

Can Judicial Institution Stimulate Citizens Well-being in Nigeria?

Hakeem Olatunji Tijan*

Abstract

The importance of the judicial institution is informed by its role in bestowing governance that enhances quality of life for Nigerians. Governance as encapsulated in the ability of the state to perform its basic responsibility of providing economic opportunities for its citizens and guaranteeing their security, among others, can be achieved if there is the presence of effective rule of law. This is imperative because the effort of the government in bestowing governance is woven around certain instruments such as policies, strategies and programmes. These instruments are useful determinants of government's effectiveness on one hand and a denominator for meeting expectations of citizens on the other. These instruments should not infringe on the rights of citizens in any way. To avoid this, the judicial institution should protect them from the juggernaut of government policies. More importantly, citizens have a right to go about their lives in peace in the pursuit of legitimate economic activities, but this is only possible if the institutions of justice and law protect them. In other words, the advancement of citizens is contingent upon an effective judicial institution. Judicial institution strengthens economic growth, reduces poverty and sustains development. This paper, therefore, examines

* Department of Political and Governance Policy, Nigerian Institute of Social and Economic Research (NISER), Ibadan, Oyo State, Nigeria;
tunjitijani2000@yahoo.com

the importance of judicial institution as a bulwark against malgovernance with the duty of improving the quality of life of citizens.

Keywords: Nigeria, Citizens, Judiciary, Government, Governance.

Introduction

Globally, the state has some basic responsibilities towards citizens. This manifests in what is termed governance as smooth interactions between the state and the citizens strengthen the translation of government into governance. Governance is encapsulated in a broad decision-making process in consultation with citizens to perform basic responsibility of providing economic opportunities for citizens and guaranteeing their security, among others. This can be achieved if there is the presence of an effective judicial institution. Ladan (2001) argues that citizens have a right to go about their lives in peace including the pursuance of legitimate economic activities, but this is possible if the institutions of justice and law protect them. World Bank (2003:1) paraphrases the nexus between the rule of law and promotion of economic activities when it holds that “without the rule of law, economic growth and poverty reduction can be neither sustainable nor equitable.” Ladan (2002) opines that the failure of the state to protect citizens from crime and lack of accessibility to justice hold back sustainable development.

It is expected that developing countries, including Nigeria, undergoing economic and political transformations have had challenges that are inimical to governance. Such challenges, which include lack of protection of property rights, poor contracts enforcement, market failures, and lack of commitments by the governments are capable of truncating the goals of economic and political-institutional transformation. In an era of globalisation with economic liberalisation being the cornerstone of economic reform and political liberalisation becoming the bulwark for political reform, it has become imperative to uphold the rule of law. This is because the in strengthening tenets of economic reform (the dominance of dictates of market forces and liberalisation of trade) and political reforms (allowing participation of more political parties, reducing the dominant role of the state and increasing the involvement of the non-state actors in the governance of the state), the

judiciary is an important institution in fortifying economic and political reforms. At the economic level, the needs to regulate the economy and empower private individuals to contribute to economic development by engaging in businesses and investments are made possible by the existence of a well-functioning legal and judicial system. A wellfunctioning judiciary will enhance investment, as the citizens will be more willing to save in the banks thus increasing the capital available for loan to the entrepreneurs. Pinheiro (1996:16) notes, “dysfunctional judicial systems may also discourage savings and stimulate capital flight, reducing the volume of funds available to finance investment.”

It thus means that a well-functioning judiciary ultimately fosters domestic and foreign investment, the creation of jobs and the reduction of poverty (World Bank, 2003). Thus, the sustainability of political and economic reforms rests with the role of courts in cementing the confidence of the people in the reforms. According to World Bank (2003), the expectation of the investors that the judicial institution would resolve disputes effectively, efficiently and fairly can enhance their belief that their interests would be protected. This would ultimately lead to the investors willingly pursuing the transaction. Stephenson (2005:13) who states the importance of the courts strengthens this argument. According to him,

courts may play an important role in economic development by providing reliable and efficient dispute resolution, enforcing contract and property rights, correcting various market failures, and making commitments, particularly those by governments, more credible. Specifying the optimal set of judicial and legal institutions for any given country is a very difficult and context specific task. But, even if we could do that, reformers would still face three challenging problems: resource constraints, incentive compatibility, and the “second best” (Stephenson, 2005:13).

Much as the role of the courts is important in heralding people-oriented governance, rearing functioning judicial institution is difficult, hence, it is pertinent that there be incentives in making functional judicial institution exist. As expatiated by Stephenson, there should be incentive compatibility.

The stakeholders, individuals, courts, citizens and government should all have incentives to make judicial institution-building effective. Stephenson states that individuals must have incentives to rely on the courts to adjudicate their disputes, the powers that have the wherewithal to subvert judicial independence must have an incentive to refrain from doing so and, most importantly, the judges must have an incentive to carry out the functions assigned to them. In other words, having effective governance is premised on the stakeholders to make the judicial institution-building effective. Anderson and Gray (2005:14) opine, “institutions do not change in a vacuum, but rather they change in response to pressure from within or without.” The agents of change who, according to North (1994), are the political and economic entrepreneurs and who have the bargaining power to create new rules should have incentives to obey the rules of the game. Avellaneda (2006:11) argues that the real incentive structure of an economy is determined by both formal rules and informal constraints.

Investors need confidence, trust and obedience to engage in business. This promotes, as already argued, interactions among the people and between the people and the state. However, interactions may bring conflicts or better still investors need the confidence and trust that contract agreements will be honoured. Rule of law and justice provide legitimacy for these contractual interrelations and are contingent upon the efficient and effective judicial institution. Correspondingly, the political and economic institutional reforms inform the necessity for judicial institution building because the successful implementation of the duo depends largely on the availability of justice and rule of law. As espoused by Anderson and Gray, economic liberalisation leads to increasing demand for more objective dispute resolution mechanisms. They submit that in Russia, between 1995 and 2000, the total number of cases filed with the commercial courts nearly doubled especially with tax and bankruptcy cases rising so speedily.

Government, Governance and Judicial Institution

Government is an abstractedly configured territorial body that makes imposing decisions that are binding on citizens, residents and businesses within distinct borders that may be called a state. These decisions are backed by constitution of that state or, the authority of the state may be derived through the legislative arm of that state. Stoker (1988:17) explains that the

government is used to portray official institutions of the state and the monopoly of the use of force. All over the world, the government has two basic responsibilities: the provision of security for the citizens and the provision of economic opportunities for the citizens. Failure to perform responsibly these basic responsibilities makes such a country a failed one (Tijani, 2012). Nevertheless, the government is a narrowly conceived concept, a concept that sees the management of resources and governing of the people from a unidirectional view of leaders only. This accounts for the failure of the state and makes it incapable of delivering these responsibilities. For the state to deliver these responsibilities, it must be able to transform from government to governance. For governance to occur, it must be seen broadly, and ought to involve citizens in both the management of resources as well as the governing of the people. Therefore, the processes by which resources are managed and people are governed determines the attainment of governance. It is, therefore, expected that for the government to deliver its basic responsibilities, citizens, on whose behalf such is performed, should be involved in the decision-making process. Therefore, for any state to perform its responsibilities, the process must involve society. This would make the government transform into governance, and, in the end, breed good governance.

Governance as a distinct concept from government

Quite distinctively, governance is not synonymous with government, government portrays a monomaniacal unidirectional process of decision making of managing affairs of the state. Mangu (n.d.:7) quoting Hyden (1999:184), states that the World Bank, in its 1989 report on the prospects for development in Sub-Sahara Africa, defines “governance with reference to the exercise of political power to manage a country’s affair. Such coinage of the concept as a political word may not serve its utilitarian purposes as a concept capable of providing a more comprehensive meaning of what the thesis of governance really conveys. In its stead, the coinage portrays governance is synonymous with government.

In fact, the difference between government and governance can be sharply located in the process of governing. This can be reduced to the difference between government under law and government under the rule of law. As it were, all the governments, either dictatorial or democratic,

must be under a form of law, even a military system of government, which is ruled by decree operates under a form of law. However, what significantly brings a sharp difference is the rule of law, which the military government does not follow. The dictatorial regime may be under the law but not under the rule of law. Ojo (1987:234) notes the sharp difference between the two words:

There could be a world of difference between government under law and government under the rule of law. While it must be appreciated that all the military administration in Nigeria have operated under the law there is still lacking those elements of constitutionalism which keep them away from being government under the Rule of Law.

Constitutionalism involves not only the proposition that the exercise of governmental powers must be bound by rules but also that the government is genuinely accountable to an entity or organ distinct from itself, where elections are freely held on a wide franchise at frequent intervals, where political groups are free to organise in opposition to the government in office and where there are effective legal guarantees of fundamental civil liberties enforced by an independent Judiciary. The nature of military administration does not admit all these requirements. They can be government under law but certainly not under the rule of law (Ojo, 1987:243).

The process of managing resources and governing of people breeds complexity in both security and economy. This makes the transformation of government into governance difficult.

Judicial Institution as a Bridge between Government and Governance

The absence of rule of law impairs the ability of the state to translate government into governance. The birth of political and economic reforms therefore necessitates the need to have a functioning judicial system that upholds the rule of law to settle the complexities that may arise. In other words, the growth of the economy fundamentally brings complexities, which need to be resolved with justice. The fulfilment of contract agreements, the

protection of property rights and the rights of the employees need to be guaranteed by displaying justice and rule of law. The desire for this is hinged on the presence of effective judicial institution. Fundamentally, effective judicial institution provides a guarantee for the rule of law, a condition necessary for the promotion of the economy and reduction of poverty. This is done by empowering the citizens, providing opportunities for them to partake in the economic activities of the country, respecting their human rights and providing security for them. Therefore, the myopically conceptualised government where justice and rule of law are a mirage should give way for governance in which justice and rule of law are respected. This is to provide economic opportunities for the citizens and guarantee their security. However, the provision of these basic roles of the state is contingent upon effective judicial institutions. This is because the judicial institution provides a bulwark for these responsibilities. According to the World Bank (2003:2), rule of law is predicated on an independent, efficient, and effective judicial system. The Bank holds that “with a wellfunctioning judiciary, the rule of law becomes a more realistic goal, and citizens develop a greater expectation of, and confidence in, the legal protections and predictability that the system can provide. The impact of these protections and predictability on economic development is profound” (World Bank, 2003:2). In consequence, it becomes imperative that for citizens to benefit from economic opportunities of the state and be protected from all forms of security threat, the cornerstone of the rule of law, the judiciary, be improved. World Bank (2003a:3) asserts further that “improving the effectiveness of judiciaries is essential to promoting sustainable economic development. It is thus a central component of the World Bank’s legal and judicial reform strategy” (World Bank, 2003a:3).

The judicial arm of government cannot be effective without the support of the other two arms– the legislature and the executive. The three must cooperate to bring desired results. This is because policies, strategies and programmes that make for effective government and that which make possible the translation of government into governance require cooperation among these important arms of government. In fact, an important theory of institution, the rational choice theory emphasises cooperation. The crux of rational choice theory of institution is that cooperation is necessary for each arm of the government to operate in a complementary term. Ironically,

in Nigeria, rather than for the three arms to complement one another and cooperate to evolve developmental-enhancing governance, in its stead, what we have is competition among the three arms of government. The consequence of the competition is that the three arms of government perceive themselves as keen competitors in which an arm sees the other in contemptuous terms.

The executive has been the arm of government whose operations have been at variance with the thrust of rational choice theory as the arm has tended to lord itself over the judiciary, hence it does everything to outsmart this essential arm of government. It does so by controlling the judiciary through usurpation of its power, controlling its funding, interfering in its appointment process, among others. It is no gainsaying the fact that one of the intrinsic attributes of an institution is that it is trajectory dependent and has an endogenously built mechanism of evolution. Hence, the reason for different outcomes of institutional reform in countries of the world, especially the developing countries. Since institutions are path-dependent and endogenously built, it needs to be constantly rebuilt and endogenously ingrained to the attributes of the local people. Unfortunately, the judicial institution is not seen as an institution that is path-dependent. Therefore, the judiciary is perceived tangentially as not important to the promotion of democracy, a system that can uphold good governance. This observation is noted by the American Political Science Review (1995):

A deeply rooted democracy requires a Judiciary fully committed to due process, liberal principles, and the protection of individual rights. Both descriptive and theoretical analyses of transitions to Democracy in places like eastern and southern Europe, Latin America, Africa and Asia, however, generally neglect the judicial system. They tend, instead, to emphasise the importance of elections, political parties, civic culture, the behaviour of civilian and military elites, and economic performance. Courts and judges– and other judicial personnel and structures, as well– are unquestionably critical to democratic reform (American Political Science Review, 1995).

Fundamentally, the ruling of the courts has great consequences on the polity. For example, according to Kramer's (2007) piece on Judiciary and Democracy, writing on the consequences of the courts' ruling on the political life of America.

Indeed, I submit that the courts are to some large measure responsible for the fractious and divided nature of our politics over the last 50 years. That's because many on the losing side of some of the court's decisions felt as though their opponents had won through the court system what they had no chance of winning through the political system. And the losers organised themselves to try to seize the political process to gain back what they thought had illegitimately lost (Kramer, 2007).

Such unconstitutional means of seizing the political process, as witnessed in intervention by the military, has had implications on the country. This is because the outcome of such illegal taking over of the political process has had serious consequences on the country's governance profile. The rule of law suffers, justice is compromised as the constitution, the guiding block for the maintenance of law and order and operations of the government becomes suspended. Rulers who control the affairs of government become ruthless and irresponsive to the yearning of the people as observed in the military regime under the late dictator, General Sani Abacha. The corollary of this therefore is that an effective judicial system is synonymous with governance. This position is supported by the World Bank's spending on judicial reform as a means of promoting economic development and lending strategy for countries. According to Messick (2002:1), "much of the recent emphasis on aid for judicial reform has been spurred by the recognition that a well-performing judiciary is important for economic development." Messick adds that his organisation, World Bank, provides loans and other kinds of support just to promote judicial reform.

The Judicial Institution and Governance

The linkage between governance and a well-functioning judiciary is given historical colouration as Messick states that Sir John Fortesque, Henry VI's Chancellor, provided a historical background of the connection between

governance and effective judiciary when the latter, in his writing in the 15th Century, ascribed England's success story to the quality of its legal institutions. Messick further claims that Sir John Fortesque's hypothesis was to be buttressed in the 18th Century by Adam Smith's thesis: a tolerable administration of justice is essential to carry a state to the highest degree of opulence. Similarly, Max Weber in the 20th Century further substantiated the logical conclusion of the symbiotic relationship between governance and effective judiciary from Sir John Fortesque, Henry VI's chancellor in the 15th Century to Adam Smith in the 18th Century. The German Sociologist noted that well-functioning judiciary was the denominator for development. According to Max Weber, the remarkable difference in development between West European states and China was the availability of well-functioning judiciary that was common to European countries (Messick, 2002:2). In the 21st Century, the importance of wellfunctioning judiciary in governance that provides economic opportunities for all is re-emphasised. The establishment of the Economic Court of the Commonwealth of Independent States (CIS Economic Court) in 1992 lays justification for the relevance of effective judiciary in governance. In the United States, Louise Trubek, (cited by Solomon 2007), sees litigation in medical malpractice as leading to new governance mechanisms in improving the quality of care.

It is worth the while to state that investments by international investors are tied to the availability of legal protection in host countries. The legal framework in which investments can be protected through viable laws and that the laws will be enforced would guarantee foreign investment, which a country needs to develop. Deductively, elements of judicial imprints on property rights, protection of foreign nationals and observance of international laws would affect the economic performance of the country. Buscaglia (1999) also maintained this assertion as he tries to put a functional legal framework as a cause for prosperous and thriving commerce.

According to him,

the law and economics of development focus its attention on the effects that well-functioning legal and judicial systems have on economic efficiency and development. Adam Smith states in his *Lectures on Jurisprudence* that a factor that "greatly retarded commerce was the imperfection of the law

and the uncertainty in its application” (Smith, 1978:528). Entrenched corrupt practices within the public sector (i.e., official systemic corruption) hamper the clear definition and enforcement of laws, and therefore, as Smith (1978) stated, commerce is impeded (Buscaglia, 1999).

Incongruously, in African countries, judiciary has been consistently weakened with attendant consequences for governance profile as the latter has been in an abrupt nosedive. Let us view governance from the perspective of the provision of security for Nigerians. The Nigerian state has failed in this basic responsibility. According to Yagboyaju and Akionla (2019), citing Shanum (2013), “no nation can enjoy lasting peace if her citizens live in abject poverty particularly if that nation is acknowledged as having the ability and substantial means to provide development and guarantee a good standard of living. Unfortunately, that is the tale of Nigeria. It is a tale of poor governance, insecurity and poverty amid plenty” (Yagboyaju and Akinola, 2019:4).

It is, therefore, not surprising that Nigeria is categorised among the “notorious” countries that are not prosperous in the world as insinuated by Martin (*United Kingdom Independent*, 6 November 2016), quoting a study, *Global Prosperity Index*, conducted by a London based research institute, the Legatum Institute. The research studies 149 prosperous countries, 19 countries are at the bottom of the ranking. Dishearteningly, Nigeria is ranked among the 19 countries that include Afghanistan, Libya, Iraq, Chad, Sudan and Yemen. For Nigeria, it is reported that “Nigeria may have one of Africa’s most powerful economies, but it scored pretty poorly in all nine sub-indexes, with its lowest rank being in safety and security, reflecting the presence of militant groups like Boko Haram and the Niger Delta Avengers” (Will Martin, in *United Kingdom Independent*, 6 November 2016).

One of the major indices of governance is the rule of law. It is the bulwark for people’s support in a polity. Security of people and their economic opportunities need to be adequately protected. A functional judicial system would guarantee that this is provided. This is the essence of democracy. According to Adamolekun (2016), as cited by Yagboyaju and Akinola (2019:5), the rule of law is one of the attractions of democracy.

This is so because

democracy is more than the people's rule. It symbolises a meaningful and broad competition for public positions through periodic, free, and fair elections, and as determined by the constitutional arrangement of the country in question. The rule of law, underpinned by an independent judicial system, implies a functional legal framework that helps to ensure settlement of conflicts between the state and individuals on the one hand and among individuals or groups on the other. It also helps to ensure respect for property rights and contracts, while preventing the government and influential individuals from acting capriciously (Yagboyaju and Akinola, 2019:5).

Furthermore, the rule of law is the measure of the totality of the goals that citizens should expect from a democratic government. Citing philosophical prepositions of political thinkers, Tijani (2017) paraphrases this macrocosmic view of the rule of law as:

... the rule of law, as a measure of the totality of the ends that democracy is to beget, becomes a denominator for measuring the importance of democracy. It thus becomes a standard for measuring, either in type or in degree, the nature of democracy and level of governance of a country. The Montesquieu's doctrine of separation of power, the John Locke's Consent of the governed and the Rousseau's majority rule are in all aim at cementing equality, freedom and liberty of the people in the society as guaranteed by democracy. All of these are insignificant if there is an absence of the rule of law. It is worthless if the individuals do not have a voice and cannot protect their rights (Tijani, 2017:13).

Today, in Nigeria, it can be said that the governance profile continually nosedives because the judiciary has not been functioning well. Tijani (2018) in supporting this position holds that:

The oversight function of the Judiciary, which is to regulate the arbitrariness of the other two arms of government– the

Legislature and the Executive - was poorly administered. An instance of this is the absence of strict adherence to the rule as evident in the lacklustre performance of the National Judicial Council (NJC) and the Executive interference in the face-off between the former President of the Court of Appeal, Justice Ayo Salami and the former Chief Justice of the Federation (CJN), Justice Katsina Alu. This is a negation to the constitutional provision as the judicial powers and authority are exclusively and directly vested in the superior courts in Section 6(6) of the 1999 Constitution (Tijani, 2017:15).

Conclusion

Improvement in court performance has been found to support economic development (Islam, 2003:6). This is achieved when rule of law becomes the guiding framework of both the private and public sector. One major factor that is capable of instilling confidence in both public and private realms is the rule of law. Market transactions are facilitated by the courts as they guarantee the rule of law. In other words, the judicial institution provides quality governance for the people when it instils confidence in both the private and public sector. Islam provides examples from China in 1979, which undertook an economic reform programme that provided a window of opportunities for the creation of new enterprises, increased inter-provincial trade, and the participation of foreign investors in China's economy. The expansion of its economy correspondingly provided expansion in the number of cases filed in commercial courts. Yet again, Wade (1989:77-79), as quoted by Cocodia (2010:5), believes that courts play a very important role in bringing about good governance by striking a balance between efficient government on one hand and the protection of the citizens against bad government on the other.

In Nigeria, against this background, it can be concluded that lack of governance in Nigeria is directly linked to the level of performance of the judicial institution. Put differently, if Nigeria's judicial institution is efficient and effective, there is a predisposition for the presence of good governance. This is because, according to Wade, good governance is contingent upon the rule of law, preservation of liberty and maintenance of equality. These concepts together represent what is termed, quoting Sabharwal (2005:2),

the index of civil society. Correspondingly, the existence of the rule of law has been considered a cornerstone of good governance. In another study (Kumar, Rajan and Zingales, 1999), it has been shown that when judicial systems are strong, countries tend to have larger firms. Firms can rely on courts to protect their property rights and enforce increasingly sophisticated contracts, for example, property rights associated with intellectual property. In the same vein, Pinheiro and Cabral (1998) discuss how states in Brazil with better performing courts have more developed credit markets. According to the study, creditors do not lend out credits when they lack the means to enforce repayment. In the post-communist countries, wellfunctioning courts support the development of new relationships in a way that makes entrepreneurs have a contract with new suppliers.

Notes

1. For further discussion on Larry Kramer's piece, see *Democracy and the Judiciary*, February 11, 2007, at www.theblog.philosphytalk.org
2. Ibid.

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