GOOD GOVERNANCE, RULE OF LAW AND CONSTITUTIONALISM IN NIGERIA

Dr. Ifedayo Timothy Akomolede,
LLB(Hons), B.L, LLM, M.Phil, Ph.D, MPA, MBA, ACIS,
Reader and Acting Dean, Faculty of Law,
Ekiti State University, (Formerly University of Ado Ekiti), Ado Ekiti

eMail: dayoakom@yahoo.com

Akomolede Olayinka Bosede(Mrs),
LLB(Hons), B.L, LLM, Partner, Dominion Law Chambers,
70, Herbert Macaulay Street, Ebute Metta, Lagos.

eMail: yinkakom2000@yahoo.com

Introduction

In the governance of any polity as a defined structure, the role of the constitution as the legal framework within which policies and laws are fashioned is gargantuan. It is the document that is often said to be the reference point especially in a presidential democracy that is being practiced in Nigeria taking cue from the United States of America. The parameters for ensuring good governance through the rule of law are well spelt out in the constitution. It is therefore logical to conclude that the relationship among constitutionalism, rule of law and good governance is inseparable.

This paper examines against the background of the various experiences and attempts made at constitutional democracy in Nigeria, the uneasy relationship among these variables which uneasiness has been accentuated by the idiosyncrasies of the country’s fragile political culture. It concludes that for good governance to be enthroned in Nigeria, the rule of law as entrenched in and powered by the constitution must be respected, sustained and upheld at all times.

There is a growing awareness that for the government to govern the people well in any given society, Nigeria inclusive, there is need for the enthronement of Rule of Law and constitutionalism. Every citizen desires to reap the fruit of true democracy in Nigeria. This paper therefore examines good governance, Rule of Law and constitutionalism in Nigeria.

1 There is a diverse political culture in Nigeria largely patterned after the cultural diversity of the different ‘nations’ that are components of the country, Nigeria.
Conceptual framework

It is important to clarify and define the terms “Good Governance”, “Rule of Law” and “Constitutionalism” as used in the paper for a proper understanding of the focus of this paper. The necessity for the clarification or definition stems from the fact that in law, words have meanings within the context in which they are used. Proffering definition to a term in law has been likened to the description of an elephant by the six blind men of Hindostani when they went to “see” the elephant. Their respective descriptions of the elephant depended on the part of the animal touched by each of them. Thus, every definition may be able to say something about some aspects of a term but one of the definitions is not able to say everything about a term defined.  

Good Governance

The dictionary meaning of “governance” is that it is the act or state of governing. It is a system of government. But the phrase, “good governance”, lacks precise definition. According to Tijani and Ashi, the fundamentals of good governance refer to “a standard setting model good governance from which no deviation is permitted.” Good governance is a prerequisite to nation building and national development. It is ruling the people well within the tenets of the Constitution and other enabling legislations.

In the present civilian rule in Nigeria, some people see “good governance” as being “democracy dividend”. But is “good governance” synonymous with “democracy dividend” or “dividend of democracy”? This is because the term “democracy dividend” has permeated through Nigeria’s political lexicon and has become a permanent feature in the country’s political arena.

The term “democracy dividend” itself lacks any definition that with a mathematical exactitude. Does it mean material benefits accruable from adopting democracy as a means of governance? This is because in the Nigerian political arena, when political actors and power gladiators speak about democracy dividend, they probably refer to different things depending on their respective political camps or platforms. Sometimes, the term is referred to when elected political office holders lay claims to provisions of basic public utilities like potable water, electricity, roads, and health care facilities, construction of buildings for schools and supplies of books/stationeries to schools.

Other persons see dividend of democracy as when elected political office holders reward their “political thugs” with motorcycles, bicycles, sewing machines, pasta-making machines, etc in the name of economic empowerment.
However, although the meaning of “good governance” may be imprecise, yet its attributes are distinguishable in the sense that:

*It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the wills of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.*

Some Ingredients of Good Governance

(a) Citizen’s Participation in Governance

The quality of democracy and good governance is a function of the depth of the citizen’s participation. The citizens must be provided with easy access to make inputs into the policies and law making process of the government. In the wordings of the Constitution, sovereignty belongs to the people and that the participation by the people in their government is to be ensured.

(b) Abolishment of Corruption

Corruption poses a major challenge to the enthronement of good governance in Nigeria’s democracy. Interestingly, one of the reasons often advanced by military coup-plotters for disrupting civilian rule administrations in Nigeria has centered on corruption of political office holders right from January 1966 through December 1983. Till date corruption and abuse of office by our political office holders still continues unabated. The various corruption charges filed by EFCC, ICPC or Code of Conduct Bureau in various courts/tribunals against former State Governors and political officer holders testify to the fact that corruption is a serious threat to good governance in Nigeria.

(c) Accountability

The primary requirement for ensuring citizen’s demand for accountability in Nigeria under a democratic rule is the sanctity of the citizens’ votes. It is through the use of their votes to reward or sanction rulers at periodic elections that citizens become assured of their power to call their political rulers to accounts. In the absence of fulfilling this pre-condition, accountability of the leaders are bound to fail or at best, would be of insignificant effect.

Secondly, service delivery which is the primary function of government is another yardstick for measuring the extent to which a government is accountable to its citizenry.

Thirdly, at the centre of the critical importance of accountability and service delivery connection is the budget. Both the internal accountability measures within the executive and the

---

6 See http://www.unescap.org
7 Section 14(2)(a) and (c) of the 1999 Constitution. Unfortunately, this Section has been rendered unjusticeable by the provision of Section 6(6)(c) as it falls within the non-justiciable sacred provisions of the Fundamental Objectives and Directive Principles of State Policy set out in Chapter 11 of the 1999 Constitution.
external accountability efforts of the legislature must be put in place to ensure that the budgetary allocation are spent on the purposes intended.\(^8\)

At the recent passing of Nigeria’s 2010 budget, the Senate President, Senator David Mark, gave a timely advice on the need for a faithful implementation of the budget for the generality of Nigerians. He said as follows:

\[\text{Unlike before, I want to advise that we must try to faithfully implement this budget to the benefit of the people.}\(^9\)

(d) Transparency

Transparency denotes openness in the management of the affairs of the country from those entrusted with governance. It is a complement of accountability. On December 22, 2008, while speaking at the investiture of national honours on some prominent Nigerians, President Umaru Yar’Adua was quoted as saying:

\[\text{Our administration is driven by unyielding convictions that we can only achieve our vision of an industrialized, stable, peaceful and secured Nigeria if our quest is rooted in rightly channeling and maximizing the phenomenal creative and productive potentials of our people and the enthronement of absolute respect for the rule of law, transparency, accountability and personal integrity in the conduct of governance business.}\(^10\)

(e) Separation of Powers

The first modern articulation of the doctrine of separation of powers is traceable to Baron Montesquieu in his book, *The Spirit of Laws*. John Locke\(^11\) had earlier advanced the contention that there should be a distinction between the King-in-Council and the King-in-Parliament. According to him, the King representing the executive should be separated from the parliament. Parliament should be the seat of the legislature.\(^12\)

However, Montesquieu was concerned with the liberty of the citizen. He reasoned that there was liberty under the British Constitution because the constitutional arrangement made provision for three departments of government, namely, the executive, the legislature and the judiciary. Accordingly, Montesquieu added the third arm – the Judiciary to John Locke’s earlier two arms of government.\(^13\)

The 1999 Constitution of Nigeria recognizes the doctrine of separation of powers. The principle of separation of powers under 1999 Constitution is meant to guarantee good governance.

---

\(^11\) Second Treatise on Civil Government
\(^12\) Crabbe, *The Doctrine of the Separation of Powers and the Purposive Approach to the Interpretation of Legislation* (Nigerian Institute of Advanced Legal Studies: 2000) p. 3
\(^13\) Ibid, p. 4
and development and to prevent abuse of power. A watertight separation of powers is not practicable. What the whole idea means is that neither the executive nor the legislature should exercise the whole governmental powers, but does not preclude influence or control over the acts of each other.

**The Rule of Law**

In the case of *Governor of Lagos State v. Ojukwu*, Oputa, Jsc (as he then was) conceptualized the rule of law in the following words:

*The rule of law presupposes that the state is subject to the law, that the judiciary is a necessary agency of the rule of law, that the Government should respect the right of individual citizens under the rule of law and that to the judiciary, is assigned both by the rule of law and by our constitution the determination of all actions and proceedings relating to matters in disputes between persons, Governments or authority.*

In the same vein, in his own conceptualization of the rule of law in the same case, Obaseki, Jsc (as he then was) had this to say:

*Rule of law primarily means that Government should be conducted within the framework of recognized rules and principles which restrict discretionary powers which Coke colourfully spoke of as a golden and straight method of law as opposed to the uncertain and crooked cord of discretion.*

Lastly, emphasizing the centrality of the concept of rule of law to constitutional democracy and good governance, the Supreme Court in *Miscellaneous Offences Tribunal v. Okorafor* said as follows:

*Nigerian constitution is founded on the rule of law, the primary meaning of which is that everything must be done according to law. It means also that government should be conducted within the framework of recognized rules and principles which restrict discretionary powers.*

The doctrine of Rule of Law is one of the pillars upon which true democracy and good governance is established upon. Historically, the concept is rooted upon the theories of early philosophers, who in their own ways proffered various definitions to the doctrine. Aristotle expressed the view that the Rule of Law was preferable to that of any individual.

---

14 *Inakoju v. Adeleke* (2007) All FWLR (Pt 353) 3 at p. 146
15 In *A.G. Abia State v. A.G. Fed* (2003) FWLR (pt. 152) 131 at p. 158, the Supreme Court pointed out the principle behind the concept of separation of powers is that none of the three arms of government under the Constitution should encroach into the powers of the other.
16 (1986) 1 NWLR(Pt 18), 621 at 647
17 Ibid at p.636
18 (2001) 18 NWLR (Pt 745) 310 at 327
Adopting the theory generally held in the Middle Ages, Bracton writing in the thirteenth century held the view that the world was ruled by law, human or divine and accordingly that “the king himself ought not to be subject to man but subject to God and to the law, because the law makes him king”.  

In the 17th century, John Locke commented on the concept of Rule of Law that:

*Freedom of men under government is to have a standing rule of live by, common to everyone of that society and made by the legislative power created in it, and not to be subject to the inconstant, unknown, arbitrary will of another man.*

What John Locke meant in essence was that the Rule of Law meant that all governmental powers was to be exercised and determined by reasonably laid down law and not by the whims and caprices of anybody or authority.

However, the widely accepted and authoritative definition of the concept was proffered by Albert Venn Dicey. According to A.V. Dicey, the concept of Rule of Law connotes three things.

Firstly, it connotes the “absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power and excludes the existence of arbitrariness, of prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone, a man may with us be punished for a breach of the law, but he can be punished for nothing else”. What this meant in essence is that governmental powers must be excised in accordance with the ordinary prescribed law of the land. Accordingly a person cannot be punished for an offence except the offence is known to law and the penalty thereof is prescribed in the ordinary law of the land, otherwise, an accused person cannot be liable for the offence.

The second meaning of Rule of Law according to Dicey is that it means equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts. In this sense, the concept of Rule of law excludes the idea of any exemption of officials or others from the duty of obeying law which governs other citizens or from the jurisdiction of the ordinary tribunals or courts. Thus, every person no matter his status in life is subject to the ordinary law of the land.

However, Dicey himself admitted that this idea of equality before the law ought to be subject to some modifications in view of the fact that some Acts of Parliament had given judicial or quasi judicial powers to executive authorities. There are also some exemptions from liability based on public policy.

---

21 John Locke, *An Essay Concerning the True Original Extent and End of Civil Government*, (1690), Section 22
27 Dicey, op.cit, pp. 202-203
granted to Judicial Officers, President, Vice President, State Governors and Deputy Governors, Legislators, members of Diplomatic Corps, Public Officers, etc.

A further limitation to this second definition of the concept of Rule of Law by Dicey is the fact that there are numerous tribunals established in Nigeria which in the real sense of the word, are no courts as envisaged by Dicey.

Thirdly, in Dicey’s view, the doctrine of the Rule of Law may be said to mean the existence and enforcement of certain minimum rights usually preserved by the Constitution.

According to Mowoe, from Dicey’s three meanings, it could be inferred that in any given society, before the Rule of Law could be said to exist, the following must be in place:

(a) Supremacy of written regular law made by the lawmakers;
(b) Certainty and regularity of law;
(c) Absence of arbitrary or wide discretionary powers of governments or its agencies;
(d) Equality before the law;
(e) Administration of the law by the ordinary law courts; and
(f) Enforcement of some minimum rights

Mowoe’s view corresponds with another Writer’s. In modern times, the Writer, Wade expresses the view that Rule of Law connotes:

(a) Supremacy of law;
(b) All acts of government to be conducted within a framework of defined rules and regulations;
(c) No punishment outside the authority of the law;
(d) Equality before the law with recognized exceptions; and
(e) An independent judiciary to pronounce on the legality of government actions.

28 Judicial officers are exonerated from all civil liability whatsoever for anything done or ordered to be done in their judicial capacity – Egbegb vs Adefarasin (1985) 1 NWLR (pt. 3) 549 at p. 567; S.B.M. Services (Nig) Ltd. Vs Okon (2004) All FWLR (Pt. 230) 1115 at 1134. This protection does not cover judicial officers who acts constitutionally to set up a panel at the request of the head of the legislature for the purpose of impeachment proceedings of an executive office holder - See Ogele vs Omoleye (2006) All FWLR (Pt. 296) 809 at p. 835
32 See Public Officers Protection Act, Cap 379 Laws of the Federation of Nigeria 1990 by Section 2(a) of the Act, actions against a public officer while acting in the execution of public duties must be instituted within three months next after the act, neglect or default complained of – See Forestry Research Institute of Nigeria vs. Gold (2007) All FWLR (Pt. 380) 1444 at 1462, 1466
33 In Nigeria these fundamental rights are contained in Chapter 4 of the 1999 Constitution
35 Administrative Law, 4th ed., p. 21
Moreover, the concept of the Rule of Law has in recent times also engaged the attention of world bodies. In 1961 an African Conference on the Rule of Law was held in Nigeria. The Conference recognized the potency of the rule of law and thereby said as follows:

...the Rule of Law is a dynamic concept which should be employed to safeguard and advance the will of the people and the political rights of the individual and to establish social, economic, educational and cultural conditions under which the individual may achieve his dignity and realize his legitimate aspirations in all countries, whether dependent or independent.\(^{36}\)

The Conference further re-affirmed the Declaration of New Delhi\(^{37}\) and stated that:

i. In order to maintain adequately the Rule of Law all governments should adhere to the principle of democratic representation in their legislatures.

ii. The fundamental human rights, especially the right to personal liberty, should be written and entrenched in the Constitution of all countries and that such personal liberty should not in peace-time be restricted without trial in a court of law.\(^{38}\)

**Rule of Law: Comparative Analysis**

Comparatively speaking, in the United States of America, the idea of the Rule of Law is recognized by the concept of “due process” as stated in Amendment XIV of United States Constitution.\(^{39}\) By Section 1 thereof:

*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United State, nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.*\(^{40}\)

Due process in this sense has been defined to mean that “the law must not be arbitrary in its subject matter and it must be conducted with fairness in its procedure. Criminal laws in particular must not be vague or indefinite.”\(^{41}\)

It must be noted that in the United State of America, the acclaim of federalism and decentralization which made respective States more autonomous and independent of federal institutions in its legislation and execution of laws was perceived as being less desirable than the administration of law or preservation of rights which the federal Constitution permitted to be done through due process.\(^{42}\)

---


\(^{37}\) The Conference was held in New Delhi in January 1959 with participants from about fifty-three countries who assembled under the sponsorship of the International Commission of Jurists, with the aim of giving practical meaning to the concept of Rule of Law and the administration of justice the world over. See generally, “Declaration of Delhi”, *Journal of International Commission of Jurists, 1959*, Vol. II, pp. 7-54


\(^{39}\) Made on July 28, 1868

\(^{40}\) It is submitted this provision has been a fertile source of constitutional challenges to discriminatory State Legislation - See generally, Marshall, *Constitutional Theory*, Chapter 7, E.C.S. Wade and A.W. Bradley, *Constitutional and Administrative Law*, 11\(^{th}\) ed. P. 101

\(^{41}\) Kehinde Mowoe, *Constitutional Law in Nigeria*, op. cit., p. 18

In Britain, which practices and unwritten constitution system, the function of the Rule of Law is performed through the common law as interpreted by Courts. While, admittedly, the principal meaning of the Rule of Law is that everything should be done according to law with the object of preventing arbitrariness on the part of the supreme Parliament.

The second meaning of the concept is that government should be conducted within a framework of recognized rules and principles that limit discretionary powers. For instance, the Home Secretary has nominally unrestricted powers to revoke any television licence and a local planning authority may make planning permission subject to such conditions as it deems fit. But the courts would not allow these powers to be used in ways which parliament is not thought to have intended.

According to Wade:

*Faced with the fact that Parliament freely confers discretionary powers with little regard to the dangers of abuse, the courts must attempt to strike a balance between the needs of fair and efficient administration and the need to protect the citizen against arbitrary government.*

On the other hand, in Nigeria, under the civilian rule the concept of the Rule of Law is recognized by the Constitution which has declared itself to be the supreme law of the land, having a binding force on all classes of persons and authority and which further makes provision for fundamental rights guaranteed to its citizens. In one of the earliest decided cases on the concept of the Rule of Law, the Court observed that:

... if we are to live by the rule of law, if we are to have our actions guided and restrained in certain ways for the benefit of the society in general and individual members in particular, then whatever status, whatever posts we holds we must succumb to the rule of law. The alternative is chaos, and the whole purport of the Defence Regulations and Emergency Regulations is to prevent this State of things.

This observation was made by the learned Chief Judge on the arbitrary use of power pursuant to Section 3 (1) of the Armed Forces and Police (Special Power) Decree, 1967. The relevant section provided for the detention of persons connected with acts prejudicial to public orders. In the instant use, the five applicants were at all material times contractors to the Nigerian Army. They were alleged to have received money for services not rendered or goods not supplied to the Nigerian Army. They were accordingly arrested and detained under the above provision. The Court subsequently ordered the Applicants immediate release.

---

45 See Sections 1(1)(3) and Sections 33-44 of the 1999 Constitution. The Courts have tended towards the view that even under military regimes, the principles of the Rule of Law as fortified by the supreme Constitution must be observed as was illustrated in the case of *Lakanmi v A.G. (West) & Ors. (1970)* 6 NSCC 143 at pp. 163-164
46 *Re Mohammed Olayori (1969)* 2 All NLR 298, Per Taylor, C. J.,
47 Decree No. 24 of 1967
Commenting further on the operation of the Rule of Law in Nigeria during the Military regime, the Supreme Court in *Garba v. F.C.S.C.*⁴⁸ observed that:

...the Military in coming to power is usually faced with the question as to whether to establish a rule of law or rule of force. While the later could be justifiably a rule of terror, once the path of law is chosen the mighty arm of government, the militia, which is an embodiment of legislature and executive, must in humility bow to the rule of law thus permitted to exist. The rule of law knows no fear, it is never cowed down; it can only be silenced. But once it is not silenced by the only arm that can silent it, it must be accepted in full confidence to be able to justify its existence.⁴⁹

Unlike in the United States of America’s and Nigeria’s situations where the Rule of Law is not expressly enshrined in the two respective countries Constitutions by name, the New Constitution of Romania, Bulgaria and Czechoslovakia’s Charter of Fundamental’s Rights and Freedoms, adopted in 1991 after the collapse of communism have gone a step further to enshrine the Rule of Law expressly in their respective Constitutions, thereby introducing a new feature hitherto lacking in the various Constitutions of modern day democracies.⁵⁰

By Article 1(3), the Romania Constitution (1991) proclaims the country as “a social and democratic State of law on which human dignity, the rights and liberties of citizens, the free development of human personality, justice and political pluralism represent supreme values and are guaranteed”. It goes further to declare that its citizens are equal before the law and that no one was above the law.⁵¹

Similarly, the Bulgarian new Constitution of 1991 proclaims the country as “a law-governed State” and that it shall be “governed only by the Constitution and the laws of the country”, enjoining the State to “create conditions conducive to the free development of the individual and the civil society”.⁵² It goes further to proclaim that “all citizens shall be equal before the law”.⁵³

The Czechoslovakia’s Constitutions follows suit. In its Charter of Fundamental Rights of Freedom, it declares that “State power may be exerted only in the cases and within the limits laid down by law, and in the way laid down by law; and that “no person may be compelled to do anything which the law does not impose on him”.⁵⁴ It states further that “legal restrictions on basic rights and freedoms must apply equally to all cases which meet the condition specified”.⁵⁵

---

⁴⁸ (1988) 19 NSCC (pt. 1) 306
⁴⁹ Ibid, p. 320, per ESO, J. SC;
⁵¹ Article 16 (1)(2) thereof
⁵² Article 4 (1)(2) and the Preamble to the Constitution
⁵³ Article 6(2)
⁵⁴ Article 2(2) and (3) thereof
⁵⁵ Article 4(3) thereof
Breaches of the Rule of Law in Governance

There are many instances and various forms where the Rule of Law has been breached by the Government. In this paper, we would mention two of such instances, one in the field of human right violation, and the other in governance.

Violation in Human Right Field

The violation of the fundamental right of a citizen is a form of breach of the Rule of Law. From Dicey’s formulation of the Rule of Law, the concept entails the existence and enforcement of certain minimum rights usually guaranteed by the Constitution, and where any of these basic rights are violated, a citizen who is wronged should have a remedy against the State or government.

In *A.G. Federation v. G.O.K. Ajayi*, the respondent was billed to attend the 8th Biennial Conference of the International Bar Association scheduled for Edinburgh, Scotland. While he was waiting to board a British Airways flight en-route London sometimes in 1995 at the Murtala Mohammed International Airport, Lagos, an officer of the State Security Service (SSS) approached him and demanded for his International Passport. The respondent obliged by giving up the passport to the officer who apparently seized same. As a result, the respondent was unable to attend the Conference. Aggrieved, the Respondent brought an action for the violation of his fundamental rights and claimed declaratory reliefs as well as damages against the government. At the High Court, judgment was given in favour of the Respondent with Two Million Naira damages awarded against the Government. On an appeal by the Government to the Court of Appeal, the appellate Court held sarcastically inter alia:

*One important way to encourage respect for the rule of law is to show those whose behaviour it regulates that the law is made by those whom it binds not by a remote group whose attitude and ideals are foreign to those of the ordinary people. Even in the animal kingdom, there is still some decorum; there is still some decency. Strong and wild animals will not pounce on another animal the way the S.S.S. men did to the cross-appellant like an Indian-rubber ball will pounce on the floor. Such brazen recklessness that went with the seizure of the plaintiff’s passport at the time it happened, I would like to believe, would not be displayed in the thick jungle. I only hope that such characters who revel in the brazen display of executive lawlessness will never rear their heads in this country again…..*

The damages awarded at the lower court was upgraded to N5million. Even though it could be argued that the action was carried out by overzealous officials of the SSS, it must be bore in mind that State Security Service operatives are employees of the government. Accordingly, the relationship between the government and the overzealous security operatives was one of master and servants. The implication, therefore, is that the government is liable for their actions or tortuous acts.

---

56 (2000) 12 NWLR (Pt. 682) 509
57 Ibid, p. 537, per Aderemi, JCA
58 Ibid, p. 528
Breach of Rule of Law in Governance

Under this heading, we would be examining the various breaches that took place in governance as a result of Late President Yar’Adua’s last foreign trip to Saudi Arabia on medical grounds before his demise. Though the then President Yar’Adua’s administration made a heavy weather about following Rule of Law, yet his absence from the country for over three months did not comply with the requirement of the Constitution.

Firstly, the President refused, failed and/or neglected to transmit to the Senate President and the Speaker of the House of Representatives a written declaration that he was proceeding on vacation or that he was otherwise unable to discharge the functions of his office as enshrined in Section 145 of the 1999 Constitution which, he had sworn on Oath to protect.

Secondly, the Executive Council of the Federation failed in their constitutional responsibility to set up a Medical Panel as stated in Section 144 of the 1999 Constitution to examine whether or not the ailing President was medically fit to continue in office.

Thirdly, in the face of the grave violation of Section 145 of the 1999 Constitution by President Yar’Adua, the National Assembly refused to act in line with Section 143 of the 1999 Constitution to impeach the then Late President.

Fourthly, the resolutions passed by the respective Houses of the National Assembly elevating the Vice President to the position of an Acting President are unknown to our Constitution. By Section 1(2) of the 1999 Constitution the country shall not be governed nor “shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of the Constitution.” Since the resolutions, no matter how premised, were clear violations of the Constitution, they were to the extent of their inconsistencies void.

Many crocodile tears had been shed and unnecessary sentiments whipped for the unconstitutional action taken by the National Assembly at the time:

There was no alternative; we reached a critical point in this country that we had no alternative than to take the step we took, to insist that the Vice President should be declared as Acting President. The only alternative would have been the forceful take-over of government by the Military. If you followed events in the country at that period, we were gradually moving towards that point. The military was already restricting the movement of junior and senior officers; that sent signals that indeed something was not going on well and that they could strike.

59 The Senate clarified that it based its decision on the “doctrine of necessity ” and not Constitutional considerations while the House of Representatives predicated it action on the need for “peace, security and good governance”. See generally “History as N’Assembly proclaims Jonathan Acting President”, The Punch, Wednesday, February 10, 2010, p. 2
60 Section 1(3) of the 1999 Constitution.
Persuasive and tempting as this argument may sound, it is submitted that had the Constitution been fully complied with by the National Assembly in impeaching the Late President, we would not have been pushed to a point where the country was a step away from falling into a political and constitutional precipice. This would have prevented the fears of military takeover; would have led to the elevation of the Vice President into the office of the President and the nomination and confirmation of a new Vice President. The legality or otherwise of the appointment of the Acting President was tested at the Federal High Court, Abuja. Before the decision of the court could be laid down, the Acting President was sworn in as a substantive President following the demise of the Late President. However, in an attempt to forestall a re-occurrence of the political stalemate faced by the country when the Late President Yar’Adua travelled out of the country for over three months on grounds of health conditions without transmitting to the Senate President and the Speaker of the House of Representatives a written declaration that he was proceeding on a vacation or that he was otherwise unable to discharge the functions of his office, coupled with the failure of the Executive Council of the Federation to act in accordance with the requirement of Section 144 of the 1999 Constitution, a new sub-section (2) has been added to the provisions of Section 145 and Section 190 of the 1999 Constitution respectively, in the recently amended Constitution. The amendment makes it mandatory for the President or a Governor of a State to transmit a written declaration to the legislature at the Federal or State level when going on either vacation or is otherwise unable to discharge the functions of his office. In the event that the President or the Governor is unable or fails to transmit a written declaration within 14 days, the Federal legislature or State legislature, which ever is applicable, shall by a resolution made by a simple majority of the vote of each House of the National Assembly mandate the Vice-President or the Deputy Governor to perform the functions of the President or Governor either as Acting President or Acting Governor until the President or Governor transmits a letter to the Senate President, the Speaker House of Representatives or the Speaker House of Assembly that he is now available to resume his functions of the office of the President or Governor.

Constitutionalism

The noun “constitutionalism” simply means adherence to the principles laid down in the Constitution. It means adherence to constitutional procedures and provisions. It is formed from the noun, “Constitution”. Constitution itself has been variously defined, depending on the pattern of the particular Constitution the proponent of a particular definition is exposed to.

According to Hogg, the term, “Constitution” may be used in a narrower or wider sense:

In the narrow sense, it refers to those rules embodied in a basic Constitutional document, such as in the United States of America, India or Nigeria. In the wider sense, it includes all – important rules which establish, empower and regulate the principles of government, some rules not contained in the basic document, and some non-justifiable rules, such as in the case of United Kingdom.

---

62 See Section 146 of the 1999 Constitution
63 See “Jonathan wants court to dismiss suit challenging his status”, The Punch, Tuesday, March 30, 2010, p. 7
64 Peter Hogg. Constitutional Law of Canada, 3rd ed. 1977, pp. 1, 2
Black’s Law Dictionary defines the term “Constitution” as:

The organic and fundamental law of a nation or State, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government and regulating, distributing and limiting the functions of its different departments, prescribing the extent and manner of the exercise of sovereign powers; A charter of government deriving its whole authority from the governed. The written instrument agreed upon by the people of Union (e.g. US Constitution) or of a particular State, as the absolute rule of action and decision for all departments... and officers of the government in respect to all the points covered by it, which must control until it shall be changed by the authority which established it, and in opposition to which any act or ordinance of such department or officer is null and void.

All these proffered definitions admit a primary function of a Constitution which is the division of powers between arms and levels of government, their various functions, powers and the guaranteed fundamental rights.

Analogous to constitutionalism is supremacy of the Constitution. Section 1 of the 1999 Constitution declares the Constitution as being supreme and its provisions shall prevail over every other law in the country. In Nafiu Rabiu v. Kano State, Udo-Udoma, JSC, (as he then was”) re-emphasised the concept of constitutional supremacy in the following words:

... it is the duty of this Court to bear constantly in mind, the fact that the present Constitution has been proclaimed the supreme law of the land, that it is a written, organic instrument meant to save not only the present generation, but also several generations yet unborn; that it was made, enacted and given to themselves by the people of the Federal Republic of Nigeria in Constituent Assembly assembled-for which reason and because it is autochthonous, it, of necessity, claims superiority to and over and above any Constitution ever devised for the governance of this country-the unwarranted intermeddleness of the military authority with some of its provision notwithstanding; that the function of the Constitution is to established a framework and principles of government, broad and general in terms, intended to apply to the varying conditions which the development of our several communities must involve, ours being a plural dynamic society....

---

65 Black’s Law Dictionary with Pronunciations 6th ed,
66 Ibid, p. 311
67 Kehinde Mowoe, op.cit, p. 4
68 (1980) 8-11SC 130
69 Reference here was made to the 1999 Constitution. But the 1979 Constitution is not substantially different from the 1999 Constitution
70 Ibid, pp 148-149
It is trite law therefore, that where any statutory provision conflicts with the Constitution, the latter prevails. This is the essence of the supremacy clause built into Section 1 of the 1999 Constitution. Some important constitutional decisions on constitutionalism and supremacy off the constitution have been delivered by various Courts in Nigeria.

One of such cases was the case of *A.G. Bendel State v. A.G. Federation & Ors.*, \(^{71}\) where one of the substantive issues before the court for determination was whether an individual or State can contract out of the provision of the Constitution. The facts leading to the institution of the case were that the Senate of the National Assembly passed a Money Bill which had been presented to it by the President of the Republic under a covering letter and in exercise of his constitutional powers. In passing the Bill, the Senate made certain amendments. The House of Representatives also purported to pass the Bill with amendments of its own. The plaintiff subsequently instituted the action challenging the unconstitutional procedure with which the Bill was passed.

The Supreme Court did not hesitate to declare the purported Allocation of Revenue (Federation Account, etc) Act 1981 as being invalid for failure of the National Assembly to comply with constitutional laid down procedures for passing the Bill into an Act. The Court went further to hold that neither a State nor an individual can contract out of the provisions of the Constitution, the reason being that a contract to do a thing which cannot be done without violation of the law is void. \(^{72}\)

It could therefore, be rightly stated that constitutionalism or supremacy of the Constitution has never been in doubt in Nigeria, and failure to adhere to constitutional provisions renders whatever was done contrary to it unconstitutional. \(^{73}\)

**Rule of Law as a tool for Good Governance**

As noted earlier, the Rule of Law presupposes inter-alia;

(a) that the State is subject to law, in other words, there is equality before the law;
(b) that the judiciary is a necessary agency of the Rule of Law;
(c) that government should respect the right of individual citizens under the Rule of Law; and
(d) that to the judiciary is assigned both by the Rule of Law and by our Constitution the determination of all actions and proceedings relating to matters in dispute between persons or between government or an authority and any person in Nigeria. \(^{74}\)

The observance of the Rule of Law is a necessary tool for good governance. Any government that objects to the enthronement of the concept of the Rule of Law is indirectly inviting anarchy into the system. In governance, the government must not only obey the law, it must obey Courts’ decisions. In *Ojukwu*’s case, supra the court pointed out the implications of disobedience to court orders:

\(^{71}\) (1982) 3 NCLR 1, (1981) NSCC 314

\(^{72}\) See also *Tony Momoh vs Senate of the National Assembly* (1981) 1 NCLR 21- where the provision of Section 31 of the Legislative (Powers and Privileges) Act, Cap 102 Laws of the Federation of Nigeria and Lagos, 1958 (now Cap L12, LFN 2004) was declared void and of no effect and inoperative to prevent service of the Court’s process within the chambers and precinct of the legislature by reason of Section 1 of the Constitution which proclaims the supremacy of the Constitution and declares void any law inconsistent with it

\(^{73}\) *Erekanure vs State* (1993) 5 NWLR (pt 294) 385 at 393; *Okulate vs Awosanya* (2000) NWLR (Pt. 646) 530 at 544

\(^{74}\) *Governor of Lagos State vs. Ojukwu* (1986) 1 NWLR (Pt. 18) 621 at 647
I think I should stress that it is a matter of grave concern that the government of Lagos State should be seen to disregard a lawful order issue by a Court of Law. If government treats Court order with levity and contempt the confidence of the citizens in the courts will be seriously eroded and the effect of that will be the beginning of anarchy in replacement of the rule of law. If anyone should be wary of orders of courts it is the authorities; for they, more than anyone else need the application of the Rule of Law in other to govern properly and effectively....

Failure to comply with the Rule of Law is a security risk to the component parts of the country. The case of A.G. Anambra State vs. A.G. Federation illustrates this point. The election of Dr. Chris Ngige as the Governor of Anambra State in 2003 election created a serious political upheaval and later a subject of litigation. From the facts of the case, an Assistant Inspector General of police, under the direct and the ostensible direction of the President of Nigeria, stormed the Anambra State Government House with a force of policemen and attempted to forcefully remove the then incumbent Governor Chris Ngige from office.

Representations were made to the then President Obasanjo but remain taciturn. It took national revulsion, furor, and condemnation of the ugly event together with the international display of outrage before the then IGP was sufficiently embarrassed to distance himself from the shameful act and consequently ordered the AIG of police to pull out the police force from the Government House at Akwa, Anambra State. The Governor’s security apparatus and police protection were also withdrawn. In addition, through the federal might, the State Commissioner of Police was prevented from taking lawful directives from the embattled Governor for the maintenance of public safety and public order contrary to Section 215(4) of the 1999 Constitution. Helpless and frustrated in the circumstances, the then Governor turned to the Judiciary for salvation. The Supreme Court strongly condemned the action of the Defendants.

Finally, it must be stated that the Rule of Law and good governance enjoins that lawmakers who make the law must comply with the procedures of the law they make. And where they go contrary to the law, the court of law would not hesitate to declare their action a nullity. The Ladoja’s impeachment cases, illustrate this point.

Following the spates of removal (impeachment) of some State Governors through unconstitutional means, Senator Rashidi Ladoja, former Governor of Oyo State, himself a victim, challenged the legality of his removal by some legislatures in the court of law. Both the Court of Appeal and the Supreme Court pitched their tents on the side of the Constitution and held that the removal of the Governor by a factional members of the Legislative House in an unauthorized place (D’Rovans Hotel, Ring Road, Ibadan) and without due compliance with the provisions of Section 188 of the 1999 Constitution was unconstitutional, null and void.

75 Ibid, p. 639. Sadly, the various Nigerian governments have been brazenly flouting the orders of Courts without the slightest compunction. Throughout his tenure in office, former President Obasanjo did not comply with the Supreme Court decision in A.G. Lagos State vs. A.G. Federation (2004) FWLR (Pt 244) 805.
76 (2005) All FWLR (Pt 268) p. 1557
77 Adeleke vs. Oyo State House of Assembly (2007) All FWLR (Pt. 345) 211
78 Inakoju vs. Adeleke (2007) All FWLR (Pt. 353) 3
Concluding Remarks

It has been amply demonstrated that good governance is inextricably linked to strict observance of the basic principles of the rule of law and upholding the abiding tenets of constitutionalism. Subversion of the constitution is indeed antithetical to good governance powered by the rule of law. In respect of the foregoing, the admonition of Justice SMA Belgore, CJN (as he then was) in *AG, Federation v. AG, Abia State & others*\(^79\) is instructive. He said as follows:

\[
\text{It must be remembered that the fountain of all our laws is the constitution. It is the composite document setting out how the country is to be held together. Any slightest disruption of the constitution be it a dispute, apparent or lurking must be addressed in the court when the court intervention is sought.}
\]

The foregoing therefore underscores the importance of the unique and sacred role of the courts in upholding the constitution and thereby promoting the rule of law and enhancing good governance in Nigeria to the admiration of all and sundry who have long been yearning for the elusive dividends of democratic governance in the country.

\(^79\) (2001) 11 NWLR (Pt 725) 689 at 736