

Administrative Law and the Challenges of Good Governance in Nigeria under Democratic System of Government: the Exigency of Legal Reforms

Michael Takim Otu

Department of Private and Property Law, Faculty of Law, University of Calabar, Calabar, Nigeria

Abstract

Administrative and Constitutional law both have Similarities and often times scholars treat them as if the courses flows directly from the constitutional principle of the rule of law to the extent that they determine the checks and balances of power control between the citizens and the state. Despite Nigerian's huge economic resources, the country is still grappling with political instability and high rate of youth unemployment such is as a result of economic mismanagement, corruption as its highest peak by the leaders of the country. The speed of technological development experience by advanced countries practicing true democracy which is a product of good governance is farfetched. This paper seeks to define briefly the concept of Administrative Law. It also focused on the challenges of good governance in Nigeria under the democratic system of government. It examined good governance in order to achieve the socio-economic, political and technological development that is dreamt of by every developing nation across the world. Finally, the paper examines the need for urgent legal reforms in all sphere of the nation's life in order to ensure and secure an efficient political administration and smooth justice administration among the citizenry in Nigeria.

Keywords: *Administrative law, Good governance, Democracy and democratic governance, Representative government, Self-determination, Legal reform*

Corresponding Author: Michael Takim Otu

Background to the Study

The line between Administrative Law and Constitutional Law is very thin. Many Constitutional Law cases are also Administrative Law cases. It is arguable to a great extent by most scholars that the whole of Administrative Law should be treated as a branch of Constitutional Law, since it flows directly from the Constitutional principle of the rule of law and it does much to determine the balance of power between the citizens and the state.²

It is noteworthy to point out that nowhere; and no time had it been known or can it be said in history that a nation no matter how strong or how stable her operations are, can certainly achieve absolute, total and perfect system of governance and justice.³ Nations across the world over the years have experienced heightened crime rate, political instability, high rate of youth unemployment and abject poverty has characterised its economy.

Conceptual Clarification and Definition of Key Words

For a proper understanding of this work, it will be pertinent to examine the definition of important concepts and words employed as they serve as a useful guide to the work. These concepts include; Administrative Law, Good Governance, Democracy and Democratic Governance, Represented Government, Election and Election Monitoring, Self Determination, Legal Reform and they are examined as follows;

Administrative Law

Briefly put, Administrative Law means that branch of our Law which vests powers in administrative agencies, imposes certain requirements on the agencies in the exercise of the powers and provides remedies against lawful administrative acts.⁴ Administrative Law in this context was part of the English legal system imported into this country by means of local legislation in 1863. The most important of such process of local legislation⁵ for the present exercise is the Supreme Court Ordinance 1914 which in effect introduced into Nigeria the rules of the English Common Law, the doctrine of equity and statute of general application which were in force in England on the 1st day of January, 1900.

According to Black's Law Dictionary⁶, Administrative Law is:

The law governing the organization and operation of administrative agencies (including executive and independent agencies) and the relations of administrative agencies with the legislature, the executive, the judiciary and the public.

Administrative Law is divided into three parts: (1) the statutes endowing agencies with powers and establishing rules of substantive law relating to those powers; (2) the body of agency-made law; consisting of administrative rules, regulations, reports, opinions containing findings of facts and orders; and (3) the legal principle governing the acts of public agents when those acts conflicts with private rights⁷.

²Oluyede, P. A. Nigerian Administrative Law. University Press Plc, Ibadan, 2002, p. 1.

³Iroye, S. O. "Nigeria in the Centenary, the Challenges of Governance and the Exigency of Legal Reforms". NOUN Journal of Legal Studies. Vol. 1, NOUN, 2014, p.155

⁴Oluyede, P. A., *Op. Cit*, pp.1-2

⁵See Ordinance No. 3 of 1863; Ordinance No. 4 of 1876, No. 17 of 1906; No. 3 of 1908 and the Supreme Court Ordinance of 1914

⁶Garner, B. A. Thompson West Group, Eight Edition, 2004, p.48.

⁷*Ibid*

Good Governance

Several definitions of this concept have been given by several writers, but these definitions are not all encompassing for the concept is better described than defined.

The term governance is a process of decision making and the process by which decisions are implemented when decisions are made and implemented, regards being had to participatory nature of that decision, it is good governance.⁸ Likewise when that decision is consensus oriented, responsive, effective and efficient, equitable and inclusive and follows the rule of law⁹ that is bound to be good governance.

The “Institute on Governance” which is an independent, Canada-based, not-for-profit public interest institution with its head office in Ottawa. It has expressed its view to the extent that the need for governance exists anytime a group of people come together to accomplish an end. It also opines that most given definitions on “Governance”, rest on three dimensions; authority; decision-making and accountability.¹⁰ It therefore came out with its own working definition of governance which is expressed as follows:

Governance determines who has power, who makes decisions, how other players make their voice heard and how account is rendered¹¹. Governance is therefore a process of directing the affairs of a given nation or organization under whatsoever type of system adopted with the intent of creating and sustaining orderliness, peace and promoting the general wellbeing of the people of such an organization¹².

Good governance is a pre-requisite to nation building and national development. It encapsulates transparency and accountability in the management of public affairs and the full involvement of all people in the political process and in decisions affecting their lives. Good governance is not capable of a definitional sentence. According to Henwood, good governance should possess the following characteristics:

Governance that prevents the occurrence of tyranny, anarchy, corruption, instability, paralysis, uninformed decision making, unaccountability and unjustified secrecy. Governance that result in good, stable and accountable government stemming from effective prevention of negative political trials¹³.

Kate also is of the idea that good governance should be characterised by:

Predictable, open and enlightened public policy with a bureaucracy that is involved with professional ethos acting in furtherance of the public good, the rule of law, transparent processes and a strong civil society participating in public affairs.¹⁴

⁸Chinyere, P; “The Challenges of Good Governance in Nigeria under Democratic System of Government: An Appraisal” .Ekiti State University, Ado-Ekiti Law Journal (2013) Vol. 5, p. 147.

⁹ See <http://www.unescap.org/huset/gg/governance.htm>

¹⁰Institute on Governance: iog.ca/defining-governance. Retrieved January, 2014.

¹¹Institute on Governance: iog.ca/defining-governance. Retrieved January, 2014.

¹²Troye, S. O., “Nigeria in the Centenary: The Challenges of Governance and Exigency of Legal Reforms.” NOUN Journal of Legal Studies (2014) Vol. 1, P.157.

¹³Henwood, R. *Good Governance and the Public System*; University of Pretoria, 2001, p.4

¹⁴ Kale, *Op. Cit*, P.11 Cited in University of Maiduguri Law Journal Vol. 5, 2002. “Democracy as a cornerstone for good governance and rule of law” by Yusuf M. Yusuf.

Democracy and Democratic Governance

Democracy has become regarded as the basis of a stable and peaceful, inter-relationship among civilized nation-states; as well as the most popular means of exercising the right to internal self-determination.¹⁵ Perhaps, the following excerpt from a scholar says it all:

Countries that govern themselves in a truly democratic fashion do not go to war with one another. They do not aggress against their neighbours to aggrandize themselves or glorify their leaders. Democratic governments do not ethnically “cleave” their own populations, and they are much less likely to face ethnic insurgency. Democracies do not sponsor terrorism against one another. They do not build weapons of mass destruction to use on or to threaten one another. Democratic countries form more reliable, open, and enduring trading partnerships. In the long run they offer better and more stable climates for investment. They are more environmentally responsible because they must answer to their own citizens, who organize to protest the destruction of their environments. They are better bets to honour international treaties since they value legal obligations and because their openness makes it much more difficult to breach agreements in secret. Precisely because, within their own borders, they respect competition, civil liberties, property rights and the rule of law, democracies are the only reliable foundation on which a new world order of international security and prosperity can be built.¹⁶

While the above assertions may not all be true, they however represent the ideals that have motivated many states and international organizations to adopt democracy as the standard form of governance and the centre upon which good governance revolves. In fact the UN and other world bodies have all embraced democracy as a legitimate form of ascending to power in sovereign states. It is generally acknowledged that development is impossible in the absence of democracy, respect for human rights, peace and good governance.

Globally, the core components of democracy include; political pluralism, allowing for the existence of several political parties and workers' unions and fair, open and democratic elections periodically organized to enable people to choose their leaders freely¹⁷. As earlier postulated; good governance is incapable of a definitional sentence, it is not a concept that is easy to define as it requires valued judgment. Individuals, institutions and organizations have proffered various definitions of the concept. If perceived from the point of view of democracy as rendered by Abraham Lincoln, it is “government of the people by the people and for the people”¹⁸. It means a government that wants the best for the majority and this seems to be in accord with this definition.

¹⁵Rusniah Ahmad, MohdAzizuddin, Sani, and David I. Efevwerhan. “Democracy as a Global Determinant factor to legitimate governance and self-determination” *Bill Law Journal* (2011) Vol. 1, No. 1; page 58.

¹⁶ Diamond L. “Promoting Democracy in the 1990s: Actors and Instruments, Issues and Imperatives”, a report to the Carnegie Commission on preventing deadly conflict, Carnegie Corporation of New York, December 1995, quoted in New Man, E. UN Democracy promotion: Comparative advantages and constraints, in Newman, E; and Rich, R; ed; UN Role in promoting democracy: Between Ideals and Reality, Tokyo, United Nations University press, 2004, p.188 at 189-190.

¹⁷Ahmed, M. “NEPAD – A framework for good governance and sustainable development in Africa”. Being a paper presented to the Nigerian Bar Association Annual General Conference (26th August – 1st September, 2006). Page 26.

¹⁸Chinyere, O. *Op. Cit.* Page 149

The World Bank defined governance as “the manner in which power is exercised in the management of a country's economic and social resources for development”¹⁹, while the United Nations Development Programme (UNDP) defined good governance as the use of government to deal appropriately with the problems facing a country. In this definition of good governance, the UNDP pointed out that the essential requirements for the realization of the concept are citizen's participation in (governance), the rule of law, transparency and equality. The 1999 constitution of Nigeria even though has not defined the concept, stated in its preamble that: it aims “to provide for a constitution for the purpose of promoting the good governance and the welfare of all persons.”²⁰

Good governance and democracy are like Siamese twins and according to Kofi Annan, then UN Secretary-General, they require the observance of rule of law, effective state institutions, transparency and accountability in the management of public affairs, respect for human rights and the meaningful participation of all citizens in the political process and decisions affecting their lives.²¹

Representative Government

The UN and other world bodies have all embraced democracy as a legitimate means of ascending to power in sovereign states and many states and international organizations have accepted democracy as the standard form of governance and the centre upon which good governance revolves. Article 25 of the International Covenants on Civil and Political rights 1966 provides: every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a) To take part in the conduct of public affairs directly or through freely chosen representatives.
- b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- c) To have access on general terms of equality, to public service in his country.

The summary of the above provisions is the participation of citizens in the affairs of governance of their countries either directly or by representation. Representation involves electing the representatives in free and fair elections. The participation of citizens in the way they are governed is what democracy is all about. This is distinguishable from a totalitarian, absolutist ruler-ship by an absolutist sovereign.²²

Self-Determination

The Declaration on Friendly Relations; (GA Res 2625(XXV)) in the section on self-determination provides;

Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign or independent

¹⁹Ibid. Quoting the World Bank. Governance and Development. Washington D.C. 1992

²⁰ Preamble to the 1999 Constitution of the Federal Republic of Nigeria as Amended.

²¹ Kofi Annan, “Global integrity in a changing world”.A message to the 9th international anti-corruption conference, Durban, S. A. 1999, p.2.

²²Rusmah Ahmad, MohlAzizuddinSani and Efevwerhan, *Op. Cit*, p.60

states conducting themselves in compliance with the principle of equal rights and self-determination of people described above and thus possessed of a government representing the whole people belonging to the territory without definition as to race, creed or colour.²³

The above provision emphasizes representative government. It goes ahead to pin it to the guarantee of the territorial integrity of a state by other states. In other words, a government that is not representative of the people may not enjoy the protection of its territorial integrity by their states. It must be emphasized that, it is the exercise of the right to participate in the internal form of governance of a nation-state by the citizens that is known as internal self-determination while the exercise of a right to determining a people's political, social, economic and cultural status, without alien or foreign domination or subjugation on the other hand is known as external self-determination.²⁴

The United Nations has been insistent on representative government – democracy as the surest means of asserting the right to internal self-determination. It therefore, in conjunction with individual states has been involved in several democracy promotion and assistance activities, especially in developing countries. These include sensitization, conduct and organization of elections and election monitoring.

Election and Election Monitoring

Election is the process or act of choosing people for office, especially political office, by taking a vote.²⁵ *Black's Law Dictionary* defined election as;

The exercise of a choice, the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies. The doctrine by which a person is compelled to choose between accepting a benefit under a legal instrument and retaining some property right to which the person is already entitled; an allegation imposed on a party to choose between alternative rights or claims so that the party is entitled to enjoy only one.²⁶

Election monitoring on the other hand, can be traced to colonial times when international and regional organizations commissioned monitoring groups to observe and report back to the conduct of elections in soon-to-be independent colonies as a means of ensuring legitimacy of the decolonization process.²⁷ The practice has now evolved into an internationally accepted means of government emerging from an election in a sovereign state.

The reports of observer or monitoring groups play a very important role in the acceptability of election outcomes among sovereign states. For instance, the April 2011 general elections in Nigeria that brought Goodluck Jonathan to power was widely acclaimed as free and fair by international monitors that included teams from the AU and EU. The same scenario repeated itself in the 2015 general election that ushered in President Muhammadu Buhari as President-

²³Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations UNGA Res. 262(XXV). 1970, Para. 7 of Principle V on Self-Determination

²⁴Ahmed, R; Azizuddin, M; and Eferwerhans, S; OP. Cit, p.61.

²⁵*Chambers 21st Century Dictionary of English Language*, Revised Edition; 2004, Page 423

²⁶Garner, B. A. *Op. Cit*; Page 557.

²⁷Frank, T. M., "The Emerging Right to Democratic Governance," 86. *American Journal of International Law* (1992) 46 at 52.

Elect of the Federal Republic of Nigeria. This crucial finding by sovereign monitors proved decisive in the support given the government by the international community in spite of the gruesome violence that followed the election of the President in some Northern parts of the country.

The same monitors' report were responsible for the international community's stance on Cote D' Ivoire when Laurent Gbagbo refused to cede power to the acclaimed winner of the November 2010 elections, Allassane Quattara. The UN, ECOWAS and AU in collaboration with French troops helped to dislodge Gbagbo and installed Quattara as President of Cote D'Ivoire. The UN has therefore become increasingly involved in election monitoring.

Recently, an UN-backed Electoral Complaints Commission in Afghanistan found that the 2009 Afghan Presidential elections were marred by fraud;²⁸ thereby necessitating a run-off election.²⁹ Such activities can however, only be undertaken by the UN either as a perceived need supported by member states; or upon invitation of a needy and desiring state. An example of such request by a needy state is the request by the government and communist party of Nepal in a comprehensive peace agreement, for UN assistance in implementing the peace agreement, especially in the area of election monitoring³⁰ among other things. The Security Council in resolution 1740 (2007)³¹ acceded to the request and established a United Nations Political Mission in Nepal (UNMIN), with the mandate to;

- a) Provide technical support for the planning, preparation and conduct of the election of a constituent assembly in a free and fair atmosphere, in consultation with the parties;
- b) To provide a small team of electoral monitors to review all technical aspects of the electoral process and report on the conduct of the elections.³²

It is worthy to point out that regional bodies are unrelenting in their pursuit of democracy and democratic governance among their member states. The Harare Declaration of the Common Wealth, 1991³³ in its paragraph 9, prescribed democracy and democratic processes of governance, protection and promotion of fundamental rights; equal rights for women and democratic, non-racial government in South Africa among others, as means of commitment to the Singapore Declaration of 1971,³⁴ which upheld the principle of self-determination. The Millbrook Action Plan on the Harare Declaration of 1995³⁵ established the commonwealth ministerial action group, empowered to assess violation incidents and prescribe appropriate sanctions for erring members.

²⁸ See "Afghanistan Elections: Results of the investigation, polling station by polling station". The Guardian (UK), October 20, 2009; available at <http://www.guardian.co.uk/newsdatablog/2009/oct/19/afghanistanelectionsresults>. Investigation last visited on October 20, 2009.

²⁹ See "Karzai the stateman gives way to pressure over poll run off the Guardian (UK), October 20, 2009, available at <http://www.guardian.co.uk/world/2009/oct/20/hamad-karzai-second-vote-poll-runoff>. Last visited on October 21, 2009.

³⁰ Preamble paragraph 2, SC Res. 1740 (2007).

³¹ SC Res. 1740 (2004), 23 January, 2007, available at <http://daccess-ddsny.un.org/doc/UNDOC/GEN/NO7/217/92/PDF/NO721792.pdf?OpenElement> last visited on 30 January, 2010

³² Ibid, paragraph 1..

³³ Harare Common Wealth Declaration, October 20, 1991, available at <http://www.thecommonwealth.org/shared.asp.files/GFS.asp?Noded/D=141095>. Last visited on September 24, 2009.

³⁴ Singapore Declaration of Common Wealth Principles, January 22, 1971; available at <http://www.thecommonwealth.org/shared.asp.files/GFS.asp?Nodel/Do141097>. Last visited on September 24, 2009.

³⁵ Millbrook Common Wealth Action Plan on the Harare Declaration, November 12, 1995, available at <http://www.thecommonwealth.org/shared.asp.files/GFR.asp?Nodel/D=1410916> last visited on September 24, 2009.

Countries that have fallen under the axe of the commonwealth for violation of democracy principles at home are Nigeria, Pakistan and Fiji Islands among others³⁶. Sanctions have mainly been in the form of suspension of membership until democracy is restored, denial of participation in commonwealth sponsored activities and technical and assistance programmes.

The African Union and the European Union all have insisted on democracy and respect for human rights as the fundamental principle of inter-state relationship among members. The African Union recently adopted the African Charter on Democracy, Elections and Governance.³⁷ Instructively, its Article 23 provides:

States parties agree that the use of inter alia, the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the Union:

1. Any putsch or coup d'etat against a democratically elected government.
2. Any intervention by mercenaries to replace a democratically elected government.
3. Any replacement of a democratically elected government by armed dissidents or rebels;
4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections, or
5. Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.

Legal Reform

This phrase is a combination of two words which are; "Legal" and "reform". Legal simply means to be lawful while reform means improvement or transformation. Legal reform is the process of examining existing laws, advocating and implementing changes in a legal system with the aim of enhancing justice or efficiency.³⁸ Four main methods of law reform have been identified and these include; repealing the old laws, creating new laws, consolidation of the existing laws and codification of laws³⁹. While judicial reform deals with the overhauling of the judicial system of a nation as an arm or aspect of the government operations; legal reform has to do with every necessary aspect of the nation's operation like political, economic and religious or any other aspect of the nation's life.

It has been said that complete legal reform should normally include, not only judicial reform but also reform of various aspects of the structural system and content of legislation, legal education and legal awareness by the population and able to incorporate consciousness of the whole legal community⁴⁰. Legal reform is a tool for implementing necessary reforms to balance competing interest; create a sustainable and dynamic economy, and build a sustainable, civil society⁴¹. Thus legal reform is an act of using the instrumentality of the law to redefine certain aspect of the nation's life.

³⁶ The suspension on Nigeria was lifted on April 29, 1999 following significant efforts to return to democratic government, after an election that voted Olusegun Obasanjo as president.

³⁷ African Charter on Democracy, Elections and Governance, January 30, 2007; available at <http://www.ipu.org/idd.E/afr.charter.pdf>. Last visited on October 18, 2009.

³⁸ <http://en.wikipedia.org/wiki/legalreform>. Retrieved December, 2013

³⁹ <http://en.wikipedia.org/wiki/legalreform>. Retrieved December, 2013

⁴⁰ Francis Neate and Holly Nielsen. The world rule of law. Movement and Russian legal reform. www.ibarid.org/document/default.aspx?DocumentUid+D1586CD8... Retrieved January, 2014.

⁴¹ <http://en.wikipedia.org/wiki/legalreform>. Retrieved December, 2013.

Characteristics of Good Governance

In order to achieve good governance necessary for sound economic development, there should be rule of law, a water tight division of powers, “an independent judiciary that jealously guards its independence, entrenched press freedom as well as fundamental human rights, multi-party politics and political tolerance. Nigerian leaders are duty bound to uphold the characteristics of good governance which includes the following⁴²:

1. **Accountability:** Accountability as one of the major characteristics of good governance does not only apply to government institutions but also to private sector and civil society organizations.
2. **Rule of Law:** Thus, accountability cannot be enforced without transparency and the rule of law⁴³. The rule of law means that the law is supreme. It is opposed to arbitrariness or discretionary authority on the part of the government. All executive actions must not contravene the law. It means equality before the law.⁴⁴
3. **Transparency:** This simply means that decisions taken and their enforcement are done in a manner that follows rule and regulations. It also requires that information is freely available and directly accessible to those who will be affected by such decision.
4. **Effectiveness and Efficiency:** These characteristics demands that institutions should produce results that meet the needs of society while managing resources at their disposal. The concept also covers the sustainable use of resources at the disposal of the institution.
5. **Equity and Inclusiveness:** This concept demands that all groups especially the most vulnerable ones (women and children) have the opportunity to improve and maintain their wellbeing. It also ensures that its members feel having a stake and do not feel excluded from their society's mainstream.
6. **Consensus Oriented:** Good governance requires mediation of the different interests in a country to reach a broad consensus on what is the best interest of the whole country and how best to achieve it.
7. **Separation of Powers:** This is another corollary of good governance. Some see it as synonymous with democracy⁴⁵ or as indispensable to democracy. The idea of separation of powers is also a veritable source of supremacy of the constitution as all the basis powers of the major organs of government are spelt out; the doctrine by separation implies the need to follow the constitution to the letters.
8. **Participation:** This is the cornerstone of good governance. Participation need to be informed and organized. This simply means that there must be respect for freedom of expression and association on the one hand and a flourishing organized civil society on the other hand.
9. **Responsiveness:** Good governance requires that institutions and processes should serve all stakeholders within a reasonable time.

⁴² See Chinyere, O. *OP. Cit.* p.152

⁴³ Aluko, A. How and why corruption persist in Nigeria. Burtonville, M. D., USA (2004). Alukome@com cast.

⁴⁴ Dicey, A. V. *Law of the Constitution*. Macmillan & Co Ltd. London (1964) pg. 183 – 237.

⁴⁵ Hon. Justice Eso in “*The Place of Law in a Democracy*”. Delivered at the 1st T. O. Elias (Jurist of Distinction) annual memorial lecture, University of Ibadan, 1999.

Nigeria and the Challenges of Good Governance since Amalgamation

The Amalgamation in Zungeru, in 1914 of Nigeria was under the supervision of Lord Frederick Lugard, Governor-General of the Protectorate, who brought into Nigeria the full operation of the British System of Government into the land also came with all its inherent vices which nonetheless had negatively affected and is still affecting the nation in one way or the other.

According to this conception of Nigerian history, the amalgamated entities have never fused; or merged into one, but have remained an amalgam of two distinct and often antagonistic entities, in terms of their background, interests and aspirations⁴⁶. Good governance is a sine qua non of a democratic government. There cannot be good governance without a democratic government. Nigeria has been subjected to several burdens and difficulties which have continued to plague it since the amalgamation and these cannot in any way be detached from the advent of amalgamation of Nigeria. Therefore, the challenges to good governance are so numerous and overwhelming and capable of establishing the enduring political system of the nation and some of these are hereby highlighted and discussed as follows:

Corruption

From the amalgamation, there was the introduction of the full British colonial system of government into Nigeria and this systems operation developed and introduced the monster called 'corruption' into the Nigerian nation. Corruption is an act done with the interest to give some advantage inconsistent with official duty and the right of other. For most people, the notion corruption conjures up the images of shady characters, i.e. making shady deals with persons in authority, either to do or refrain from doing something in his official capacity. Corruption has been defined as any deviation from society's norms for the purpose of aggrandizing one's personal interest as opposed to the interest of the collectivity⁴⁷.

Corruption refers to an inducement by means of an improper consideration to violate some duty.⁴⁸ Corruption which has been described as a hydra headed monster and a worldwide phenomenon⁴⁹ has now become an integral part of the Nigerian society. Corruption is made manifest in various ways which includes; outright misappropriation of the public resources, usage of public resources for purely private and dishonest purpose, nepotism, disregard for accountability in the exercise of discretion, bribery, fraud, money laundering and etc.

It is believed that the government of the colonialist in Nigeria brought into limelight several forms of corrupt practices as their system of operation most especially their judicial system encouraged corruption⁵⁰. In most recent times, the allegations of patently corrupt and incapable persons being appointed to superior courts have too frequently been made and at the highest judicial quarters.⁵¹ Some other incidence of judicial corruption exists and continues to

⁴⁶Akasum Abba, 2005. The Misrepresentation of Nigeria by Nigerians and others: Being a paper presented at a workshop organized by CEDDERT on behalf of the Nigeria UN reform committee, Assembly Hall, ABU, Zaria.

⁴⁷Worigji et al –*O.P. Cit.* Cited in good governance, corruption, immunity and accountability by Abubakar S. R. Matazu et al, a paper presented at the 41st Nigeria Association of Law Teacher's Conference held in University of Jos, 12th June, 2005.

⁴⁸Curzon, L. B. *Dictionary of Law*, 5th ed. (Financial Times 1998) p.87.

⁴⁹Abdulqudari, I. B. "Plea Bargain in the Nigerian Criminal Justice: A Sword on the Victim and Shield to the Accused". The Advocate. Volume 2 Law Society of National Open University; Ilorin Study Centre, 2012, Page. 79

⁵⁰Thw unpublished report of the justice KayodeEso commission of inquiry on the judiciary. See also Hon Justice Anthony Amagolu in, "Constraints in the Administration of Justice" in 1999 ALL Nigeria Publishers Ltd for National Judicial Institution, Abuja, 2000. 84 at pp. 86-88 and the critique of justice Amagolu's view in Akanbbi "comment". Ibid. pp.44-87.

⁵¹Weekend Concord.Sundar 11th December, 1993.

preponderate. It was once alleged that Supreme Court Justice were settled with Mercedes Benz cars to secure their cooperation in the self-succession bid by former military president, Ibrahim Babangida⁵². In January, 2001, Justice Adebayo Manuwa of the Lagos State High Court was allegedly dismissed for professional misconduct, abuse of office and corruption.⁵³

Corruption has become so visible in all aspect of the Nation's operation that it is very hard to find any government establishment or officials that are not corrupt. We have all forms of corruption in the civil service and the public service as you can hardly get any job done or file treated without one form of gratification or the other. The Police, the Prison Service, the Customs, Immigration and Emigration are also not free from corruption as they have placed more value on extortion than the security of the nation and so the country is now suffering from various forms of insecurity. Corruption therefore, does not make for good governance in any society where it holds sway. It undermines the concept and practice of democracy which as a term has been seen in the context of society as referring to be generally secured by a legislature representing most of the inhabitants who controls the actions of the executives.⁵⁴

The overwhelming effect of corruption cannot in anyway be underrated as it has subjected the nation and the entire citizenry to all forms of stigmatization home and abroad as Nigeria has been tagged as one of the most corrupt nations of the world⁵⁵. Every Nigerian crossing over the border to foreign countries is specially searched in a way that is dehumanizing. Just because of the corruption identity that has been placed on the country. While inaugurating the anti-corruption commission, President Olusegun Obasanjo pontificated that:

With corruption there can be no sustainable development or political stability. By breeding and feeding on inefficiency, corruption invariably strangles the system of social organization. In fact, corruption is literally the antithesis of development and progress⁵⁶.

The anti-corruption battle no doubt gave birth to Independent Corrupt Practices Commission (ICPC) Act 2004.

Political Instability

The Nigeria nation since amalgamation has been marked with all sorts of political instability as motivated by certain factors which includes; tribal sentiments; military take overs, annulment of free and fair election, electoral malpractices and lack of sound and focused political ideology.⁵⁷ One of the cardinal principles of rights to democratic governance is the right of the citizens to choose their governmental system through constitutional and other democratic means⁵⁸. Representative government and access to power in accordance with the rule of law are germane conditions for obtaining the consent of the governed in any society

⁵²Vanguard, Thisday, January 11, 2001, p. 1.

⁵³Vanguard, Thisday, January 11, 2001, p.1.

⁵⁴Ross-Spacer v. Master of the High Court of Switzerland Civil Appeal No. April 17, 1972

⁵⁵Annual Report of the Transparency International, 2005. Retrieved December, 2013

⁵⁶Justice M. M. A. Akambi, "The place of society in the promotion of transparency and good governance" delivered at the all Nigeria judges conference, 2001 (Ibadan Spectrum 2003) p.77.

⁵⁷Iroye, S. O., Op. Cit; p.164.

⁵⁸Igwe, O. W. and Akolokavu, G. O. 'Seeking the promotion and consolidation of democracy in Nigeria in the content of human rights law". Current issues in Nigerian law Volume 3. (School of Law – National Open University of Nigeria, Lagos).2013; Page 192.

since it is not possible for every citizen to be directly involved in governance, they must be able to have their say in government through accredited representatives. Otherwise, some groups will be ignored and marginalized and this could be a fertile ground for intra-state conflicts. Also, there must be a legally recognized means of assuming governmental power; so that it does not become a situation of the survival of the fittest and rule by trite force. In this light, junta seizure of power in states is roundly condemned as unconstitutional⁵⁹. Up till now, the nation Nigeria has not been able to fashion out a system of government that is practicable and well acceptable to all the regions of the nation and this account for all the various kinds of political crises and instability rocking the democratic setting of the nation. The current calls for separation by various regional groups in Nigeria on account of the perceived northern domination in the polity attest this.

Although US democracy promotion and assistance is viewed by some as a veiled hegemony and western imperialism⁶⁰, there is no gain saying the fact that bad governance and corruption have been responsible for the needless suffering of people in many nations where government officials' loot dry, state treasuries for their own benefits and to the peril of citizens. America's effort at establishing democracy in such nations has in no small way, contributed to peace and security, all over the world. For instance, the 2009 presidential elections in Afghanistan would have been a hotspot for violence and civil strife but for the efforts of the US government that persuaded HamidKazir and Abdullah, to accept re-run elections, which eventually saw the former emerge as President following the withdrawal of the latter from the re-run.

The United States itself; has reiterate that it will not impose the type of democracy that countries should practice out that countries should give life to democracy in their own way⁶¹. Similarly, the United Nations has also posited:

It is not for the United Nations to offer a model of democratization or democracy or to promote democracy in a specific case. Indeed, to do so could be counter-productive to the process of democratization that, in order to take root and flourish must derive from the society itself. Each society must be able to choose the form, pace and character of its democratization process⁶².

What the above means is that in societies that have no historical democratic culture, they can evolve a democratic culture that best suits their heritage; and which reflects and respects the will of their people; it must not be democracy, in the western style. After all, respected western democracies like Britain, Spain, Sweden and the Netherlands still retain their monarchies, affect in a constitutional form. The British upper-house of parliament, the House of Lords, is not elective but both hereditary and appointive. Succession to monarchs is not by elections but by primogeniture. But the key question is whether it accords with the will or consent of the people. So states should be free to adopt democratic processes that affirm the will of their people⁶³.

⁵⁹ Ahmad, R., Sani, M. A. and Efevwerhan D. OP. Cit., pp. 76 – 77.

⁶⁰Newman, E. "UN Democracy Promotion Comparative Advantages and Constraints in Newman E; and Rich, R; ed, UN.Role in promoting democracy between ideals and reality. Tokyo, United Nations, University press, 2004, p.188 at 191.

⁶¹ See text of Obama's Speech in Ghana, Supra, note 52 above.

⁶² Boutros Sahali, Boutros, "An Agenda for Democratization". New York: United Nations, 1996. Para 10, available at [http://www.un.org/en/events/democracyday/pdf.An agenda for democratization%5BI%5D.pdf](http://www.un.org/en/events/democracyday/pdf.An%20agenda%20for%20democratization%5BI%5D.pdf). last visited on August 6, 2009.

⁶³Ahmad, R; Sani, M. A. and Eferwerhan, D. I. Op. Cit. pp.84-85.

The political setting of Nigeria has defined a monster kind of system known as the “money politics and godfatherism and politics of substitution by elimination and this therefore betrays the system of worthy people who could have been good leaders but find it difficult to make it because they cannot have the guts to dance to that kind of music. This kind of politics is bad for the development of the nation and if the nation will be able to meet up with the standard practice as experienced in the development nations of the world, there is the need for an urgent rethink and every hands must be on deck in other to bring about a total clean up and overhauling of the nation's political system.

This has been the basis on which US relationship or assistance to developing countries rests. Much about this revealed in US President Obama's speech to the Ghanaian parliament:

...development depends upon good governance. That is the ingredient which has been missing in far too many places for far too long.... First, we must support strong and sustainable democratic governments. But history offers a clear verdict: governments that respect the will of their own people are more prosperous, more stable and more successful than governments that do not.

This is about more than holding elections – it's also about what happens between them. No country is going to create wealth if its leaders exploit the economy to enrich themselves, or police can be bought off by drug traffickers. No business wants to invest in a place where the government skims 20 percent off the top, or the head of the port authority is corrupt. No person wants to live in a society where the rule of law gives way to the rule of brutality and bribery. That is not democracy; that is tyranny, and now is the time for it to end.

In the 21st century, capable, reliable and transparent institutions are the key to success – strong parliaments and honest police forces; independent judges and journalists; a vibrant private sector and civil society. Those are the things that give life to democracy, because that is what matters in peoples' lives.⁶⁴

Insecurity

Insecurity is identified by all kinds of threat to the citizenry particularly threat to life and property within the nation. The Nigerians daily life is marked with all kinds of action and activities that makes the environment no longer save for habitation and the government particularly has not been able to live up to expectation. Such acts of insecurity include, tribal and ethnic clashes, violence by religious extremists, hostage taking and kidnapping, bombing and politically motivated violence.

As at present, the greatest form of insecurity being battled by the Nigerian government is the insurgency war of the Islamic religious sect called the “Boko Haram” which has caused a lot of havoc particularly in the northern part of the nation. It is the duty of the state to provide for the security of lives and property of its citizenry.⁶⁵ Therefore, there is urgent need for the government to double its effort in fighting against insecurity in the nation.

⁶⁴ “Text of Obama's Speech in Ghana”, Associated Press, July 11, 2009, available at http://news.yahoo.com/s/ap/20090711/ap_on_go_pr_wh/af_obama_text_1 last visited on July 12, 2009. It was believed that President Obama chose to visit Ghana and not Nigeria in spite of the latter's regional importance due to her leader's corrupt attitudes.

⁶⁵ Section 14(2b), Constitution of the Federal Republic of Nigeria, 1999.

Unemployment

This is a state or condition of living without any job. As defined by the International Labour organization, the unemployed are the numbers of the economically active population who are without work but available for and seeking work, including people who have lost their jobs and those who have voluntarily left work⁶⁶. The Nigeria terrain has been identified with the problem of youth unemployment. The universities, polytechnics and the colleges of education year in year out continue to turn in new graduates into the labour market but most unfortunate there are no provisions of employment for this young generation. It is believed that Nigeria has a youth population of 80 million among which 64 million of them are unemployed and 1.6 million are under-employed⁶⁷. This data without gainsaying portrays a situation that threatens the economic and political sectors of the nation. The problem of unemployment has given rise to so many vices which includes hooliganism, illicit drug dealings and trafficking, human trafficking, armed robbery, prostitution and etc. Unemployment is capable of creating a socio-economic and political hostility, instability and insecurity in the environment. The problem of youth unemployment has been stated to be capable of undermining democratic practices as they constitute a serious threat if engaged by the political class for clandestine activities.⁶⁸

Immunity

This has been defined as exemption from penalty, burden or duty.⁶⁹ Immunity from the constitutional context is restriction on legal proceedings both civil and criminal on some offices identified under section 308(3)⁷⁰. A person made mention in section 308(3) shall not have any proceedings instituted or continued against him during his period of office, he shall not be arrested or imprisoned during that period⁷¹ even when they disobey court orders, they are immune from contempt proceedings.

In these circumstances, it turns out to be worrisome as one cannot find a place for the rule of law (equality before the law) being one of the concept of good governance. In at least two instances, the courts had indicated that if not for the constitutional immunities, they would have had governors convicted for contempt of court flowing from disobedience of court orders⁷². The only remedy against recalcitrant chief executives lies in the adverse public opinion which their misbehaviours provoke. The press has reminded them that the immunity given to them is a protection according to their offices and to abuse it is desecrate to the office.⁷³

Rule of Law

This is a concept of not just great antiquity but also one that has universal validity as well. It presupposes a situation where everything is done according to laid down legal principles.

⁶⁶ Ibrahim Samson: "Youth Unemployment and the Implications for Stability of Democracy in Nigeria", International Journal of Social Science and Sustainable Development, Volume 3, Number 3 (Centre for Advanced Training and Research; Cameroon) 2013 page 13.

⁶⁷ Ibrahim Samson: Supra page 14.

⁶⁸ Ibrahim Samson: "Youth Unemployment and the Implications for Stability of Democracy in Nigeria"; International Journal of Social Science and Sustainable Development, Volume 3, Number 3 (Centre for Advanced Training and Research; Cameroon) 2013 page 11.

⁶⁹ Henry, C. M. A. Op. Cit Cite in good governance, corruption, immunity and accountability by Abubakar S. R. Matazu et al' a paper presented at the 41st Nigerian Association of Law Teachers' Conference held in University of Jos 12th – 16th June, 2005.

⁷⁰ Constitution of the Federal Republic of Nigeria 1999 as amended.

⁷¹ Section 308(a) and (b)

⁷² Mr. justice Olatunji A Jose-Adeogun in Lagos (see the alleged contemptuous speech by the Lagos State Governor in daily times Tuesday June 8, 1982, P.40) and the chief Judge Kano state Mr. Justice Dahiru Mustapha

⁷³ The edition titled "our leaders and our laws" in New Nigeria No. 5, 158 Friday October 22, 1982.

Lawyers, jurists and political thinkers have over the years struggled to develop and insist on the adherence to the principles of rule of law by those in authority so that governance cannot be characterized by oppression, arbitrariness and coercion. The rule of law has many connotations which when put together point to the prevalence of law in a particular society. The said connotations are as follows:

First, it connotes that everything in the governance of man in any society must be done in according to the law. This implies that both the governance and the governed must justify their actions in law.

Second, it connotes that government business should be conducted within the framework of recognized rules and principles to avoid dictatorial tendencies. This is because if discretionary powers are allowed, those in government would use such to the detriment of the less privileged members of the society.

Third, the rule of law connotes equality of all citizens before the law so that each citizen has equal right to be protected by the law and at the same time has equal right to resist any infraction into his person or interest in the property.

Finally, it also connotes that no citizen should be punished for an offence not provided under the law except where such offence is clearly contained in a written law and the punishment clearly prescribed.⁷⁴

Having a Vibrant and Independence Judiciary

A vibrant judiciary is indispensable to good governance. To perform the economics responsibilities conferred on it by the constitution, the judiciary must be wholly and timely independent. This is because “an independent judiciary is a sine qua non of a democratic government”. Some factors that can make judiciary in Nigeria more responsive to its constitutional roles are as follows: Avoid ambiguities, shun unnecessary technicalities, expert application not to be anathema to proper intervention by the judiciary in determining contentious issues brought by parties, avoiding delay in the administration of justice, reduction in cost being awarded especially in the appellate court, to mention but these five. This will make the judiciary well positioned as the ultimate protector of the constitution and the defender of the people against oppression⁷⁵.

Human Right

One way in which the judiciary is very relevant to good governance is the area of human rights. In its theoretical form, there has been a long standing dispute between the universalities and the relativists' schools.⁷⁶ The Universalist school says human rights are universal, that, they are the same everywhere and in every age. Relativists say human rights within specific culture necessarily differ even if there are shared values, the interpretation of such values must be different within each culture. The Universalist school championed by the west has gained the upper hand through the United Nations international human right instrument which eventually together with the European convention formed the dominant inspiration behind

⁷⁴ S. 36(8) of the constitution

⁷⁵ Report of the presidential committee on the review of the 1999 constitution.

⁷⁶ The review of both positions in M. J Perry, “Are Human Right Universal? The relativist challenge and related matters” Human Right Quarterly Report Vol. 19 No 3 (1997) pp 46 – 509.

the fundamental rights enshrined in the Nigerian constitutions. The observance and defence of the human rights of citizens is the cornerstone of democracy and good governance. This is because, a society cannot record any meaningful progress if her citizens are terrorized or in any manner deprived of the inalienable rights with which God has endowed them with. The constitution⁷⁷ contains a regime of inalienable rights which they guarantee to all their citizens as the abuse of these rights by the government pose a grave danger to democratic government and good governance.

Multi-Party System

The growth of modern democratic practice revolves around political parties which stand out as organized platform for the articulation of aspirations and canvassing for electoral votes. Thus, a broad based multi-party system in a country enhances national unity and guarantees free choice of candidates by the electorates⁷⁸. Our present political parties are lacking in ideologies and do not reflect the dream of a united Nigeria as most of them lean towards ethnicity.

Necessary Legal Reforms

The need for urgent legal reforms in all sphere of the nation's life in order to ensure and secure an efficient political administration and smooth justice administration among the citizenry in Nigeria must not only be seen as necessary, it must be attended to as a matter of urgency. To have a meaningful, sustainable development for any country, such a country must be seen moving closer to the ideal of good governance⁷⁹. To achieve this, necessary reforms are needed and discussed as follows:

1. **Constitutional review:** The need for urgent constitutional review aimed at the realization of fashioning out a constitution and system of government that will adequately meet up with the need of the nation. The legal reform anticipated in Nigeria therefore, must start with the making of a new constitution that is autochthonous to the people and until this is done, the interest of the Nigerian people will not be adequately represented and protected. It has been argued that a proper constitution operationally must fit into the society's cultural patterns and physical needs as well as ideals and create concepts.⁸⁰
2. **Reform of the political sector:** It will therefore be necessary to foster a political system that is rich in ideologies that can help to promote the political terrain of the country. The political terrain and practices in the nation must be seen to allow indiscriminate participation by ensuring it is free from all forms of threat and violence. It must encourage a system of government that will be free from the oppression of the minority; discrimination, dichotomy, election malpractices, etc.
3. **Overhauling of the social sector:** This has to do with the social life of the people which involves their ethics, values and religion. The country must be seen to create an atmosphere where all the religions can peacefully coexist with mutual understanding and respect for one another. There should be the development of a national identity as against tribal, religious or regional identity.

⁷⁷ Section 33-46 of the constitution

⁷⁸ Report of the presidential committee on the review of the 1999 constitution

⁷⁹ See <http://cwww.unesco.org/huset/gg/governance.htus>

⁸⁰ Sofekun, J. A., *Constitutional Law through the Cases*. Caligate Publishing Company Limited. Ibadan, Nigeria 2011. Page 2.

4. **Overhauling of the economic sector:** The government must ensure equal and even distribution of wealth and natural resources to all and sundry. State and national legislations should be promulgated to eliminate quota system in order to promote national unity. Right peoples should be placed in the right position as this will foster right, proper and positive actions.
5. **Reform of the educational sector:** The Nigerian educational system must be developed in a way to reflect the culture, value and religion of the Nigerian indigenous society with preference and encouragement for cross cultural and cross religious learning. The school curriculum should be programmed towards self-actualization as against the present curriculum which has programmed everyone for economic slavery in the labour market⁸¹.
6. **Judicial reform:** The problem of delay in the administration of criminal justice remains a major challenge. The country is thus confronted with the unfortunate situation in which the criminal justice system has lost its capacity to conclude criminal trials involving the wealthy and politically exposed persons. Lack of financial independence of the judiciary which encourages executive interference in the administration of justice erodes public confidence in the system.
7. **Land reform in Nigeria:** The Land Use Act of 1978 has proved to be a clog in the wheel of development since its inception. Its desired objectives have not been achieved. There is need to amend it in very many substantial ways especially the aspects that are in conflict with the provisions of the constitution⁸².
8. **Prison service reform:** Prison conditions in Nigeria are undoubtedly very bad. Prisons are overcrowded; the hygienic conditions are extremely very bad, pre-detention trial is extremely long. There is urgent need for the legislatures in this country to pass laws that will usher in a new prison services all over the country; different from our previous archaic and anachronistic laws.
9. **The police reform:** The Nigeria police remains susceptible to corruption and incidence of committed human rights abuses. There has been increase reports of torture and cruel, inhuman and degrading treatment of suspects in police detention.

Conclusion

This paper has discussed the concept of administrative law and its interrelationship with governance. Conceptual clarification and definition of key words like administrative law, good governance, democracy and democratic governance, representative government, election and election monitoring, legal reform are succinctly explained. The paper went further to examine the characteristics of good governance, Nigeria and the challenges of good governance since amalgamation, the necessary legal reforms needed were as well examined and a concluding remark.

Throughout this paper, we have presented the emerging concept of democracy as embraced by nations. It has become the most acceptable means of legitimizing power and ascertaining the wish of the people. The UN, regional bodies and hitherto tyrannical regimes have all made

⁸¹ Iroye, S. O. *OP. Cit*, P. 175.

⁸² See Section 47(2) of the Land Use Act 1978 which ousts the jurisdiction of the court in all matters relating to the amount or adequacy of compensation pertaining to vesting of all land in a state in the governor or his power to grant a right of occupancy. This provision is being inconsistent with the provisions of section 315 of the 1999 constitution as amended.

efforts to adopt democracy as the only form of legitimate internal governance in sovereign states. From the analysis of democratic persuasions, one can summarize the following salient elements of democracy and democratic governance:

1. Respect for human rights and fundamental freedoms;
2. Representative government;
3. Access to governmental powers; based on the rule of law.
4. Regular free, fair and direct elections, based on equal, universal suffrage;
5. Separation of powers;
6. Multi-party system of government; and
7. Constitutional change of government.

On the whole, while the concept democracy has its own shortcomings, its acceptance by almost all party of the world is a clear signal that it is no longer a western concept or ideology.