

# Handbook of Research on Sustainable Development and Governance Strategies for Economic Growth in Africa

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## Chapter 15

# Rule of Law, Governance, and Sustainable Development: The Nigerian Perspective

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### **ABSTRACT**

*The chapter is predicated on the premise that strong adherence and commitment to the rule of law and good governance is essential for sustainable development. Using a holistic approach, the study established that Nigerian leaders have consistently disregarded the principles of rule of law and good governance, violating the ideal democratic values and institutions which undermine the country's sustainable development. Over long years of military rule, governance has been badly and negatively impacted because observance of rule of law and democratic tenets are not in consonance with military ethics and rule. Civilian regimes have not fared better. The process leading to non-sustainable development and underdevelopment are mostly accompanied by the subversion of due process, the manipulation of existing laws and regulations to suit parochial interests. The chapter concluded that for sustainable development to take effect, there is need for re-orientation of political leaders towards adherence to the principle of rule of law and good governance as the foundation for sustainable development in Nigeria.*

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## **INTRODUCTION**

Intellectual discourse and research particularly in respect to rule of law, governance and sustainable development has attracted the interest of the scholars in recent times owing largely to the interlocking relationship among these concepts (as it affects the development of the democratic experience in Nigeria) as it affects the developmental process in Nigeria democratic experience. It is therefore pertinent to state from the beginning that this chapter will adopt a holistic approach in discussing the Rule of Law, Governance and Sustainable Development, with particular focus on Nigeria. In the few decades, rule of law, good governance and sustainable development has been a recurring decimal in the discourse at the international level, and particularly about African States. These concepts are imperative to the development of any human society. There is a nexus between these three concepts as they are indices by which any nation will be measured in terms of development. Rule of law and good governance are essential preconditions to achieving sustainable development in any society. It is widely recognized that good governance is essential to sustainable development, a well-functioning legal institutions and governments bound by the rule of law are in turn vital to good governance. A weak legal and judicial system where laws are not enforced and where corruption is the norm undermine respect for the rule of law engender environmental degradation and undermine progress towards sustainable development. (Tahmineh Rahmani, 2013). They are prerequisite to peace and stability, without which democratic societies can hardly function properly. In other words, they are catalysts for achieving sustainable development in a society.

Law has been widely agreed to be the best method of social control. Rule of law as a concept cuts across boundaries, borders, societies, cultures and history. The rule of law is an enabling factor and an element of the process that affects a wide range of development outcomes. It is an enabler of sustainable development that can only be sustained and given effect to by good governance. The United Nations, defined rule of law as a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated and which are consistent with international human rights norms and standards. (Report of the Secretary-General, 2004). Thus, a violation of laws by persons, institutions, public and private entities and even the State undermines sustainable development. The enabling mechanisms of the rule of law includes, a fair legislative framework, accessible grievance and dispute resolution processes, effective enforcement mechanisms and accountability of the people in governance.

Consequent upon the foregoing, it is necessary to note that Nigeria is one of the most populous nations in Africa, particularly in West Africa. Governance is one of the major problems in Africa, and by extension Nigeria. With respect to governance, Nigeria has had a prolonged adventure of the military in governance which has affected in a way, the observance of basic democratic tenets because the constitution and the rule of law practically suspended in a military regime. The relationship between democracy and good governance is a global acclamation borne out of the belief that democracy is founded on the principle of the rule of law and constitutionalism capable of ushering in good governance and societal development. The consequential effect of this is total lack of development, let alone sustainable development. It is only when we attained the development level that one can talk of sustainability.

Against this backdrop, this chapter analyzes the concept of governance which rest basically on three dimensions: authority, decision-making and accountability. In other words, governance determines who has power, who makes decisions, how other players make their voice heard and how accountability is rendered. Good governance is generally characterized by accessibility, accountability, predictability, transparency and the rule of law. Good governance starts from the recognition that a nation, institution

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or organization is operated for the benefits of others, with the obligation of accountability. The commitment to transparency and accountability as an attribute of good governance promotes the rule of law over corruption; this opens the flood gate to many benefits of sustainable development in the society. It is a pointer that everyone is bound by the rule of law, including the government. These attributes of good governance are ultimately reflected in the extent to which the security and prosperity of individuals is being well-served by their governments. Thus, a discussion of the application of good governance which serves to realize societal goals will be done.

To this end, a thorough examination of sustainable development that constantly seeks to achieve social and economic progress in ways that do not disregard the future will be carried out. It is the development that meets the needs of the present without compromising the ability of the future generations to meet their own needs. It also underlines the importance of protecting the natural resource base and the environment. Thus, economic and social well-being cannot be improved with measures that destroy the environment. Development has to take into account its impact on opportunities for future generations. Many facets of the rule of law forms the essential components of sustainable development because it provides the framework which enables the equitable realizations of basic rights and fair access to benefits accruing from resources available to the country and its society. All these variables and its import will be assessed in the body of our write up.

The chapter seeks to look at the concepts of the rule of law, good governance and sustainable development and the relationship between this concept as well as the need for the promotion of these concepts in any human society. The chapter further discuss the culture of the rule of law in Nigeria, highlighting the effectiveness of the rule of law since the inception of the Fourth Republic in 1999. The chapter also appraise the fairness of the legal framework, access to justice, electoral processes, the independency of the judicial system and the entire criminal justice system and their impact on the quality of governance and sustainable development as the end result. Furthermore, the role of the government, its political commitment and will in the entrenchment of the rule of law in Nigeria will be discussed. The chapter in conclusion will discuss factors affecting the entrenchment of the rule of law in Nigeria and its overall impact on good governance and sustainable development *as a platform to knowing and appreciating the challenges and successes of other African countries.*

## **RULE OF LAW, GOOD GOVERNANCE, SUSTAINABLE DEVELOPMENT AND INTERNATIONAL HUMAN RIGHTS LAW**

All human beings have the right to be treated with dignity and respect which are afforded to people through the enjoyment of all human rights and are protected by the rule of law. All human beings have the right to be treated with dignity and respect. Such dignity and respect are afforded to people through the enjoyment of all human rights and are protected through the rule of law. The principle that the enjoyment of all human rights is *both the means and the goal* of development is a long-standing one. Human rights are not just an abstract ideal. They imply concrete rights of the individual and concrete obligations of the state. They must be protected by all states and respected by all individuals and legal entities.

Human rights are an evolving body of international law beginning with the Universal Declaration of Human Rights (UDHR) and the treaties and declarations that derived from it. These agreements require governments to ensure that the conditions necessary for all people to fully enjoy their rights are met. The UDHR states in Article 1 that all human beings are born free and equal in dignity and rights. It further

states in Article 3 that everyone has the right to life, liberty and security of person and in Article 5 that no one shall be subjected to torture or to cruel, inhuman or degrading treatment.

There is the universal acceptance of human rights in principle on domestic and international plane. (Agarwal, 2010). The principles of human rights in international law and practice and in the policies of states have been the bedrock of public policy around the world. It has very recently become the legal duty of International Law to respect, protect and promote human rights. Globally there has been a drastic change in the level of commitments to human rights.

The UDHR has become a standard by which the dignity and worth of the human person can be measured. It has come to be regarded as possibly the single most important document created in the twentieth century and as the accepted world standard for human rights and is seen as an essential foundation for building a world in which all human beings can, in the centuries to come, look forward to living in dignity and peace (Peter Bailey, 2013). The UDHR is a powerful instrument for the achievement of human dignity and peace for all.

On the national level too, states have taken measures to protect the rights of the individuals by incorporating the provisions relating to it in their constitutions. For example in Nigeria, Fundamental Human Rights are entrenched in our ground norm, Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria states among other things that Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria and also that every individual is entitled to respect for the dignity of his person, and accordingly, no person shall be subjected to torture, or to inhuman or degrading punishment or other treatment and no person shall be held in slavery or servitude (Section 33 and 34 of the 1999 Constitution of the Federal Republic of Nigeria). Human rights is not an abstract idea, they imply concrete rights of the individual and concrete obligations of the state and must be protected by all states and respected by all individuals and legal entities. In other words, the concepts of human rights and the rule of law are two sides of the same principle, the freedom to live in dignity. There is no rule of law within societies if human rights are not protected and vice versa; human rights cannot be protected in societies without a strong rule of law. The rule of law is the implementation mechanism for human rights, turning them from a principle into a reality (UN, 2015).

The rule of law and human rights therefore have an indivisible and intrinsic relationship that has been fully recognized since the adoption of the Universal Declaration of Human Rights, in which it is stated that it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law (UN, 2015). As a matter of fact, rule of law reduces the violation of human rights in a society where it is strictly upheld (Randall, 2005). It has been said that rule of law and judicial independence were instrumental in securing both economic and physical integrity rights (Apodaca, 2004). Thus, rule of law helps to protect human rights.

On the other hand, there is no doubt that nurturing good governance is essential to ensuring respect for human rights and attempt to govern without the rule of law will result in social disorder because without the rule of law the essential components of good governance will not be realizable thereby, making the promise of human rights unfulfilled. It is now being realized that the protection of human rights at the domestic level is possible only when good governance prevails. Since good governance can help in the realization of human rights, demand has been made to declare right to good governance as the most basic human right (Ishan Krishna Saikia, 2013). Good governance is a prerequisite to ensuring the fulfillment of human rights. In other words, human rights cannot be respected and protected in a

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sustainable manner without good governance. Good governance in itself ensures adherence to the rule of law which in turn safeguard human rights.

Therefore, human rights, good governance and rule of law are mutually reinforcing. The concept of good governance in International Human Rights can be linked to Articles 21 and 28 of the UDHR which both recognizes the importance of a participatory government and that everyone is entitled to a social and international order in which the rights and freedoms set out in the UDHR can be fully realized. The International Covenant on Civil and Political Rights (ICCPR) in Articles 2 requires state parties to respect and ensure the rights in the covenant and to take necessary steps to give effect to those rights (Articles 1-3,5&6,8&9,13&14,16&17,22&23,25&40 of ICCPR). The International Covenant on Economic Social and Cultural Rights (ICESCR) also provides that states have the obligation to take steps to achieve the full realization of the rights in the covenant by all appropriate means (Articles 4 & 8, Preamble of ICESCR). All these provisions boil down to good governance. Thus, rule of law serves many masters.

### **Concept of Rule of Law**

In every society, law is very essential to maintain and enforce order. In defining rule of law, it is important to understand the meaning of law. Law can be conceived as the express formulation of enforceable rules by the appropriate law-making body in a society, for the purpose of balancing and safe-guarding individual and the collective interests. Thomas Davitt (1959) defines law as a directive judgment formed by the law-making authority. According to McLean and McMillan (2003), law means the body of rules enforced by any sovereign state. From the above understanding, it means law is an obligatory rule of action prescribed by the supreme power of a state. Rule of law on the other hand, means that every citizen shall not be exposed to the arbitrary desire of the ruler and that the exercise of the powers of government shall be conditioned by law. No one can be lawfully restrained or punished except for a definite breach of law established before the courts in ordinary legal manner (John, 1999). Theoretically, rule by law and rule of law differs. Rule by law stipules that humans are governed by whatever law is made by the supreme law-making body, whether such body is recognized or not. Rule of law, however, goes beyond this by recognizing the legality of law-making body as well as the propriety of the law in any society. Thus, we talk of the spirit of the law when discussing the rule of law, which implies the supremacy and predominance of law over all. Thus, the spirit of rule of law in good governance goes beyond rule by law because in the rule of law is embedded justice, fairness and societal values of equity.

A proper understanding of the term began with the ancient philosopher (Aristotle) who describes the term rule of law as preferable to that of any individual and goes on to note that having men govern without law, is like letting loose a wild animal; for men, being naturally appetitive, are ruled by emotions and passions, even in the rule by the best of men. For Aristotle, the law was nothing less than the rule of reason. As a socio-political necessity, the rule of law is something necessitated in the contract of the society and government in view of equality or inequality of men (Aristotle, 1964). The concept of the rule of law also stipulates that all are equal in the eyes of the law except certain officials like Presidents and Governors who may be acting in their official capacity. This is in tandem with the view of Okoli (2013) who opines that the idea of the rule of law is not new, but it is bound up with the liberty of the citizens, maintaining that all through the ages, philosophers have grappled with the problems of safeguarding the liberties of citizens so as to avoid tyranny or arbitrary exercise of government powers over citizens.

Moreover, this view had been popularly held as part of political philosophy by people like Brockton who was of the view that the king itself ought not to be subject to man, but to God and to the law,

because the law makes him king. The current idea of the rule of law owes much to the writings of A.V. Dicey (1885) who articulated and expounded the principles of the rule of law. According to him, the rule of law has three discernible facts which include the followings: long quotation must be indented.

1. There is the absolute supremacy of regular laws as opposed to the influence of arbitrary power. That means, a man may be tried and punished for a breach of the law, but he cannot be punished for anything else;
2. The rule of law clearly stipulates common equality before the law of the land administered by the ordinary law courts. That can be interpreted to mean that no man, irrespective of his social or official position, is above the law. Everyone is duty-bound to obey the same law; and
3. The rule of law holds that the legal rights of the subjects are secured not by guaranteed rights proclaimed in a formal code but by the operation of the ordinary remedies of private law available against those who unlawfully interfere with his liberty of action, whether they are private or official citizens.

In view of Dicey's analysis above, it can be deduced that state does not have its own right over and above the citizens and that laws are acceptable phenomenon guiding the principle and behavior of the rulers and the ruled. There is supremacy of the law over the whims and caprices either of the individual or the state. This rule further helps potential leaders to be instructed on the need to respect the law. The citizens in turn will take example from the leaders. But above all, it will enhance the sustenance of democratic ideal in the society. The hallmarks of respect for the rule of law include separation of powers of the executive, the legislature and the judiciary; regular, free and fair elections in which the electorates are asked to freely choose their rulers, an independent and impartial judiciary coupled with an independent, fearless and vibrant legal profession, free and independent media institutions; and equality of the people before the law. What has gone before denotes the principle of legality which underlies the concept of rule of law.

## **Concept of Governance and Good Governance**

Governance as a concept is anchored on three interrelated demonologies, which include; authority, decision-making and accountability. According to Adejumo (1995), governance implies the efficient management of state institutions and also that it has to do with steering society and the state towards the realization of collective goals. Edigin and Otoghile (2011) clearly identifies that the term good governance is a logical deduction from the term governance. They aver that since governance is carried out in the interest of the generality of the people, then good governance implies putting the people first in governance carried out in accordance with legal and ethical principles. Taken in this sense therefore, it is not out of place to say that good governance refers to a system of government based on good leadership, respect for the rule of law and due process, the accountability of the political class to the electorate and transparency in government (Mukoro, 2009). Governance processes refer to the quality of participation necessary "to ensure that political, social and economic priorities are based on a broad consensus in society and that the voices of the excluded, poorest and most vulnerable are heard in decision-making (UNDP, 2005). The World Bank (2003) defines governance as "the manner in which power is exercised in the management of a country's economic and social resources for development". World Bank further elaborates the concept of governance using three dimensions. These includes: "the nature of political

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regimes; the exercise of authority in the management of social and economic resources and, the capacity of government to design and implement policy to discharge its functions” (Eyinla, 1998 cited in Afolabi 2016).

Also, a renowned scholar, Kaufmann (2006), and his colleagues conceive of governance as consisting of the traditions and institutions by which authority in a country is exercised. This includes: the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies, and the respect of citizens and the State for the institutions that govern economic and social interaction among them (Kaufmann et al, 2006). After a study covering over 213 countries over past decades, Kaufmann et al identified six aggregate governance indicators. These include: quoted paragraph should be indented...

1. Voice and accountability: the extent to which a country’s citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and free media.
2. Political stability/absence of violence: perceptions of the likelihood that the government will be destabilized or overthrown by unconstitutional or violent means, including political violence and terrorism.
3. Government effectiveness: the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government’s commitment to such policies.
4. Regulatory quality: the ability of the government to formulate and implement sound policies and regulations that permits and promotes private sector development.
5. Rule of law: the extent to which agents have confidence in and abide by the rules of society, and in particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence.
6. Control of corruption: the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as „capture“ of the state by elites and private interests (Kaufmann et al, 2006: 4).

Furthermore, governance have been specifically identified and concretely elucidated by (Olowu and Erero, 1997, cited in Afolabi, 2016) as relating to the “rule-ruler-ruled relationship”. These scholars, according to Afolabi, have identified the three dimensions of governance in the context of “rule-ruler-ruled relationship” as inclusive of “functionalism, “structuralism” and “normativism”. According to them, functionally, governance deals with “rule making, legitimization, and enforcement” while it structurally comprises of three institutions: “ruler or the state”, the “ruled or the society” and, the “rule of law”. In this regard, Afolabi, (2016) opines that these scholars viewed governance as the “relationship between state and society institutions”.

From the foregoing, it must place on record that the institution of government was developed in line with the social contract philosophy to among other things promote sustainable human development in ways that reduce disparities in security, income, well-being and opportunity between groups of citizens. It also ensures that people are sovereign, mandate to govern is a contract and the say of the majority upheld. In this context, therefore, good governance implies a situation where majority say is respected, where government strives in all its policies and actions to provide a better life for the majority, where social inequities are minimized, where all stakeholders respect the rule of law and where the conduct of government/organization business is transparent and accountability is institutionalized (Abubakar, 2008).



Good governance to this end is a difficult concept, as it is not always easy to define. It is amenable to different definitions depending on the perception of the person. [2013] sees good governance as an indeterminate term used in international development literature to describe how public institutions conduct public affairs and manage public resources. But because good governance is related to the modern state, which is a human creation, one can hazard pinpoint what constitutes good governance. Specifically, good governance involves: enthronement of a democratic government, which guarantees equal participation of all citizens in governance; provision, promotion and sustenance of the rule of law; provision and protection of the constitution; promotion and protection of the fundamental human rights of the citizens; provision and sustenance of the freedom of the press; availability of a transparent, accountable and participatory governance at all levels of government; regular, free and fair elections; as well as provision of basic amenities, such as, portable water, electricity, qualitative education, healthcare delivery, good roads, among others. To ascertain whether governance is 'good', actors look at the mechanisms that promote it, the processes used, and the outcomes achieved. Mechanisms of good governance can include transparent, democratic institutions as well as efficient and effective public services. How about the process and the outcomes?

## **Sustainable Development Defined**

Sustainable development in simple term is “the development that meets the needs of the present without compromising the ability of the future generations to meet their own needs (UN, Sustainable Development Goals, 2016). It also underlines the importance of protecting the natural resource base and the environment. Thus, economic and social well-being cannot be improved with measures that destroy the environment; all development has to take into account its impact on opportunities for future generations. Other human right components of development should also be respected, protected and fulfilled in an integrated manner.

Respect for and enforcement of human rights is a precondition for sustainable development. This implies that without acknowledging and acting to defend the rights of people, sustainable development is impossible. (An Initiative of the United Nations Association in Canada with the support of IDRC, 2013). Sustainable development revolves round the basic human rights and can be said to encompass all human rights in one single right i.e. right to sustainable development. Thus, action taken in the present to improve the human condition and environment which will also benefit future generations is sustainable development.

According to the United Nations, sustainable development goals are related to human rights in so many ways. (UN Human Rights, Office of the High Commissioner) UN states the following as some of the sustainable development goals (UN sustainable Development Goals, 2016):

1. That poverty should be eradicated and ensuring equal access of men and women to economic resources which simply emphasizes rights to an adequate standard of living, social security and equal rights of women in economic life (Articles 22, 25 of UDHR, Articles 9, 11 of ICESCR, Articles 26, 27 of Convention of the Rights of the Child (CRC), Article 28 of Convention on Rights of Persons with Disabilities (CRPD), Articles 11, 13-16 of International Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

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2. That there should be an end to hunger and malnutrition as well as improving agricultural production which emphasizes rights to adequate food and equitable distribution of world food supplies (Articles 25 & 28 of UDHR, Articles 2 & 11 of ICESCR, and Article 24 of CRC).
3. To ensure healthy lives and promote wellbeing of all at all ages which emphasizes rights to life, health, special protection for mothers and children (Articles 3, 25 UDHR, Articles 6 ICCPR, Articles 10, 12 of ICESCR, Article 12 of CEDAW, Article 6, 24 of CRC).
4. To ensure inclusive and equitable quality education and promote life-long learning opportunities for all emphasizing rights to education, equal rights of women and girls to education, and vocational training (Article 26 UDHR, Articles 6, 13 of ICESCR, Articles 23,28,29 of CRC, Article 24 of CRPD, Article 10 of CEDAW).
5. To achieve gender equality and empower all women and girls emphasizing rights to the elimination of violence and discrimination against women (Articles 1-6, 11,12, 16 of CEDAW, Articles 1-4 of DEVAW, Articles 2, 7, 11,13, 16, 24, of CRC, Articles 7, 10 of ICESCR).
6. To ensure availability and sustainable management of water and sanitation for all emphasizing rights to safe drinking water and sanitation, right to health and equal access to water and sanitation for rural women (Articles 11,12 of ICESCR, Article 14 of CEDAW, Article 25 of UDHR).
7. To ensure access to affordable, reliable and modern energy service emphasizing the rights to adequate standard of living and to enjoy the benefits of scientific progress and its application (Articles 25, 27 of UDHR, Articles 11,15 of ICESCR)
8. To promote sustained economic growth, full and productive employment and decent work for all emphasis rights to work and favourable conditions of work, prohibition of slavery, forced labour and trafficking of persons, equal rights of women in relation to employment, prohibition of child labour and equal labour rights of migrant workers (Articles 4, 23 of UDHR, Articles 6,7,10 of ICESCR, Articles.27 of CRPD, Article 8 of ICCPR, Articles 6,11 of CEDAW, Articles 32, 34-36 of CRC, Articles 25 of International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (CMW), International Labour Organisation (ILO)Convention Nos. 100, 111, 182).
9. To ensure affordable and equitable access to quality infrastructure, access to financial services and markets, and access to ICT emphasizing rights to enjoy the benefits of scientific progress and application, access to information, to adequate housing and equal rights of women to financial credit and rural infrastructure (Articles 19, 25, 27 of UDHR, Articles 11, 15 of ICESCR, Article 19 of ICCPR, Articles 13, 14 of CEDAW).
10. To take urgent action to combat climate change and its impacts emphasizing rights to health, adequate food and safe drinking water, right of all peoples to freely dispose of their natural wealth and resources (Article 25 of UDHR, Articles 1, 11, 12 of ICESCR, Articles 24 of CRC, Articles 12 of CEDAW, Articles 28 of CMW, Article 1 of ICCPR).

In other words, sustainable development cannot be achieved without human rights because it is a right in itself.

## **RULE OF LAW, GOOD GOVERNANCE, AND SUSTAINABLE DEVELOPMENT: THE NEXUS**

It is widely recognized that well-functioning legal institutions and governments bound by the rule of law are, in turn, vital to good governance. The rule of law is a principle of governance and is critical for sustainable development. It has been shown that countries adhering to the rule of law have higher levels of growth and investment through the protection of property rights. (UNDP, 2013). In addition, it can promote equity, gender equality, and inclusion through, for example, the protection of legal identity and more equitable access to resources for both women and men. Effective rule of law frameworks, together with implementation, help prevent and mitigate violent crime, resolve grievances, and protect citizens; all key elements to contain violent conflict. It can also promote more sustainable and equitable management of natural resources through, for example, protecting the rights of indigenous peoples to land and other communal resources.

From the foregoing, these three concepts, namely, the rule of law, governance and sustainable development are so interrelated that one is tempted to liken their relationship to that of Siamese twins. Their relationship is so intricately linked that, sometimes, one wonders where one stops and the other begins. Rule of law, governance, and sustainable development are the key elements that are imperative for the existence of what Plato, in his Republic, described as an “ideal state”. Though, Plato later admitted in the Statesman the difficulty of having an ideal or a perfect state. It is generally believed today that every state, no matter how crude, primitive or authoritarian, is saddled with the problems of the rule of law, good governance and sustainable development. Better governance is a prerequisite for, and probably also a product of, steps towards sustainability. Much is expected from ‘good governance’. According to the European Commission (2001), good governance consists of openness and participation, accountability, effective coherence, efficiency (proportionality) and greater sensitivity to the immediate context that is promised by subsidiarity. For sustainability, other requirements include means of internalizing external costs and ensuring integration of policy considerations, evaluation of options and dealing with trade-offs. Thus, good governance is predicated in a society where leadership and followership adhere to due process, rule of law and act responsible and responsive to set objectives (either at societal governance or corporate governance). According to John Locke (1632-1704), the social contract stipulates that when the State negate from its social responsibility (i.e. protection of life and properties, ensuring people well-being and justice) or the King becomes a tyrant and acts against the interests of the people, then people have the right, if not an outright obligation, to resist the authority.

## **CULTURE, EXPERIENCE AND (IN) EFFECTIVENESS OF THE RULE OF LAW IN THE NIGERIA FOURTH REPUBLIC**

Relying on the general principle of the rule of law, it behooves on every constituted authority to respect its application and behave in conformity with the general court orders and injunctions. For this reason, in the concept of the rule of law, the courts are expected to play some vital role in applying the law without respect for persons. Accordingly, judges are expected to be courageous, impartial, independent, just and be respecters of no persons no matter how highly exalted their positions in the society may be (Omoregbe, 2007). The major issue here is that without an independent judiciary with incorruptible judges the rule of law cannot be sustained.

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However, since the inception of Nigerian Fourth Republic and the return to civil rule from long term military interregnum, experience have shown that in principle, Nigerian government subscribes to the application of known laws without intervention in their application. But in practice, there was a blatant and flagrant disregard to the application of the rule of law as this is manifested in inability of Nigerian leaders to obey set down rules and operate within the norms of a given establishment. In this case, obedience to court orders is a paramount measuring index of compliance with the rules of law in any society. This culture of arbitrariness negates the general principle of the rule of law as alluded above, it is necessary to note that the rule of law can be seen as the expression of the will of those who govern with or without the consent of the democratically constituted electorate (John, 2009:59). However, it is doubtful whether democracy can be obtained without the consent of the *demos*. For anything short of the consent of the masses, what would be operational will be mere authoritarianism. Thus, the rule of law implies that it is a democratic principle.

The culture of individual supremacy above the established law is attributed to military regime, because military intervention in itself is naturally an aberration to the rule of law, because of its outright rejection of the rule of law. Unfortunately, evidence of total disregard to the principle of rule of law still persists during civilian regimes. In fact, civilian administrators seem to surpass the military in their open disrespect to the rule of law. To this end, Obasanjo's administration in Nigeria was the worst when it comes to compliance with the rule of law. Obasanjo's regime can also be described as an embodiment of executive lawlessness in Nigeria. Obasanjo went to an extent of disrespecting the principle of true federalism and often involves in intergovernmental rivalries rather than cooperation. For instance, the feuds between the Lagos State Government and the Federal Government over the failure to remit funds allocation meant for Local Government Councils in Lagos are a typical example of executive lawlessness in Nigeria. According to Mbaba (2005), despite the judgement of the Supreme Court on the matter, the defaulting party, and in this case, Federal Government was still defiant, looking for reasons to justify its position including going back to court, as if to seek permission to continue in the disobedience. In many cases, a Nigerian ruler in brazen show of dictatorship, tries to use the vehicle of the law to advance his purpose and so enacts laws to silent everybody from criticizing him, or opposing his oppressive policies. Such laws even oust the jurisdiction of courts so that nobody, not even the court can question the ruler. Examples are many in Nigeria. Check for instance section 3 (3) of the Public Officers (Special Provisions) Act, Cap 381, Laws of the Federation of Nigeria, 1990.

In the same vein, there persist during Obasanjo's administration, illegal arrest, detentions, trials, banning of trade unions and popular organizations, harassment of civil rights campaigners; illegal proscriptions of media houses, extra-judicial killings as in Gbaramatu (in Delta State), Odi (in Bayelsa State), Zarki-Biam (in Benue State), secret trials like that of Henry Okah and other hostile acts against the citizenry perpetrated by Nigerian leaders have become a daily occurrence in every state of the Federation. It is on record that open disrespect to court rulings and other constitutional provisions made the Nigerian Bar Association in March 2006 to embark on a two-day nation-wide industrial action in order to protest any continuous executive lawlessness championed by President Obasanjo (Onyekwere, 2006).

It must be noted that this article is not interested in character assassination, but reporting the real situation. More so, evidence of how Obasanjo rule arbitrarily which negates the principles of rule of law can also be seen in the forceful and unconstitutional removal of state governors such as Ngige in Anambra State, Rasheed Lagoja in Oyo state and the unilateral declaration of martial law in Plateau State respectively (Ariye, Ogbomah, Ebipre and Eric, 2012).

Considering these unacceptable attitudes from the foregoing, the effectiveness of rule of law in Nigeria is a vague and by implication, it deprives the citizens of their right of expression, liberty and freedom of association which are essentials ingredient of good governance and sustainable development.

## **THE ROLE OF POLITICAL ACTORS IN THE ENTRENCHMENT OR OTHERWISE OF THE RULE OF LAW IN NIGERIA: 1999-2017**

It must be placed on record from the foregoing discussion that the attitude of political actors goes a long way in ensuring the applicability of the rule of law. Political system cannot operate in a vacuum; it is the political leaders that determine the smooth running of the system. If the actors disposed favorably to the existing laws, then the rule of law is at work. Since the inception of the Nigeria Fourth republic and the return to civil rule in Nigeria, the attitude of Nigerian leaders towards constitutionalism is disturbing. It has been observed that there was a flagrant disregard to the existing laws owing to the fact most political leaders were been influenced by the long term military rule in Nigeria. To this end, there was a carry-over mentality from military to democratic dispensation. This is manifested during Obasanjo eight years of civilian rule where state governors and public officials were removed arbitrarily without regards to the existing laws.

On assumption of office on 29 May 2007, President Umaru Musa Yar'Adua expressed the view that upholding the rule of law was a corner stone of the manner in which his government will undertake the responsibility of governance. On 27 August 2007, speaking at that year's Nigerian Bar Association Annual Conference, he reiterated the view that a growing culture of disrespect of the rule of law appeared to be one of the greatest challenges that the Nigerian nation has to deal with. He suggested, again, the commitment of his government to establishing a culture of respect for the rule of law and constitutionality which would endure. However, the promise to uphold the rule of law was soon disregarded by flouting of court orders. The Yar'Adua administration blatantly refused to comply with an Abuja High court order of Monday, February 25, 2008 granting the lawyers and families of Henry Okah and Edward Atatah (members of the Movement for the Emancipation of the Niger Delta (MEND)) immediate access to them. (Sahara Reporters, 2008). It suffices to also say that the conduct of the April 21 2007 presidential election that brought Yar'Adua to power by the Independent National Electoral Commission and the resolution of the consequent dispute by the Presidential Election Petition Tribunal and the Supreme Court fell short of the universal values that underpin the rule of law as the basis of a free society (Mba, 2009).

Goodluck Jonathan declared his belief that law is an instrument for social engineering and political transformation, he pledged to ensure that all actions of his government will conform to the rule of law, including observation of human rights norms. To sustain the confidence of the people in the rule of law, at a point, he challenged the managers of the nation's judiciary to constantly review the country's laws. He also enjoined the judiciary to always give credible and well-reasoned judgments in order to enhance social justice and fairness. (Ehikioya, 2014) However, his administration also interfered with the rule of law. Very prominent was the case that culminated in the National Judicial Council's suspension and eventual removal of the former President of the Court of Appeal, Justice Ayo Salami, who was believed to have stood firm against the perversion of justice and the abuse of power. The refusal of the President to re-instate him as recommended by the National Judicial Council smacks of a culture of impunity. More so, the power to suspend a judge is given to the National Judicial Council and not the President.

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The former Central Bank Governor, Sanusi Lamido Sanusi was also unlawfully arrested and detained by the Jonathan administration.

Four months after he was sworn in as President, in reaction to cases of human rights abuses by security operatives, Buhari pointed out that his administration would not tolerate the situation where any arm of government undermines the rule of law. In his address at the Commonwealth meeting in May 2016, he also reiterated his government commitment to comply with the rule of law and respect for human rights. The Buhari administration is not exonerated from the flagrant disrespect of the rule of law. Recent happenings in the polity show that the rule of law and all known tenets of constitutional democracy have been abused with impunity. These include the desecration of the judiciary as an institution by the executive, disobedience to court orders and clamp down on non-violent protesters (Nwakaeti, 2017). Oduwole (2017) says there had been no adherence to the rule of law and human rights in the fight against corruption and insecurity. He criticizes the government's attitude towards the obedience of court orders and lack of compliance with due procedures of law. He states further that 'although there is urgent need to stem the tide of corruption in Nigeria it must be done within the ambit of the law and respect for human rights of the citizens and that obedience of court orders is sine qua non in any society governed by law'. Keeping of suspects in detention or in prison after valid order from the court is an affront on democratic norms and a desecration of the Constitution of the Federal Republic of Nigeria. (Umukoro, 2017) The case of Sambo Dasuki, the National Security Adviser under former President Goodluck Jonathan, is a major reference point. Mr. Dasuki is facing multiple trials for alleged diversion of \$2.1 billion meant for the purchase of arms in the immediate past administration. In spite of the fact that Dasuki has been granted bail, he is still held in custody. The Court of the Economic Community of West African States, ECOWAS, declared the arrest and detention of former National Security Adviser, Sambo Dasuki, as unlawful and arbitrary. The court also held that the further arrest of Mr. Dasuki by government after he was granted bail by a court of law, amounts to a mockery of democracy and the rule of law. (Okakwu, 2016).

Despite the issuance of a court order to the contrary, the Federal Government has refused to effect the release of the leader of the Islamic Movement of Nigeria, Ibrahim El-Zakzaky. The leader, alongside his wife, was arrested last year by the Nigerian Army and has been in custody since (Okeowo, 2017). The Amnesty International had recently called for the immediate release of El-Zakzaky after the expiration of the 45-day ultimatum issued by the court. The international pressure group said a non-compliance would be a "flagrant and dangerous contempt for the rule of law." (Okeowo, 2017).

The invasion of homes and arrest of some justices and judges alleged to have been involved in corrupt practices by the Directorate of State Security, an agency in the Presidency is a threat to the independence of the judiciary. It is pertinent to state that the National Judicial Council (NJC) is the body saddled with the duty of enforcing discipline in the judiciary. Commenting on the invasion, Afe Babalola, a Senior Advocate of Nigeria says "I must admit that I am shocked at the claims that huge amounts of money in local and foreign currencies were recovered from the homes of some of these Judges. If proven to be true, surely the Judges concerned must offer some explanation as to how they came to be in possession of such vast amounts of money. However, I am equally shocked at the manner in which the "raids" were carried out and the resultant negative publicity it has attracted to the judiciary and the legal profession as a whole..." He states further that it is settled that when men or groups of people come together to form a nation and thereby give up their individual identities and freedoms, they do so with the realization that they will be governed by certain laws and also the expectation that those laws will be strictly

adhered to and implemented, without favour or bias by those in authority over them, be they appointed, selected or elected (Babalola, 2016).

## **Factors Affecting the Political Actors in the Entrenchment of Rule of Law in Nigeria and Its Overall Impact on Good Governance and Sustainable Development in Nigeria**

### **The Attitude or Mentality of the Political Leadership**

According to Mullins (1996), leadership is a process in which the leader and followers interact such that the leader influences the actions of the followers towards the achievement of certain aims or objectives. Thus, it is the ability of influencing the behavior of others, or exerts influence within working group in order to achieving group task or organization objective. The followers (subordinates) perceive the leadership as having certain attributes or characteristics that endeared him/her to control or exert influence over them. Therefore, leadership, by concept, is a non-coercive capacity (i.e. is not the use of instrument of delegated power or authority), and followers (subordinate) willing consent to be influenced or directed by the leadership. Leadership is hence conferred from below (by the electorates/subordinates) and not from above (by elites/super ordinates) for constructive engagement towards cooperative, collaborative efforts and mutual benefits. Leadership attitude in Nigeria is always a master /slave relationship which actually negates the much-needed development in the society.

### **Long Term of Military Rule**

The military rule undermined development of democratic institutions, culture of accountability and transparency and is characterized by the absence of citizen influence and oversight. Unfortunately, again under this democratic dispensation the imperatives of good governance have been scuttled; the imperatives of politics and administration of representation, using the ballot box, is being comprised. Hence people wishes and desires with regards to electing their representatives and consequently revealing their preferences for the character of government is denied. Therefore, representatives become more engaged in patronage and self-serving activities; they are neither responsible to their oaths of office nor responsive to the yearnings of people. Thus the absence of people in the political process incapacitated them from holding the political leaders accountable for their decisions and action – hence people are subjected to arbitrary rule. In these conditions, good governance becomes a rare commodity; the result has been diminished economic development, reduced social cohesion, a heightened level of corruption and high state of insecurity all of which undermined political stability.

### **Poor Leadership**

A continuous decline in the quality of governance in Nigeria therefore calls for building political leadership based on competence, commitment, patriotism, acceptance and self-denial. Public officials must therefore provide leadership that brings about a change in behavior, as leadership is indeed paramount to good governance.

## Poor Governance

Leadership lack of transparency in public spending has resulted in massive looting of the national treasury; lack of accountability and gross mismanagement of public enterprises and institutions by leadership, has generated massive debts that have become a major drain on national resources. There is a growing global consensus on the devastating effect of corruption on development and good governance. There is an organic interconnection between quality of governance and capacity to drive a sustainable development. According to Kofi Annan, 2003 (then Secretary General of United Nations), “Corruption is an insidious scourge that impoverishes many countries, and affects us all ... it creates discrimination between different groups in a society, feeds inequality and injustice, discourages foreign growth ... it is indeed a major obstacle to political stability and successful social and economic development of any nation”. It has become common thing to read in the Nigeria daily newspapers, news magazines and in radio about politico-bureaucratic elite’ kleptomaniac tendency. The legislative arm that supposed to be people’s representatives and instrument of check for bad governance has paradoxically become an institution of corrupt practices – engaged in self-serving, marketing instead of making laws. Thus, the current development crisis in Nigeria can be attributed to a history of poor governance characterized by corruption and social injustice. This informed why Nigeria is in a state of ever-shaky socio-political stability due greatly in part to the pervasive poverty trends, as informed by bad governance.

## **SUMMARY, CONCLUSION AND RECOMMENDATIONS**

Adherence to the existing rules of body of rules, ensuring good governance is *sin qua non* to the development of any nation and indeed a potential ingredient for sustainable development. However, despite the numerous disappointments of past administrations, the trend of the ruling class and, in particular, the leadership seeing itself above the law is an impediment for rule of law to prevail. The increased abuses in public office have weakened the developmental situation in the country, intensified poverty and are manifestations of the crisis of good governance. To address and redress the crisis and ensure good, transparent and accountable leadership, the core effort of any responsive and responsible government is to reform the social, political and economic order and, indeed, mobilize the population to support and enhance democratic values. The long period of concentration of power in the hands of few, which gradually result in the collapse of the rule of law, have alienated masses from participation in governance and their capacity for oversight function and recalls; and this is the basis for any good governance.

Furthermore, good governance, in its political, social and economic dimensions, underpins sustainable human development, mass participation and economic empowerment and poverty reduction. Poor governance on the other hand, brings about, prevalence of poor service delivery, ineffective public-complaints mechanisms, ineffective anti-corruption mechanisms (Due Process, ICPC, EFCC could not stop the devil), lack of effective popular participation in policy making most political elites rigged themselves to power and hence becomes irresponsive to mass yearnings as well as general corruption in all spheres of public life due to materialistic value/poverty. In insuring good governance that would foster sustainable development, this chapter will conclusively be anchored on following variables as being capable of measuring good governance and sustainable development in any civilized environment as remarked by Ibrahim (2009) in his International Index for Good Governance. These variables or factors include:



- Sustainable Economic Opportunity
- Mass participation
- Safety and Rule of Law
- Participation and Human Rights
- Human Development

Adherence to these factors will lead Nigeria cum Africa to good governance and development in all spheres of human endeavor within the African continent such that life would become meaningful for Africans including those in diaspora.

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