute crimes against humanity and war crimes. See Amnesty International (2015), "Stars on the shoulders, blood on their hands: War Crimes committed by the Nigerian Military. https://www.amnesty.org.uk/files/webfm/Documents/issues/afr4416572015english.pdf. (Accessed -16-4-2019).

[72] Mbanefo Louis, "The Role of the Judiciary in Nigeria Now and in the Future", Public lecture delivered in Lagos, 29 September 1975, 45

[73] Davies Arthur E. 1990. "The Independence of the Judiciary in Nigeria: Problems and Prospects", *African Study Monograph*, 10(3), February 1975, 56

[74] Elias, "Foreword," ix-x.

[75] Hon Justice Kayode Esho, "The Judex and the Various Estates", *Thoughts on Law And Jurisprudence*, Lagos: MIJ Professional Publishers. 1990, 139-141; Hon Justice Kayode Esho, "The Judex and the Various Estates", *Magistrates Conference Western State of Nigeria*, 10th April, 1974.

judiciary since 1999 is that the Nigerian bench before that time was beset by a number of challenges.[76] One of the key challenges was the lack of political and especially financial independence arising from the judiciary being tied to the apron strings of the executive arm.

Transparency and independence of the judiciary are far from reality in Nigeria. Is the Judiciary really the last hope for or of the common man? Is the Nigerian judiciary the last hope for or of our national leaders? Is transparency deemphasized when the interest of the leaders are at stake? This is why those who constitute the Nigerian leadership in Nigeria democracy are mostly people that accessed their ways to power through some odd pathways and are we surprised that things continue to worsen in the country? The point being mooted here is that if Nigeria want other people to take her seriously, then we must establish a society based on the rule of law as a basis for true democracy. What is the role of the Judiciary as a possible check to the excesses of the government high-handedness and the citizens' jungle justice or self-help inclinations?

The Role of the Judiciary In Sustaining Justice through the Constitution, Constitutional Law and Constitutionalism for National Development: Myth or Reality?

Justice, seen jurisprudentially, is a contested idea. Yet, it can be suitably defined according to certain principles of desert, equitable and humane distribution of benefits and burdens, respect for human rights as well as fair opportunities. Strategies of establishing justice in a society include, efforts to promote dialogue and bargaining, reconciliation of opposing views and desires, working out free, fair, beneficial and equitable means of sharing resources, burdens and benefits. The quest for justice is all about seeking for more imaginative ways of fostering positive human values, social reconciliation and establishing a just and harmonious society. The pursuit of justice requires sustaining core values such as, the belief in equality and fairness, belief in consultation and dialogue, the importance of accommodation and tolerance, support for diversity and commitment to freedom, peace and non-violent change. For example, a social contract model of justice assumed that there would be justice when people acting as rational agents accepted basic practices of society that would assure their mutual advantage in the long run.

An impartiality theory of justice is the call for some basis for respectful, fair and equal treatment of all.[77] The idea of justice, for J. S. Mill, arises from the fact of living in society. Justice renders it indispensable that each should be bound to observe a certain line of conduct towards the rest. This conduct consists in, first, not injuring the interests of one another and secondly, that each person bears his share (to be fixed on some equitable principle) of some labours and sacrifices incurred for defending the society or its members from injury. For Mill, justice demands that people observe certain general rules that define what to do and expect. Justice is thus the conformity to law. It implies something, which it is not only right to do, and wrong not to do but which some individuals can claim from us as his moral right. Mill concludes by saying that justice is grounded on utility.[78] This principle of utility is the foundation of morals or the ultimate

[76] Omotola, Jeremiah Shola. "Democracy and Constitutionalism in Nigeria Under the Fourth Republic, 1999-2007", *Africana: A Journal of Ideas on Africa and the African Diaspora*, 2(2), 2007.

[77] Kai Nielsen, "Conceptions of Justice", *Encyclopedia of Government and Politics Volume 1*, Mary Hawkesworth (ed). London: Routledge, 1996, 86-87.

[78]John Stuart Mill, "John Stuart Mill", *The Great Legal Philosophers*, Clarence Thomas (ed). Philadelphia: university of Pennsylvania press, 1991, 367, 467-476.

principle, which decides cases in which we have opposing yet valid sides of justice. "Utility or the greatest happiness principle holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to promote the reverse of happiness."[79]

For Rawls, the identity and conflict of interest that illustrate life in any society marked by social co-operation, collaboration and distribution, necessitate the existence of a set of principles. He says that these principles are to guide our choice among the various social arrangements, which determine the division of advantages and for underwriting an agreement on the proper distributive shares.[80] Rawls insists that a society is well ordered only when it is designed to advance the good of its members and also effectively regulate its operation by a public conception of justice. Rawls' idea of justice as fairness emphasises on the procedures by which rights and duties can be determined and allocated in ways that ensure fair distribution of advantages and benefits.[81] When appraising the Nigerian situation there is clearly a lack of political, moral and financial independence of the Judiciary as an arm of government, which often denies justice to the aggrieved and occludes established means for seeking legal redress judicially and constitutionally. The prolonged delays in the judicial activities of election tribunals are sufficiently revealing of the delay of justice and absence of access to the rule of law which reflects the character of Nigeria's purported democracy at this moment. Nigeria ought to urgently reform and further strengthen its constitution as a foundational document or charter that defines and limits the authority and power of government. The aim of the constitution is to assure the separation of powers and ensure that political authority is restrained by a system of checks and balances.

A constitutional government can be distinguished from a dictatorship or monarchy because it is a political system that codifies its laws and practices in a document or charter that defines and limits the authority and power of government. So, it reduces the fear and possibility of arbitrary and absolute power being concentrated in the hands of any one person or group.[41] Thus, the constitution stresses the importance of rights, individual freedom and devolution of authority. The need for a constitution arises because there should be a generally accepted way of harmonizing diverse interests of competing groups in a society. The constitution seeks to define what is right or proper by creating a system of laws to ensure the obedience of the citizens to the principles of the commonwealth.

A constitution in itself, no matter how well written, cannot by itself establish a humane democratic order. There is a nexus between the constitution, good government or leadership, and the society. Most societies in Africa are faced with the challenge of internally creating sustainable environment for constitutionalism.[42] They contend with the problems of establishing appropriate values and institutions in order to mitigate mutual mistrust, conflict and instability.[43] Specifically, the problem with Nigeria needs to be understood clearly. There is constitution in existence even though we may say that it is not perfect because some rights of the citizens are not backed up by this constitutional law or the rule of law. Put simply, these claims are not justiciable. Why is this the case?

[79] John Stuart Mill, *Utilitarianism, On Liberty, Essay on Bentham*, Mary Warnock (ed). Great Britain: William Collins, 1962: 257; John Stuart Mill, "John Stuart Mill" 367, 467-476.
[80] John Rawls, *A Theory of Justice*. Oxford: Clarendon, 1971; John Rawls, *A Theory of Justice*. Oxford: Clarendon, 1972, 178-179
[81] Robert Solomon and Jenifer Greene, *Morality and the Good Life*. New York: McGraw-Hill College, 1999, 426&435.

Also, another problem is that the constitution does not effectively allow for the Separation of Powers especially for appointment into some sensitive positions of authority e.g. nomination for the Office of the Minister of Justice, Inspector General of Police are prerogative of the Executive especially the President. It would have been better for the National Assembly to have input from nomination to appointment so that these officials can function in the national interest rather than in a parochial ethnic or religious interest.

So continually we face problems in creating constitutional societies where the observance of law and justice will underwrite human and social development. One main problem with Nigeria's constitution is that some important economic rights of the citizens are not "justiciable" meaning that they are not backed up by constitutional law or the rule of law. Also, the constitution appears to grant so many "soft landings" and immunities from prosecution by the law, thus creating gaps in the social and legal system exploited by actual and potential law breakers. Specifically, in Nigeria constitutionalism is threatened by politics, ethnicity, religion, corruption, abusive power and insecurity among other dangers. Thus, the constitution in its present form seems unfair to some social members such that security, peace, freedom and justice are no longer assured. There is urgent need for constitutional reforms and judicial reviews. It means that the government needs to rethink Nigeria's elite political economy. And the country's legal system needs to go after the ethnic, political and religious elites that sponsor criminality, violence and terrorism in Nigeria.

Conclusion

One may ask the question: What are the conditions that should exist for the judges and the judicial process to be up to speed; become fit for purpose, in the face of prosecutorial challenges in the contemporary Nigerian society or socio-legal system? We can revisit the idea of the legislature; law enactment (National Assembly or House of Assembly), law adjudication and interpretation (The Court system), law enforcement (the Police and other security agencies, non-state actors, Public prosecutors), law implementation (Executive arm of government and its proxies) and obedience or compliance to the rule of law (government, its agencies and citizens) as a holistic system of prosecution. Prosecution is the task and commitment of all stakeholders. The judges and other judicial workers need to imbibe innovative ways of enhancing their adjudicatory powers of checks and balances. This can be done by using modern technology (online, biometrics, forensics, CCTV, ICT, GPS), strong incentives and reward system (very good remunerations and welfare during and after public service) as well as an institutionalization of investigative or forensic approach to law and legal reasoning (less delays, reduced vulnerability in the criminal justice system and an enhanced effectiveness of evidence based prosecutorial and magisterial acumen) for their activities. There is also a need for the following legal reforms and constitutional reforms: a continuous learning and educational development of the stakeholders, financial autonomy of the judiciary so as to maintain the separation of powers and also promote the administrative autonomy of the judiciary so as to prevent unhealthy political and societal influences on the judicial system in the discharge of its socio-legal mandate.

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