



Constitutionalism and the Rule of Law Under Yar'Adua Government: A Critical Analysis

By

Isa Munkaila, PhD

Department of Public Administration
Federal University Wukari, Taraba state
munkailaisa@gmail.com

&

Abubakar Saddiq

College of Education, Jalingo
Taraba State

Abstract

The process of any democratic government relies heavily on constitutionalism and the rule of law. The past and present governments in Nigeria did very little in observing the rule of law in dealing with its citizens. The past democratic governments especially the Obasanjo government 1999 – 2007 subverted the rule of law and violated so many aspects of our constitution with impunity. However, the Yar'adua government came in 2007 and the government saw constitutionalism and the rule of law as cardinal principles and so observed and respected it to a certain degree. However, this does not mean that his government had never violated the rule of law but in comparison with other government, his administration fared better. This study attempts a critical analysis of constitutionalism and the rule of law under President Yar'adua. Adopting a qualitative research method with reliance on the secondary sources of data, it discovered that the regime had strong adherence to the rule of law which is a key requirement for democracy to thrive. It further observed that the regime operated within the confines of constitutionalism which imposes limitations on the process of government, a development which manifested in the strict adherence to the rule of law and the protection of human rights by that regime. The study recommended good governance, press freedom, free and fair elections, judicial independence among others as the panacea to the success of constitutionalism and the rule of law in the country.

Keywords: Constitutionalism, Rule of law, Constitution, Democracy.

Introduction

Constitutionalism and the rule of law are very important concepts that determine the nature and the operation of any good democratic government. This is because it deals with the strict adherence to the constitution and the rule of law in dealing with the rulers and the ruled. In fact, the powers of government are defined and limited by law and the official actions of the various organs of government are required to be in strict compliance to the rule of law. The nature of government in terms of its activities is guided by the constitution and the rule of law especially with a democratically elected government. So, constitutional democracy cannot see the light of the day without strict adherence to the rule of law (Adelman, 1998).

Nigeria especially under the military era and even democratically elected government, like Obasanjo's democratic era witnessed gross violation of the rule of law which made the democratic system less effective. Therefore, in order to pave way for a responsive and reliable government, any government must defend the constitution and must as well observe



the rule of law in earnest. This increases the credibility of the government nationally and internationally. More so, election must be free and fair and above all transparent so that the dividend of democracy can reach the common man. And anything short of that will spell doom and anarchy in the country and that is why the Yar'adua government suffered from the problem of legitimacy because of the nature of the election that brought him to power. It is on record that President Yar'Adua openly admitted that the election that brought him to power was marred by gross irregularities.

Constitutionalism: A Conceptual Discourse.

Soyinka (2000) in explaining the concept of constitutionalism once argued that:

Constitutions are very simple, the protocols of survivals and continuity for any social grouping. They are not to be written down, though experience dictates that they are much better off when written. The United Kingdom, viewed by many ex-British colonials as the model of popular participatory government sometimes known as democracy does not, till today boast of a constitution.

Constitutionalism is binding on both the rulers and the ruled, both kings and ordinary citizens, therefore, there is no constitutionalism under absolute monarchs or absolute presidents. Constitutionalism is of necessity a version of limited government (Muzrui, 2001). It is therefore, seen as a complex of ideas, attitudes and patterns of behavior elaborating the principle that the authority of government derives from the people and is limited by a body of fundamental laws (Griffin, 1996).

The Concept of Rule of Law

Rule of law according to Dicey, means three things which can be explained as follows. Firstly, no man is punishable or can be lawfully made to suffer in body or goods, except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land. It means the supremacy or predominance of regular law, as opposed to the influence of arbitrary power (Nwabueze, 1973).

Secondly, no man is above the law. This means that there is one law for all. In this sense, the rule of law excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunal. By the above analysis, every human being is equal before the law no matter the position he occupies in government (Kahan, 2002). Thirdly, the general principle of the constitution, e.g. the right to personal liberty, the right of public meeting and freedom from trespass, as in Nigeria are laid down and have their source in a written constitution.

The third aspect above tends to be violated in Nigeria. This is because the right to personal liberty and the right of public meetings are denied to some group of individuals while others especially pro-governments are allowed to enjoy it even in excess. For instance, in so many cases, opposition political parties are denied permission to hold political rally in so many states of the Federation. In fact, former Senate President and a Presidential running mate to General Muhammed Buhari, Chuba Okadigbo died as a result of tear-gas during the 2003 presidential campaign in Kano. There were other such cases during President Obasanjo's regime and even during the regime of President Musa Yar'adua. Today and as the 2023 general election draws near, there are reported cases of mutilation of posters of opposition candidates and defacement of billboards while there are equally rampant cases of the opposition parties being denied access to venues for campaigns.

Constitution: A Conceptual Analysis



Constitution is defined as “a formal document having the force of law by which a society organizes a government for itself, defines and limits its power” (Nwabueze, 1973). Appadorai (1974) defined a constitution as the body of rules which directly or indirectly affects the distribution or the exercise of the sovereign power in the state. The constitution is also seen as, the collection of principles according to which the powers of the government, the right of the governed and the relations between the two are adjusted.

It can also be seen as a body of fixed rules which shows how a state is governed. These fixed rules are laid down in a legal document which serves as a guide in the performance of the functions of government (Tamanaha, 2004). Rulers and the ruled are expected to abide by the principles of the constitution. The constitution by its principles explains how the state can be governed, the political institution to be established and the powers which they hold and use in the administration of the state.

The constitution explains further how leaders are to be elected or appointed and even changed. Strong (1972) observed that “*the objects of constitution are to limit the arbitrary action of the government to guarantee the right of the governed and to define the operation of the sovereign power*”. Accordingly, constitution can be written, unwritten as well as flexible or rigid (Cordon, 1999).

Theoretical Framework

This study adopts the theory of democracy as a theoretical framework. Democracy can be described as a system of government under which the people exercise the governing power either directly or through representatives periodically elected by themselves (Appadorai, 1968). As far as democracy is concerned, its different definitions revolve around what Abraham Lincoln referred to as “*government of the people, by the people and for the people*”. It is a political system characterized by the participation and government of the people through their freely elected representatives. It also recognizes and promotes human and people’s rights, including the rights of the opposition and the minorities.

Modern constitutionalism is democratic constitutionalism and modern democracy is a constitutional one. The rights of speech, publication and association are integral to democracy because they make possible free discussion and the continuous participation of the people in the government not only at the time of the general elections. Free discussion is necessary because democracy is based on a belief in the value of individual personality. This implies the obligation to respect the other man, to listen to his arguments and to take into account his point of view. The process of law making should therefore allow full scope for the consideration of different and opposing viewpoints. Those who are adversely affected by a law must feel that their case has been properly heard.

Freedom of people and equality before the law are the cardinal principles of democracy, a development which makes the choice of this theory quite apt for this study. These principles are reflected by all citizens being equal before the law, having equal access to power and freedom is secured by legitimized rights and liberties which are generally protected by constitution. Constitutionalism and the rule of law can only flourish where freedom of political expression, freedom of speech and freedom of press are guaranteed. And the only political system that can guarantee all these is democracy. Without democracy, the rule of law and constitutionalism are useless because constitutionalism and the rule of law which are integral part of the constitution can hardly strive in a dictatorial or autocratic rule.

Ball (1977) argued that liberal democracy has characteristics such as open competition of power is open not selective and is based on established and accepted forms of procedures. Entry and recruitment of political power is relatively open. Periodic elections exist to avoid dictatorial tendency and group operates to influence government decisions. Associations such as trade unions and other voluntary associations are not subjected to close control. Civil liberties such as freedom from speech and religion and freedom from arbitrary arrest are recognized and protected by the government. There is an independent judiciary and the mass media are allowed to report to public the activities of the government and have within certain limits freedom to criticize the government without fear or favor. All the above ingredients can only be seen where liberal or constitutional democracy exists and they are necessary conditions for the practice of constitutionalism and the rule of law. So, good governance remains a panacea under which constitutionalism can strive.

The Yar'Adua Government and its Seven Point Agenda

The government of Shehu Yar'Adua introduced the seven (7) point Agenda in Nigeria, in the following areas:

Power and energy: This strategy was put in place by his government in order to develop adequate power supply as well as to ensure the development of a modern economy for the country by the year 2015. The agenda was pertinent and still necessary because power supply was and still very epileptic in the country and with this development, it will be difficult if not impossible for any industrial take-off to take place. The epileptic supply of power make industrialization very difficult and the sales of this organization to cronies by the PDP government worsened the administrative system by creating unnecessary bottleneck in the management and administration of power and energy in Nigeria.

Food: Food production was also part of the Yar'Adua agenda for nation building. The government knew that we are seriously facing food insecurity and the only option was to provide food for the nation by developing modern technology, research and development of agricultural inputs for an increased yield in agricultural production. This was to enhance massive domestic and commercial food production output as well as technological transfer to that sector.

Wealth creation: wealth creation was another agenda introduced by that government to tackle the rising rate of poverty in the country. Under this agenda the government diversified production especially in agriculture and solid mineral sector. This decision arose because agriculture played a vital role in the development of Nigeria's economy and required government attention.

Transport sector: Due to bad road networks, the government introduced the revitalization of transportation system to enable citizens transport goods and services from one place to another. Therefore, with modernized and industrialized Nigeria, it became mandatory that Nigeria develop its transport sector which will add greater value to agricultural development and other sectors of the economy.

Land reforms: This agenda was aimed at improving and boosting productivity and wealth creation in Nigeria. This aspect is necessary because the country lost billions of dollars through unused government owned landed properties or assets. Government also brought changes in land laws and the emergence of land reforms which will significantly put



land into commercialized farming and other large scale business by the private sector in Nigeria.

Security: Security is very important in any given society in both external and internal investment and thus making security not only a constitutional requirement but necessary infrastructure for the development of any economy. In fact, security is synonymous with both external and internal investment as there can never be any meaningful investment in an unstable polity.

Education: The reform in educational sector was supposed to achieve the “minimum acceptable international standards of education for all”. Therefore, with strategic education development plan there was an assurance of excellence in both the tutoring and learning of skills in science and technology. Therefore, political, economic, social and cultural development can only be achieved through sound and excellent educational system in the country.

So, the seven-point agenda witnessed poor implementation coupled with the dead of Yar’Adua in 2009. It’s along this line that this paper opined that Yar’Adua’s constitutionalism and rule of law helped in improving the principles of constitution in many facets of human endeavours. But it is also worth noting that constitutionalism and rule of law also suffered some set-backs in many areas including poor implementation.

Manifestation of the violations of Constitutionalism and the Rule of law by Yar’Adua’s Government

The Nigeria constitutional violations and lack of strict adherence to the rule of law is seen as a normal business that is done on daily basis. But it is important to note that since the powers of government are defined and limited by the law of the land, official actions or governmental activities of every organ of government are expected to be carried out strictly in accordance with the law. This is because constitutional democracy cannot flourish or survive without respect or strict observance of the rule of law (Stephenson, 2008). President Olusegun Obasanjo’s government 1999 – 2007 was marked high in gross contempt for the rule of law (Soyinka, 2000). However, President Yar’Adua decided to make the observance of the rule of law and due process the cornerstone of his administration. Accordingly, that government was commended for complying with the judgements and orders of election petition tribunals. Good examples of these cases were that of Adams Oshiomole as Governor of Edo State, Governor Rotimi Ameachi of Rivers State, Governor Peter Obi of Anambra State, Mimiko of Ondo State, etc.

But like previous regimes, the Yar’Adua government equally ignored certain court orders or engaged in executive lawlessness in total subversion of the rule of law (Leadership, 2009). As a matter of fact, serious economic and financial crimes were committed under the pretext of upholding the rule of law. In some instances, the Yar’Adua government in a desperate move to cover up crimes by some highly placed Nigerians manipulated the law using the office of the Attorney General of the federation in that regards. The case of the former Governor of Delta state, James Ibori who remained a free man in Nigeria from some criminal allegations of money laundering but ended in jail in London readily come to mind (The Nation, 2009).

Over the years, various human right charters and agreements have been codified in treaties of which Nigeria is a signatory. The 1999 constitution guarantees our fundamental human rights in conjunction with international conventions. However, there still exist violations of human rights across the country (Leadership, 2009, Desert Herald, 2006). For



instance, one Miss Okere was severely brutalized by some naval ratings in the street of Lagos. She was stripped naked in broad day light before their commander and in public glare (Leadership Newspaper, 2008). In fact, even the condition of our prisons across the country is terrible, with reports of incarceration of inmates awaiting trial for years.

More so, at the 60th anniversary of the universal declaration of human right day, the Civil Rights Congress (CRC) described President Yar'Adua's adherence to the principles of the rule of law as weak and ineffective against the backdrop of what the group called continued violation of human rights, other citizens' rights as enshrined in both the constitution and other charters. Comrade Shehu Sani in commemoration of the day observed thus: "*in his 7-point agenda, he made rule of law as cardinal, but his attack on channels TV and Leadership Newspaper and Elendu reports questions his adherence, commitment to the rule of law*" (Desert Herald, 2009).

Another case of violation of the rule of law by Yar'Adua's government was the case of Mallam Nuhu Ribadu in challenging his demotion from the rank of Assistant Inspector-General of Police to Deputy Commissioner of Police. Ribadu took the Police authorities to the Federal High Court where he prayed the court to restrain the Police authorities from imposing any punishment on him pending the determination of the case. In justifying his dismissal from the Nigeria Police Force during the pendency of the case, one of the reasons adduced was that he had challenged constituted authority by suing the Police authorities in the Federal High Court (Soyinka, 2000). When the Inspector-General of Police set up a panel to investigate the allegations on him, Mr. Ribadu filed another action at ECOWAS Court of Justice on the ground that the power to discipline Police officers is exclusively vested in the Police Service Commission (Soyinka, 2000). The Police authorities proceeded with the investigation and recommended the Plaintiff's dismissal from the Police Force. The dismissal was approved by the Police Service Commission in spite of article 22(2) of the protocol of the ECOWAS Court which provides as follows: "*when a dispute is brought before the Court, member states or institutions of the community shall refrain from any action likely to aggregate or militate against settlement*". So, this case was a clear violation of the rule of law by the Yar'Adua government (<http://www/sahara reporters.org>).

Another case in mind is the reconstitution of councils of Federal Universities on October 22, 2007. Yar'adua dissolved the governing boards of all Federal government parastatals and agencies. The 27 Federal universities were affected in the exercise as their governing councils were sacked "with immediate effect". The several demands of the Academic Staff Union of Universities (ASUU) for the reconstitution of the councils were ignored. Given this scenario, Academic Staff Union of Universities (ASUU) filed an action at the Federal High Court with a view to compelling the Federal government to reconstitute the Councils (Soyinka, 2000). The Federal government in reaction to the suit appointed the external members of the councils. But contrary to section 2 of the Universities (Miscellaneous Provisions) (Amendment Act, 2003) which provides for six members who shall be 'knowledgeable' and familiar with the affairs and traditions of the university, government appointed ten (10) persons as members of each of the councils. Some of the members have never been associated with the University system. This was a clear violation of the rule of law and the constitution of the land (Leadership, 2008, The Nation, 2009). By appointing individuals more than the number specified in section 2 of the Universities (Miscellaneous Provision) (Amendment Act, 2003), the Yar'Adua government subverted the rule of law.



Another clear case of violation of the rule of law under Yar’Adua government was the case of the 42 University of Ilorin lecturers that were sacked by the university authority during the national strike under Obasanjo’s regime. The Lecturers took the case to a Federal High Court and lost but appealed to the Court of Appeal and won. The government also appealed to the Supreme Court but lost. The Supreme Court therefore passed judgment in favour of the lecturers and directed that the sacked lecturers be reinstated ‘with immediate effect’. But the government refused to reinstate the twenty-seven (27) out of the forty-two (42) lecturers as directed by the Supreme Court.

As a matter of fact, since the restoration of democratic rule in May, 1999, the provisions of the various Appropriation Acts have been observed in their breach by the Federal, States, and the Local Governments (The Nation, 2009). Although Yar’Adua’s government has been commended for ensuring that unspent funds are returned to the treasury, it is submitted that the practice is illegal in as much as the project for which the funds were appropriated have not been implemented. This brazen violation of the Appropriation Acts tends to affect the implementation of the budget and as well encourage corruption and financial mismanagement of public funds.

The violations of the rule of law and the constitution came to limelight during the ‘Boko Haram’ sectarian crises that engulfed some states in Northern Nigeria. The Federal government used federal government might in suppressing the crises which was commendable. But the unfortunate aspects of the crises were the way and manner in which the Nigeria Police killed the leader of the group Mallam Yusuf Ibrahim (Desert herald, 2009). The leader of the group was arrested by the army and was handed over to the Police for prosecution. But the Police unfortunately killed the leader of the group thereby denying the Nigerian public knowledge about the group. In fact, where rule of law and the constitution are respected, it is given that once a person is accused of the commission of crime, he must only be tried by a Court of law established under the constitution where the complaints of his prosecutors can be ventilated in public in accordance with the law and where his constitutional right of fair hearing would be assured (Nathan, 1997, Shklair, 1998, Dicey, 1914). But instead of taking the leader of the group to Court, the Police decided to kill him thereby blocking all vital information that could have been obtained from him which could have equally been useful in finding lasting solution to the problem.

The adherence to the rule of law by the Yar’Adua government at the Federal level alone was not enough because the rate of violations of the rule of law at the state and local government levels also affected the smooth operations of the government of the country (Aguda, 1985). The rule of law and the constitution tend to be respected when the issues affect prominent Nigerians whereas where it concerns the ordinary Nigerian, nobody talks about the observance of the rule of law.

Conclusion

Conclusively, it is good to note that good governance rests on the essentials of rule of law, which encompasses respect of the law by the state, equality before the law and the creation of a level playing field for all the citizens to operate and realize their potentials. The paper unveiled the fact that governments in Nigeria often violates the rule of law and as such negates the principle of constitutionalism. It was however discovered that the regime of President Umaru Musa Yar’Adua performed better with regards to the respect for the rule of law and constitutional order in the country. As a matter of fact, governments in the country are expected to operate within the ambit of the law and full respect for the constitution. This



means that the law must be above every Nigerian irrespective of status and in every circumstance. The Nigerian legal system must provide justice and equal treatment for individual, group and the society. Anything short of all these can only institutionalize bad government and dictatorial leadership under which the rule of law and constitutionalism can hardly survive.

Recommendations

For the rule of law to be efficient and effective, it must be extended to the common man and leaders at all levels must be put under a very close supervision in order to minimize the violations of the rule of law and be ensured that the constitution is respected. The victims of the rule of law and the constitution are the opposition and the weak. So, governments at all levels must be transparent and responsive to the needs and aspirations of the people. Government activities or services should be provided on the basis of equity; justice and fair play and above all, fear of God. It is until these are done, if not, the rule of law as a foundation of any democratic rule can hardly be achieved.

Good Governance: the major key to the success of rule of law and constitutionalism in any country is good governance. The government should as a matter of principle abide by the constitutional provisions and be ready to implement any court verdict that affects the government, individual, group or the so-called 'most powerful'. The constitution must be observed religiously and must be strictly followed in carrying out governmental activities in the country. Selective or segregated justice should be avoided and the court should be given all what it requires in order to perform efficiently and effectively in the discharge of its duties. Good governance should be mandatorily observed not only at the centre but also at the state and local governments.

Freedom of Press: For the rule of law to be efficient and effective, the press must be given adequate opportunity and independence to cover and report the activities of government and the governed. Government should encourage the establishment of laws that can guarantee some degree of freedom for the press. A situation where government operates in secrecy cannot augur well for the citizens and even the country at large.

Free and Fair Election: free and fair election must be allowed to take place in order to put in place a popular government. Election at all levels must be free and fair so that the electorates can exercise their freedom in selecting leaders of their choice. Apart from the electoral reforms, credible individuals with fear of God should be appointed as members of Independent National Electoral Commission (INEC) to conduct election. This is the only way that the confidence of the common man can be restored in our electoral process.

Independence of the Judiciary: The judiciary should be given the freedom to operate without interference and in a manner that guarantees its independence. And any court verdict should be enforced immediately without minding who is to be affected. In essence, the principle of equity, justice and fair play must be adhered to in dealing with the government and the citizens or citizen and citizen. On the other hand, the judges should also be monitored and supervised in order to make sure that cases are handled properly.

Reforms of the Nigeria Police: This is another vital area if at all we want rule of law and constitutionalism to flourish in Nigeria. The Nigeria Police as an institution is already

decayed or at the process because the calibre of policemen are such that greater percentage of them cannot read and write. So, the fundamental human rights as embedded in the constitution can hardly be understood by some members of the police force. Because of this, the police see no fault in applying maximum force, brutality, torture and even killings in the process of discharging their duties. In fact, majority of them see themselves as above the law and therefore can kill without penalty. So, the reorganization of the Nigeria Police must be carried out in order to fish out the bad and unqualified ones among them while strict supervision and monitoring be put in place in order to check erring members.

Corruption: War against corruption must also be intensified in order to make sure that the rule of law and constitutionalism flourish in the country. Corruption can be seen as a major bottleneck to development as well as the rule of law and constitutionalism. So, more efforts should be put to fight the menace and government should show more commitment and as well avoid selective treatment. The state and the local governments should also be fully involved in fighting the evil side by side with the Federal agencies like EFCC, ICPC among others.

Provision of Basic needs to the electorates: One of the major obstacles to good governance is lack of performance by our leaders. The government at all levels should go into belt-tightening and see the provision of social services to the citizens as a matter of urgency and compulsion. The National and State Houses of Assembly should do all that is possible to ensure that government at various levels perform in the provision of social services. Any elected executive officer who fails to perform should be removed and be replaced with competent ones.

References

Adelman, S. (1998). Constitutionalism, Pluralism and Democracy in Africa. *Journal of Legal Pluralism*, 23 (3),

Aguda, T.A. ed. (1985). *The Challenges of the Nigerian Nation: An Examination of its Legal Development 1960 – 1985*. Ibadan: Heinemann Books Ltd.

Akin, O. (2005). *Law and Nation Building in Nigeria: Selected Essays*. Lagos; Alemtex Printers

Appadorai, A. (1968). *The Substance of Politics*. New Delhi, India: Oxford University Press.

Black Law Dictionary (1979). May 1.

Desert Herald Weekly (2009). October 13th-20th.

Dicey, A.V. (1914). *Introduction to the Study of the Law of the Constitution*, 8th ed. London: Macmillan.

Gordon, S. (1999). *Controlling the State Constitutionalism from Ancient Athens to Today*. New York: Harvard University Press.

<http://www/sahara reporters.com>.

Kahn, O. (2002). *The Reign of Law*. Yale: Yale University Press.

Leadership Newspaper (2008). December 15th.

Leadership Newspaper, 31 Dec. 2005

Mazurai, A. (2001). Constitutional Change and Cultural Engineering. in Oloka-onyango, J. ed. Africa's Search for New Directives in Constitutionalism in Africa. Kampala, Uganda: Fountain publishers.

Nwabueze, B.O. (2007). *How President Obasanjo Subverted the Rule of Law and Democracy*. Ibadan: Gold Press Ltd.

Soyinka, W. (2000). Constitution and continuity in Segun, J. ed. *Path to People's Constitution*, Ile Ife: University of Ife Press

Stephenson, M. (2008). *Rule of Law as a Goal of Development Policy*. World Bank Research, Washington D.C: World Bank Press.

Tamanaha, B. (2004). *On the Rule of Law*. Cambridge: University Press

The Nation Newspaper (2009). December 4.

www.worldjusticeproject.org.

Brief bio-data of the Authors

Dr. Isa Munkaila is a Senior lecturer in the Department of Public Administration, Federal University Wukari, Taraba State, Nigeria.

Abubakar Saddiq is a lecturer in College of Education, Jalingo, Taraba State, Nigeria.