

# SUPREMACY OF THE CONSTITUTION AND GOOD GOVERNANCE IN NIGERIA

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## **Abstract**

The dynamics of Nigeria's history has imposed on it a succession of leaders who ruled in such a way that sharply showed absence of good governance in Nigeria's developmental efforts. In the world today, there is a universal desire for good governance due to its immense benefits and by necessary implication because of the adverse consequences that emanate from bad governance. This paper examines the supremacy of the constitution and governance in Nigeria and observes that there has been poor culture of constitutionalism in Nigeria. It concludes that the adherence to supremacy of the constitution by leaders and the led would guarantee good governance in Nigeria.

## **Introduction**

The concept of the supremacy of the constitution is traceable to the American constitutional evolution. It is the outcome of the federalist papers which emphasized the predominance of the American constitution over and above the whims and caprices of its integrating units (Inegbedion & Odion, 2000,P.72). The constitution is thereby placed on a higher pedestal above all other laws in the legal system in so far as it regulates the government itself and all other organs of government in the legal system.

In democratic governance in Nigeria, the rule of law finds better expression in participatory democratic governance. The involvement of citizens not only in the choice of their leaders but also in the direction of governmental policies ensures the sustenance of the rule of law in our body polity.

Under the republican constitution, the ideal of freedom, liberty and social justice were doubly entrenched and the constitution was made supreme all over other laws in the land (Section 1 (3) of 1963 constitution ). The supremacy of the constitution means the predominance of the regular laws of the land to the exclusion of the rule of arbitrariness of the elected leaders. In essence, any law that did not conform with the dictates of the constitution could not be termed a 'regular law' and not acceptable in the society. Therefore, the preference for constitutional supremacy over parliamentary supremacy meant that the legislature could not promulgate laws unless in accordance with the dictates of the constitution especially with respect to the nature of the laws so enacted.

On the whole, looking at the supremacy of the constitution and governance in Nigeria, it is instructive to note that there has been poor culture of constitutionalism in Nigeria. Thus, in the colonial era, the constitution, where it existed, rather than being an instrument of empowerment was an instrument of domination.

## **The Supremacy of the Constitution:**

The word supremacy comes from a Greek word 'supremos' which means supreme or superior to all others". Supremacy of the constitution therefore means that the constitution is superior to every other law in the land. The notion here is that the constitution is always the final authority in the land as administered by the law court. It means that no other institution, person or persons, not even the legislature that assisted in making the law should claim superiority over the law. The supremacy of the constitution in relation to government and its functionaries, states that those government functionaries or agencies must recognize and obey the constitution of the state. Its influences and authority transcend any other institution in the state. Thus, the existence of the constitution makes it impossible to possess or exhibit arbitrary or absolute power.

Dicey (1885) defined the supremacy of the constitution as absolute supremacy or predominance of the regular law as opposed to the influence of arbitrary power. He stated clearly that supremacy of the constitution emphasizes equality before the law or equal subjection of all classes to the constitution and the right of individuals as defined and enforced by the courts. According to Alakija cited in Inegbedion and Odion (2000), consequently, under the 1979 constitution, which is

integrate with the 1999 constitution, elaborate provisions were made for the establishment of courts with requisite jurisdiction to entertain justiciable claims. Section 6 creates the regular courts of the land and in particular Sections 236 and 260 recognized the existence of the irregular courts like tribunals or quasi-judicial panels. The constitution equally provides for the protection of its jurisdiction from ouster clauses that may be contemplated by the legislature (see Section 4(8) of the 1979 and 1999 constitutions). In *Hon Mike Egbadon V Ron Joe Ekpenkhio and others*, the court of appeal re-emphasized that it was the duty of the regular courts of the land to act as the protector of the constitution and by implication observe strict adherence to the rule of law.

From the foregoing, it is clear that the constitution recognizes citizens as equal and if the 'supremacy' of the constitution is respected by all citizens, that is, the governed and the government, there is the possibility that good governance will be the order of the day.

### **Governance Defined.**

Governance according to Onwiodiokit (1999), connotes the manner in which government governs the territory and the people it jurisdictionally controls. To Saint (1992), governance should be understood as the mechanism whereby an institution or organisation (be it the family, the nation-state or elements of it) incorporates the participation of relevant interest groups in defining the scope and content of its work including the capacity to mediate among these interests when they enter into conflicts and the means whereby it demonstrates accountability to those who support it through its mission mandate and the application of its resources in pursuit of its goals. However, Sengeldin and Landel-Mills (1991), describes governance as regime types, the nature and style of political system, and issues encompassing political authority, channels and processes, institutional and structural arrangements, decision-making processes, the flow of information and the nature of relationship between the state and the society.

To World Bank (1992), governance refers to the manner in which power is exercised in the management of a country's economic and social resources for development. Wai (2004), sees governance as the use of political authority and exercise of control over a society and the management of resources. Obadan (1998) opines that governance includes institutional and structural arrangements, decision-making processes and policy, information, implementation, capacity, development of personnel, information flows and style of leaderships within a political system. Obadan usefully identifies governance as the efficiency and effectiveness of governments in promoting the economic well-being of its people.

Good governance in this context involves a normative judgment which indicates a preferred relation that should ideally govern relations between state and society and between a government and a people. Good governance is normally used in the literature to refer to one or all of the following attributes of governance: accountability based on notion of popular sovereignty and public choice; a legal framework that guarantees the rule of law and due process; popular participation in decision-making processes based on political and social pluralism; and on freedom of association and expression; and bureaucratic accountability based on impersonality of office, uniform application of rules, and rationality of organizational structure (Bello-Imam, 1997, P.3).

From the foregoing, it means that governance as a concept clearly covers all aspects of the complex and myriad relations that exist between government and the people. The concepts constitution and governance are interrelated in so much as they deal with the people and the society. The effective performance of one will hopefully positively reflect the performance of the other.

### **Poor Culture of Constitutionalism**

Historically, there has been a poor culture of constitutionalism in Africa in general and Nigeria in particular. Adajumobi (2004), has given four reasons for this development:

First is colonial pedigree. In the colonial era, the constitution, where it existed, was not an instrument of empowerment but domination. The people never participated in its making, could not access it nor were it made to serve them. It was the extractive and punitive aspect of the constitution that was emphasized. Power was concentrated in the colonial authorities while the traditional chiefs that served as agents of indirect rule policy were made to perform tasks of

controlling and enforcing compliance on the people.

The second reason for the poor culture of the constitutionalism has to do with the processes of decolonization. Decolonization was not accompanied by any radical transformation of the inherited colonial structure. Rather, such structure was only slightly reformed and as a result, the post-colonial leaders assumed the image of the colonial rulers. They did not open up the political space and were not interested in popular empowerment but only concerned with maintaining their power and control over the state and society. The culture of authoritarianism, dominion and control subsisted, and the people remained marginal actors in the power equation in the society.

The third reason has to do with the tension between development and constitutional order that arose in the immediate post-colonial era. Shortly after independence, there was debate on what should be major priority for African states. Should it be pursuit of a constitutional order or should it be the project of developmentalism? The consequence of that debate was resolved in favour of developmentalism. The problem of underdevelopment, poverty, malnutrition and disease were considered to be much more important than investing in constitutionalism.

The fourth reason for the deprioritization of constitutionalism has to do with the dominant orthodoxy in the 1960s and 70s. This was a period of cold war in which African states were caught in cold war web. That is socialist vis-a-vis capitalist ideologies. Given the fact that socialist ideology embodied in it welfare packages and tended to bear a milk of human kindness, many African countries had a predilection for socialist doctrines. Adoption of socialism then meant placing emphasis on social economic rights as well as the rule of law. The latter were viewed as bourgeois indulgences, which African societies could not afford.

A related reason for the poor constitutional culture among African states, Nigeria inclusive, is the phenomenon of coups, counter-coups and military rule that underpinned many African states in the post-colonial era. Military rule is antithetical to constitutionalism as its powers are centralized; with the constitution suspended and rule of law abrogated.

The above scenario explains why Nigeria as a nation has not been able to anchor its governance on constitutionalism and the rule of law. This has had negative effects on our socio-economic development even at the 48<sup>th</sup> year of independence anniversary of 2008.

The constitutional journey in Nigeria started with the partitioning of Africa in 1885 as a result of the Berlin conference. The conference brought Nigeria under British control. To co-ordinate and effectively manage the conglomeration of various scattered ethnic groups, each occupying a geographical area with diverse historical backgrounds, culture, language and religion, the Clifford Constitution of 1922 was introduced. This constitution which derived its name from the then Governor of Nigeria, Sir Hugh Clifford, became the first constitution in Nigeria. The following constitutions then followed; the Richard's Constitution of 1946, McPherson Constitution of 1951, the Lyttleton Constitution of 1954, the Independence Constitution of 1960, the Republican Constitution of 1963, the Constitutions of 1979 and 1989 and finally, the 1999 constitution which came into operation in May 29, 1999.

### **Effects of both Good and Bad Governance in the Society**

In recent times, people have been much more concerned about 'good governance' than any other aspect of government. Bello-Imam (2004,P,538) most aptly summarizes good governance into seven fundamental elements. These are:

1. Accountability of public officials (both political and bureaucratic leadership) for all their decisions and actions vis-a-vis the public funds and resources in their care.
2. Transparency in governmental decision-making procedures, process, investment, decisions, contracts, procurement and appointments. The essence of transparency is to prevent corruption and enhance economic efficiency and effectiveness.
3. Consistency and hence predictability in government behaviours. This is particularly critical to the carrying out of economic transactions between individuals and government as well as amongst individuals in taking investment decisions. Government and public institutions should not be capricious in their behaviours and utterances.
4. Openness in government transaction and a reliable flow of information necessary for economic activities and development to take place. Without information, rules will not be known, accountability will be low and hence risks and uncertainty will be many. Consequently, the cost of committing capital will be huge. An open system

should thus be encouraged to relay information to stakeholders and promote dialogue among the people as well as ensure their active participation in the socio-economic development of the country.

5. Government and its citizen must strictly adhere to observance of the rule of law. This means that government and institutions should be known and understood by everyone in the society.
6. Popular participation in decision-making process based on political and social pluralism and on freedom of association and expression, and
7. Establishment and sustenance of institutions and mechanism that can enforce governmental acceptability as well as for redress of transgressions. There should also be value - for - money auditing of all government activities and programmes.

Arising from the above, Amoako (1997), maintains that good governance implies efficient and effective public administration, national policies and sound management of all resources. It calls for the ability of a state to anticipate challenges to its well-being, provide core services to its people and then argue these services, act as a catalyst of change and guide the various forces in a society towards harmony.

Obadan (1998,P.25), in addition, contends that good government implies ruling on the basis of equity and social justice and an end to corruption, nepotism and political manipulation of public institution. It is only when citizens have the belief that their government operates on their behalf in an open and accountable manner, that government will also be able to obtain their willing co-operation in, for example, mobilizing resources for development. In the same manner, good government is critical to creating and sustaining an environment that fosters strong and equitable development and it is an essential complement to sound economic policies. There is a linkage between supremacy of the constitution and good governance. Without deliberate respect for the supremacy of the constitution in the state, good government cannot be possible especially in Africa and Nigeria in particular.

Conversely, bad governance is characterized by ugly problems such as pervasive corruption, lack of public acceptability and the 'capture' of public service by the elites among others. The World Bank (1992) characterized bad governance with many features among which are:

1. Failure to make a clear separation between what is public and what is private, hence a tendency to divert public resources to private gain,
2. Failure to establish a predictable framework for law and government behaviour in a manner that is conducive to development or arbitrariness in the application of rules and laws.
3. Excessive rules, regulations, licensing requirements e.tc. which impede (the functioning of markets, and encourage rent-seeking
4. Priorities that is inconsistent with development, thus resulting in a misallocation of resources.
5. Excessively narrow base, for non-transparency in decision-making.
6. Policy formulation is restricted to the select few in the society and is top-down while fundamental human rights are also free only to the ruling elites. When these negative features occur together, they create an environment that is hostile to development, hence the necessity for the supremacy of the constitution to avert bad governance.

A number of negative consequences surface when transparency and accountability are absent in public transactions. Obadan (1998,P.26), summarizes these negative consequences on national, development as follows:

1. Bad governance result in the reduction of public revenue, and conversely increases public spending which development in turn results in large fiscal deficits and hence it is virtually impossible for government to run a sound fiscal policy,
2. Governance reduces investment as well as the productivity of public investment and infrastructure,
3. Bad governance increases the income gap between the rich and the poor as it allows those in influential positions to take advantage of government activities/resources at the expense of the poor masses,
4. Bad governance limits government's ability to impose and enforce necessary regulatory control and inspection to correct for market failure and hence limits the fundamental role of government. For example, because of corruption, compliance with contract terms and enforcement of property rights are hardly possible,
5. Bad governance undermines legitimacy of the market economy and by extension that of

democracy.

6. Bad governance reduces foreign direct investment essentially because of corruption which is seen as an inhibitive tax in another guise
7. Bad governance destroys incentive for handwork and productive behaviour as cheap money earned from rent-seeking abound (Nkrumah, 1999).
8. Bad governance influences public expenditure as the corrupter adds what he has invested in corruption to the real contract price, and
9. Again, to Nkrumah, bad governance results most often in perversion of and sometimes in public welfare and promoting the greatest happiness for the greatest number of people. This is the stand of the supremacy of constitution. These are only a few of the negative consequences of bad governance. For a nation to operate bad governance is a serious matter.

It could lead to ostracization of a nation. For example, between 1993 and 1998, as a result of bad governance of General Sanni Abacha, Nigeria was ostracized and it became a pariah nation-state. It was after his death that Nigeria was readmitted into the comity of nations.

Kofi Annan (1997), contributing to supremacy of the law and good governance says without the supremacy of the law, no amount of funding or amount of charity to Africa will set Africa on the path of good governance and prosperity. From this statement of the then Secretary- General of the United Nations, it is aptly clear that the practice of the supremacy of the constitution will lead to good governance of a nation, a union and association. The practice and respect for the constitution engenders core values, political representation, enthronement of civil and political rights and public accountability.

As Adejumobi (1999,PP.39-40) rightly puts it, good governance at the micro level denotes organizational effectiveness, that is, the capacity of an organization to achieve tasks assigned to it within set rules and regulations (constitution), and favourable environmental conditions. At the macro level, he added that good governance is about public welfare and promoting the greatest happiness for the greatest number of people. This is the stand of the supremacy of constitution.

### **Recommendations**

If a nation, a union or an association must not relapse into bad governance, a number of instrumental steps have to be taken by both the government and the governed. To ensure good governance in Nigeria, the following recommendations are a sine quanon.

1. Elected leaders at all levels of government must note that public office is public trust. They must ensure that they build confidence between themselves and the electorate, and their policies and actions must reflect the interest of the generality of the people as stipulated in the constitution.
2. The electorate should not remain docile but should raise appropriate legal question on all critical issues that affect them directly or indirectly in line with the supremacy of the law.
3. All elected citizens and others should subject themselves to the principle and practice of rule of law and due process. No highly placed in society should see him or herself as above the law or due process.
4. All leaders should constantly enhance both accountability and transparency in all public and private transactions that are guided by predicable rules of the game as advocated by the constitution.
5. The three tiers of government should accord and respect all the fundamental human rights and freedoms as it will help the citizens to live in dignity and happiness.
6. All organs of government should respect and accord equality to both men and women as guaranteed by the Nigerian constitution.

### **Conclusion**

This paper has been able to establish a relationship between the supremacy of the constitution and governance in Nigeria. It has been able to explain that poor culture of constitutionalism as handed down by the colonial regime, has been responsible for the non-observance of the supremacy of the constitution in Nigeria. It must be noted that the number one objective of any government anywhere in the world is to attend to the wishes and aspiration of its entire citizens. This, no doubt, lies in promoting the logic and principles of the supremacy of the constitution. Although some analysts have argued that

constitutionalism may not necessarily guarantee speedy economic development or lead to the emergence of good leadership, what is however sure is that it ensures predictable way of life, orderly process of leadership selection and change, laid down organization and procedure in public interaction, a reform of the state and its institutions, and the protection of civil liberties and political rights. If all these are achieved through supremacy of the constitution, then any nation, union or an association would certainly be on the right path to promoting good governance in a culture of the supremacy of the constitution.

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