

Oct 20 2011

## Nigeria – Ensuring [un] Rule of Law

LSE IDEAS

By Bala Mohammed Liman, PhD candidate School of Oriental and African Studies.

The current crisis in the Nigerian Judiciary is indicative of the failure of the executive arm of government to allow the judiciary to attain some level of independence and autonomy. An independent and autonomous judiciary is important for ensuring respect for the rule of law so as to check the excesses of the executive arm of government especially in terms of corruption, human rights violations and abuse of office. A continual disregard for the rule of law has major implications for the survival of the country's nascent democracy and the dividends that may emerge from a stable and enduring democracy.



Prior to the return to democracy in 1999, the Judiciary had operated under Military regimes that ruled the country for 29 of the 39 years after independence. These military regimes suspended the various constitutions and ensured that the Judiciary lost any sense of independence or autonomy with judgments indicative of what the ruling junta of the time required to provide a sense of legitimacy by claiming that they were just obeying court orders. The most notorious of this was the case of the annulment of the June 12<sup>th</sup> 1993 elections when President Babangida reverted to the courts to provide his action some semblance of legitimacy.



It was hoped that the return to democracy in 1999 would enable the judicial and legislative arms of government to thrive in their constitutional roles of both legislative and judicial oversight of the executive arm of government. However the newly elected President, a retired Military ruler Olusegun Obasanjo, still had traces of his military heritage and his constant and blatant disregard for court orders meant that the country was always flirting with one constitutional crisis or the other during his eight-year presidency. The most notable of these being his disregard for the release of local government funds to the Lagos State Government even after the Supreme court had ordered their release,

thereby almost crippling the ability of the local governments of the state to function. The second was his attempt to change the constitution to enable him to run for a third term in office and then his illegal tinkering of the various electoral acts so as to benefit himself personally and his ruling party, the Peoples Democratic party (PDP).

With his election in 2007, President Yar'adua made the respect for the rule of law one of his administration's cardinal focuses. By stressing the need for the respect for the rule of law, he hoped to ensure that no one was above the law and that the courts would be able to freely and fairly carry out their functions and thus restore confidence in the polity. This process was a move towards a judicialization of politics where unlawful actions or omissions will be reduced[1] and where the courts will play a bigger role in resolving issues between the state and society. This was seen as a welcome development given the abuses of the previous government and was put to the test early on when several election tribunals overturned many Gubernatorial elections that directly affected the ruling party's hold at the state level. So as to show his sincerity in upholding the rule of law, the president chose to ensure that the verdicts were respected even though it reduced the number of the ruling party's numerical strength at the state level. He further directed that the Economic and Financial Crimes Commission (EFCC), long seen as a watchdog for the ruling party in harassing its political opponents, respected the rule of law by ensuring that they did not detain suspects indefinitely guaranteeing their constitutional right to bail while the investigations were ongoing.



While this seemed to indicate the President's sincerity, many began to realise that this was done to give some semblance of legitimacy to a government that many argued was voted into office through a massively rigged election. As Domingo[2] notes, when some governments take the path of respecting the rule of law, in some cases it is because 'in appearing to bow before court rulings, power holders can stake a claim to observing the principles of rule of law and limited government'. This was seen to be the case when the subsequent verdict of the Supreme Court came out in favour of the Peoples Democratic Party (PDP)

even in the face of glaring irregularities in the presidential elections, suggesting that the reason for the adoption of the rule of law was for government to relinquish responsibility for controversial issues to the courts, even when the courts were clearly leaning towards government in its judgments. This line of argument was further reinforced when political allies that were being investigated for various economic crimes were finding loopholes in the system to keep them out of jail in some instances with the tacit connivance of the then Attorney General of the Federation.



With the death of Yar'adua and his vice Goodluck Jonathan taking over the reins of the presidency, the PDP has now taken a different approach, toning down on the rhetoric of respecting the rule of law and obvious interference in the affairs of the courts. This interference created a split between the Court of Appeal and the Supreme Court that resulted in the suspension of the President of the Court of Appeal Isa Salami, who was seen as an independent, incorruptible and upright judge, at a time when certain electoral cases were up for review. This was seen as the PDP's way of ensuring that the cases electoral cases before the courts would come out in its favour, further lessening any confidence in the courts.

What does this mean for the Nigerian people? Well, a continued interference in the judiciary means that it will continue to be seen an appendage of the executive making it unable to freely and fairly undertake its responsibilities. This means that it cannot help in maintaining a cordial relationship between the state and society thus creating tensions in the polity that could lead to violent conflicts as seen in the post election violence in parts of the country. The lack of independence is because the courts are reliant on the executive arm of government for funding, making it difficult for them to be independent. As Figueroa and Taylor[3] note, being autonomous is one way in which the courts can be effective and this occurs when the courts general structure and budget is self regulated. The second way for its success is if there is external independence between the judiciary and the other arms of government, but as stated the fact that the courts funding is from the executive arm of government, Nigerian courts find it difficult to remove themselves from political interference both at the federal and state levels. Finally, there is also a need for internal independence whereby lower ranking judges in the lower courts do not feel obliged to defer to their superiors. In Nigeria, there is a little or no internal independence with junior judges deferring to senior judges in the upper courts.

How then can the rule of law be ensured if the courts are seen as an arm of the executive? The starting point must be financial independence for the judiciary. Once this occurs, the next step would be a restructuring within the judiciary especially in the relationship between the lower and upper courts and junior and senior judges, so as to create the internal independence that is also required to guarantee respect for the rule of law. It is important to note that without this independence, what we will see happening is what Domingo calls an un-rule of law where if, in countries with weak institutions like Nigeria, the courts are neither autonomous nor independent, the politicization of the courts will only benefit the ruling party with the opposition finding it hard to get fair trials and thus unwilling to accept court judgments especially in electoral matters. This then results in a fragile democracy that is prone to fits of crisis.

Also this results in citizens having nowhere to turn to for salvation for the enforcement of their fundamental human rights and in a world where the move is to ensure that the rights of the poor and vulnerable- (they make up over half of the Nigeria's population)- are ensured, Nigeria's poor might find it more difficult for their rights to be guaranteed, while at the same time tensions will ensure that the democratic experiment will be one filled with incidences of violence as the electorate will see this as the only way to ensure that their rights are protected when there is no one to defend those rights.

[1] See Domingo, P. 2004 Judicialisation of Politics: The Changing Political and Social Role of the Judiciary in Mexico. Presented at the conference: Judicialisation of Politics ILAS-University of London 17-19 March 2004

[2] *ibid*

[3] see. Figueroa, J. and Taylor, M. 2006. Institutional Determinants of the Judicialisation of Policy in Brazil and Mexico. *Journal of Latin America Studies*. Vol 38 pp. 739-766. Cambridge University Press

This entry was posted in [Africa](#), [IDEAS Blogs](#), [Uncategorized](#). Bookmark the [permalink](#).