

Socio-economic dimensions of the rule of law: The Delta State model

INTRODUCTION

BEING text of a lecture delivered by His Excellency, Prof. Amos Agbe Utuama (SAN), Deputy Governor, Delta State, at the 2009 NBA, Asaba Branch Law Week on November 24, 2009.

I FEEL honoured to be with you on this occasion and also to be asked to deliver the law week lecture. The choice of the theme "The Rule of Law in the Present Democratic Dispensation" of the law week is topical and thought provoking. In your letter of invitation, you generously gave me the liberty to choose from a list of three suggested topics and any other topic concerning any happenings in Nigeria.

Taking advantage of the first and last options, I have decided to speak on the Socio-Economic Dimensions of the Rule of Law: the Delta State Model. One may ask why this topic? I have chosen this topic because, with the adoption of the United Nations Millennium Development Goals ("MDGs") and signed by world leaders in New York, the challenge facing democratic governments all over the world and in particular developing countries like ours, is how to use the Rule of law as a tool to achieve the set goals, namely to:

- Eradicate extreme poverty and hunger
- Achieve universal primary education
- Promote gender equality and empower women
- Reduce child mortality
- Improve maternal health
- Combat HIV/AIDS, malaria and other diseases
- Ensure environmental sustainability, and
- Develop a global partnership for development

The MDGs are to be achieved by 2015 barely 5 years from now. Our country has adopted the goals. Delta State has also adopted the goals under the State Economic Empowerment and Development Strategy (SEEDS). As can be seen, some of the principal objectives of the MDGs are to improve knowledge and develop skills, health care delivery services, create wealth, provide jobs, restructure the economy and position the nation for economic growth for poverty reduction. The overall goal of our country is to be one of the twenty most advanced economies in the world by 2020. Delta State has also bought into this goal.

With the advent of the MDGs, the current thinking is that the socio-economic dimension of the rule of law should tool up governments to achieve the goals. This does not mean that the normative character of the concept should be diminished, for it remains relevant. For this reason and in order to put the discourse in analytical perspective, rule of law in the formal sense will be sketched and followed by its constitutional expression.

CONCEPT OF RULE OF LAW IN THE FORMAL SENSE

As jurisprudence tells us, the Rule of law is an ancient ideal that was postulated by ancient Greek philosophers such as Plato and Aristotle around 350 BC. Conceptualising the Rule of law, Plato stated 'Law is the ultimate authority and the master of government' and argued that 'with obedience of government to law, men would enjoy all the blessings that the gods should shower on a State'.

According to Aristotle, law should govern and those in power should be servants of the law.² For John Locke, "Rule of law means freedom of men under government to have a standing rule to live by; the liberty to follow his own will in all things where the rule prescribes none and not to be subjected to the arbitrary. To Prof. Albert Venn Dicey, one of the greatest contemporary exponents of the rule of law, "every government action shall be according to law as opposed to arbitrary power; all authorities as well as individuals shall act and be bound by law; there shall be Cooper, John et al. Complete Works By Plato, page 1402 (Hackett Publishing, 1997). Aristotle, Politics 3.16 John Locke in his Second Treatise of Government (1690) - equality of persons before the law and all disputes between individuals or between governments and individuals shall be referred to the ordinary courts of the land for adjudication." Writing in 1977, Joseph Raz identified eight principles any legislation must possess to pass the test of the Rule of law. These are:

- Laws should be prospective rather than retrospective;
- Laws should be stable and not changed too frequently, as lack of awareness of the law prevents one from being guided by it;
- There should be clear rules and procedures for making laws;
- The independence of the judiciary has to be guaranteed;
- Natural justice should be observed, particularly those concerning the right to fair hearing;
- The courts should have power of judicial review over the way in which the other principles are implemented;
- The courts should be accessible; no man may be denied justice; and

- The discretion of law enforcement and crime prevention agencies should not be allowed to pervert the law.

In summary, the Rule of law in its formal expression implies that the law is supreme over all persons and authorities, every person and authority is bound by and must obey the law; actions of government must be governed by law and not the whims and caprices of the ruler or group of men. The law must be certain, stable and not subject to frequent changes; must be clear and so also the procedure for making laws; independence of the judiciary must be preserved. Also natural justice must be observed particularly in matters concerning the right of fair hearing. The court should have power of judicial review over the way in which other principles are implemented. Courts must be accessible to the people and no person should be denied access to justice and the discretion of law enforcement and crime prevention agencies should not be allowed to prevent the law and importantly the law is no respecter of persons.

Dicey, Albert. Introduction to the Study of the Law of the Constitution Eighth Edition, Macmillan, (1915).

Raz, Joseph. "The Rule of Law and Its Virtue", The Law Quarterly Review, volume 93, page 195 (1977);

THE CONSTITUTIONAL STRUCTURE OF THE RULE OF LAW

Our country, including the federating States, is a constitutional democracy under the 1999 Constitution. It would be recalled that this point was arrived at after a chequered history of military rule and failed Republics.

All the principles of Rule of law as enunciated above are embodied in one form or the other or degree in the 1999 Constitution. For example, the Constitution declares our country as the Federal Republic of Nigeria. It also created and defined tiers and arms of government. The powers of the government are stated and enumerated in legislative lists. The supremacy of the Constitution is proclaimed and entrenched in Section 1(1), which provides: "This Constitution shall be supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria."

Consequently, Section 1(3) states that if any law is inconsistent with the provisions of the constitution, the constitution shall prevail and any other law shall to the extent of the inconsistency be null and void. Section 4(8) gives the courts the power of judicial review the exercise of legislative powers. Thus, the courts can strike down any legislation that is unconstitutional in order to maintain the integrity and supremacy of the constitution and Rule of law. In *A.-G., Federation v. Abubakar*,⁶ the Supreme Court per Onu JSC stated succinctly as follows:

"This court has also held that where provisions of any law are inconsistent with the Constitution the said provisions are null and void and this court has not hesitated to so pronounce."

Section 3 of the Constitution is immediately followed by Part II of the Constitution, which explains the powers of the arms of government of the two tiers of government. Sections 4, 5 and 6 set out the legislative, the executive and judicial powers of both Federal and State governments. Section 9 deals with modes of altering provisions of the constitution. The whole of Chapter 4 outlines the fundamental rights. Although the normative structure of the rule of law is important in that it precludes an arbitrary exercise of governmental power and tyranny the more paramount at this point in time with the advent of the MDGs (2007) 10 NWLR (pt.1041) SC.1 at page 97, paragraph E as stated earlier are the socio-economic dimensions of the rule of law. They are the foundation and fountains of peace, egalitarianism and prosperity for the people.

In this regard, the rule of law must be seen as a dynamic tool and not just a formal concept in order to give meaning to it. In the lofty words of Prof. Ben Nwabueze in his book, *Constitutional Democracy in Africa*: "The content of law which, under the concept of rule of law, is to govern the relations of the State with the people, must include not only a legal guarantee of civil and political rights, it must secure to the people economic and social rights by making it the affirmative, if non-justiciable, duty of the state to provide the material benefits implied by such economic and social rights- education health and medical care, electricity, water, shelter, public transport, social security and a good standard of living generally" (emphasis supplied).

It is against this background that the paper will now examine the application of the socio-economic dimensions of the Rule of Law in Delta State. As a prelude however the constitutional directives that underline them will be highlighted to show how State government is systematically translating these socio-economic directives into concrete action for the common good of Deltans.

CONSTITUTIONAL OBJECTIVES

The constitutional objectives that have inspired Delta State Government to apply the socio economic dimensions of the Rule of Law are the Fundamental Objectives and the Directive Principles of State policy contained in Chapter 2 of the Constitution. These are set out in Sections 13, 14, 15, 16, 17, 18, 20, 21, 23 and 24. Section 13 makes it a duty and responsibility of all authorities and persons exercising legislative, executive or

Constitutional Democracy In Africa, Vol. 3, (Ibadan, Spectrum Books Ltd. 2004) p.23 - judicial powers to conform, observe and apply the fundamental objectives and directive principles of state policies.⁸ Section 14 directs Government to recognize that sovereignty belongs to the people from whom government through the Constitution derives all its powers and authority. Accordingly the security and

welfare of the people is the primary purpose of government. As such the participation of the people shall be assured in accordance with the provisions of the constitution. Section 15 sets out the political objectives under which the government, among other things must promote integration of all without any discrimination. Furthermore the government is required to provide, among other things, adequate facilities for and encourage mobility of persons, goods and services throughout the State. The economic objectives which are contained in section 16 require the government to harness the resources of the State and promote prosperity and an efficient and dynamic self reliant economy; secure maximum welfare, freedom and happiness of every citizen on the basis of social justice, equality of status and opportunity.

Section 17 sets out the social objectives, founded on ideals of freedom, equality and justice, directs government to provide for the opportunity of securing adequate means of livelihood, improve conditions of work and promote the health, safety and welfare of all persons in employment and adequate medicare and health facilities for all persons, pursue policies that protect children, young persons and the aged against exploitation whatsoever and promote family values.

Next are the educational objectives in Section 18 under which the Government should strive to enhance educational opportunities for the people at all levels and promote science and technology. The environmental objectives contained in Section 20 require government to protect and improve the environmental conditions of the State. The directive on National ethics based on discipline, integrity, dignity of labour, social justice,

See the case of A.-G. Ondo State v. A.-G., Federation (2002) 9 NWLR (Pt.772) 222 where the Supreme Court upheld the constitutionality of the Independent Corrupt Practices Act, 2000 which was enacted pursuant to section 15(5) which provides that "The State shall abolish all corrupt practices and abuse of power."

- religious tolerance, self-reliance and patriotism. Section 24 imposes the duty on every citizen, among others, to respect the dignity of other citizens, the rights and legitimate interest of others and live in unity and harmony and in the spirit of common brotherhood, and make positive and useful contribution to the advancement, progress and well being of the community where he resides.

THE DELTA STATE MODEL

Delta State as we all know is a creation of the Constitution and like any government under the Constitution is subject to the Rule of law. To implement the socio-economic dimension of the rule of law as espoused in the fundamental objectives and directive principles of State policy outlined above, the Uduaghan administration has set a three point agenda of peace and security, human capital development and infrastructural development. With avowed commitment to good governance and service delivery to Deltans, the state government has, from year to year and from time to time, prepared and passed Appropriation Law and

Supplementary Appropriation Law in line with Section 120 of the Constitution to allocate funds to implement socio-economic dimensions of the Rule of Law under the three point agenda. The following discourse will attempt to highlight the model under the three rubrics of the Agenda.

PEACE AND SECURITY AGENDA

The State government recognizes that peace in the State is a condition precedent to achieving socio-economic advancement for Deltans. It has therefore left no stone unturned in ensuring that recognition is given to the diversity of the people of the State in order to promote a sense of belonging and loyalty among all the ethnic groups in the State, ensure social cohesion and integration and break barriers of ethnic distrust that had existed and ensure that all Deltans live in unity and harmony in the spirit of common brotherhood. This has been reflected in the appointment to the State executive council where all the ethnic groupings in the State have been carefully accommodated to ensure ethnic balancing and interest. The State resources are being harnessed and equitably distributed with a view of addressing the major sectors of the State.

In the area of security, the State Governor as the chief security officer of the state is collaborating with the police and other security agencies to ensure public safety and the security of life and property of Deltans. Specifically, the Governor has created the office of Special Adviser on Land Security for the purpose of intelligence gathering for pro-active measures. In the riverine areas, there is the water security committee with a similar mandate. The Government recognises that Communication is a vital tool in tackling security issues and has therefore acquired and installed, a first of its kind in sub Saharan Africa, a digital communication system to provide for security personnel a State-wide communication services with a view of enhancing information sharing so as to enhance security measures in the state. Another tool deployed by the Governor in ensuring security in the State is the promotion of dialogue to diffuse tension across the state. The weekly meetings with service commanders and provision of their logistic needs remained sustained and provides an invaluable platform for reviewing the security structure of the state and to nip in the bud conflict or dispute with serious security implications if left unattended to.

THE security issues of the State were made more complex and daunting being part of the Niger Delta and as a major stakeholder in oil production arising from the sharp decline of representative democracy and socio-economic right of the rule of law during the long military interregnum. Due to the absence of democracy, there was no mechanism for making decisions that served the best interests of the people,⁹ hence, the period witnessed the introduction of various laws to divest and nationalise the mineral resources of the Niger Delta without corresponding development of the area and the creation of socio-economic opportunities for the people in return. Over the years, our oil producing communities became characterised by environmental degradation and massive water

George Soros: The crisis of Global Capitalism (Open Society Endangered) Vinod Vasistha for Viva Books private Ltd, New Delhi, 2004 at page 200 - pollution, destruction of the traditional economy and occupation of the people. These have led to massive unemployment of able-bodied youths and the consequent youth restiveness and armed agitation and protest against the obnoxious rule of law that denied the people of the control, management and enjoyment of their natural resources. The result was the virtual imposition of poverty and despair on the people. General insecurity followed and this became a vicious cycle, which militated against genuine efforts to develop the area.

The policy of the State Government has remained that of engagement with the armed youths to curtail the general insecurity in the State until May 13, 2009 when the armed conflict took a sudden turn that heightened tension in the area. Thanks to the amnesty proclaimed by the Federal Government and accepted by the armed youths, which has ushered in the era of peace and engagement in the Niger Delta including the State.

The state government has keyed into the post amnesty agenda of Mr. President of Rehabilitation and Reintegration of the ex-armed youths and Development of the Niger Delta. The State government is participating fully in this post-amnesty programme by way of resettling displaced persons, provision of rehabilitation centres and programme of development of new towns in Okerenkoko and Gbokoda. With these policies and programmes, the socio-economic dimensions of rule of law are being activated with vigour and diligence to enhance peace, order and good governance which are essential to effective delivery of economic development and poverty eradication.

HUMAN CAPITAL DEVELOPMENT AGENDA

Human capital development is multi faceted. The agenda involves well thought out programmes of capacity building in various areas of human endeavours, economic empowerment by way of micro credit, medicare delivery for the people, creation of employment and wealth, so as to build an egalitarian State. These programmes are being implemented by various ministries, departments and agencies including an MDG office.

MDG OFFICE

The State Government has established a dedicated office for the MDGs to coordinate all efforts and programmes aimed at achieving the Millennium goals. In 2008, the MDG accomplished Fifty-three (53) fenced solar powered boreholes with 3,000 gallons capacity water tanks across the 25 LGAs, Roll back malaria programme with the purchase of 456,732 doses of Sulfdoxine pyrimethamine for 228,210 pregnant women; Procurement of 400,000 pieces of long-lasting Insecticidal nets, medical Obstetrics equipment for health facilities and Equipment support to strengthen Skill Acquisition Centers.

MICRO-CREDIT PROGRAMME:

One of the strategies of the State Government for eradicating extreme poverty and hunger is the Delta State Micro-Credit Programme ("DMCP"). This programme is run by the Office of the Executive Assistant on Micro-Credit to the Governor. The objective of the programme is to use the credit delivery as an instrument for generating self employment for Deltans and through the associated multiplier effects of the low cost investments stimulate full employment and prosperity in the State and thus raise the per capita income of the average Deltan. The programme, which took off in 2007, has as last month empowered a total of 3,876 Cluster Groups comprising 42,473 persons made up of 27,072 women and 15,401 men.

EDUCATION

Importance of education to the development of human resource cannot be over-emphasised. The state has therefore adopted universal primary education for students in public primary and secondary schools. Every child of school-age in Delta State is encouraged to enroll and go to school. Higher education is being made more accessible to qualified indigenes of Delta State in tertiary institutions through various schemes including Scholarship/Students Special Assistance Scheme, Grants to law students, financial assistance to aviation and marine technology students, grants/scholarships to physically challenged students and children of deceased civil servants who died while in active service. Other scholarship schemes are the overseas postgraduate scholarship scheme, local scholarship schemes and automatic scholarship to First class degree holders from recognized institutions to pursue Ph.D. programme.

HEALTHCARE PROGRAMMES

The free health care programme is presently two fold; the Free Maternal Health Services and the Free Rural Health Scheme. The free maternal health programme was launched in 2007. It entails Free Antenatal Care, free Drugs, free deliveries including caesarean-section if necessary and free post-natal care (after delivery) up to 6 weeks after delivery. The primary aim of the programme is to reduce maternal mortality in the State. So far, over 105,000 pregnant women have registered under the Programme and more than 45,000 normal deliveries achieved. On the other hand, over 5,000 caesarean sections have been recorded. As a result, maternal mortality rate in Delta State has dropped to 300/100,000 birth compared to about 650/100,000 before the beginning of the programme.

It is also worth stating that in Delta State, children are entitled to free health care from birth to five years age.

The Free Rural Health Scheme was designed to surmount the socio-economic barriers to good health by delivering curative, primary and secondary preventive health care, free of charge, to the doorsteps of Deltans, especially those plagued with ignorance and poverty.

The results of last year's Free Rural Programme revealed that a total of 93 Communities were visited in the 25 Local Government Areas of Delta State. 19,974 persons were seen and a total number of 865 surgeries performed. 7,495 persons were tested for HIV and 257 tested positive, resulting in a 3.4 per cent prevalence ratio.

The result for this year has so far also been outstanding. Data collated in the first half of the programme, which is ongoing has shown that a total number of 11,420 patients have been seen and 506 surgeries performed. 5,223 persons were tested for HIV and 135 have tested positive, resulting in 2.58 per cent prevalence ratio.

In furtherance of our objective to develop our human capital, the Delta State Government through the Ministry of Health will early next year launch the "Free Under 5 Health Scheme."

GENDER EQUALITY AND WOMEN EMPOWERMENT

The State Government through the Ministry of Women Affairs, Community and Social Development has initiated the Delta State Residential Rehabilitation Life Skill Acquisition Programme (DERRLSAP). The programme aims at poverty reduction and wealth creation among young women in the State. Presently, 21 women who have dropped out of school or single mothers with no means of livelihood are undergoing a holistic residential training involving re-orientation and skill-acquisition at the Women Development Center, Okpanam Road, Asaba. 42 others are on the day programme.

In addition to the DERRLSAP, the Women Development Center also runs a three-year skill acquisition training for women. Examinations taken by them are Delta State Trade Test, Federal Trade Test and the National Board for Technical Education. Forty-one women are presently undergoing training while many of the graduands from the Centre are gainfully employed. Also established by the Ministry is the Women Fund For Economic Empowerment, which gives financial support to widows in the rural areas. So far, a total of 160 women from 16 women groups mainly engaged in farming and trading have been given soft loans of N30,000.00 each across the State.

AGRICULTURAL EMPOWERMENT PROGRAMMES

To advance and maintain the integrity of the State economy, the State government has adopted a policy of growing a Delta without oil. This is with a view of isolating the State economy from the vagaries of the international oil market and the unstable Federal constitutional allocations arising therefrom. The State government has developed two complimentary agricultural empowerment programmes. The first is the Youth Empowerment Through Agriculture (YETA).

Under this programme, 450 youths have been trained in various aspects of agricultural discipline and equipped with appropriate skill, have been allocated land and given relevant agricultural inputs. They are actively working in their various farms across the State. It is the expectation that these 450 youths and others that would follow would eventually take to agriculture as gainful occupation to ensure that agricultural production in the State is increased and sustained so as to provide adequate food for all Deltans and food security. The peasant farmers are also receiving financial assistance and other agricultural inputs under the Peasant Farmers Support Programmes (PFSP) to increase their yields. Both programmes are not only creating gainful employment and wealth for participants but would assist to diversify the state economy and virtually lead to agricultural revolution and emergence of agro-based industries in the state.

PROGRAMME OF CITY BEAUTIFICATION

To promote public health, public safety and environmental sustainability in the State, government has embarked upon the programme of city beautification and lighting starting with Asaba, the capital city and Warri/Effurun metropolis. This is with the objective of making our cities more hospitable, friendly, secure and livable for our people and to attract more tourism opportunities and investments.

PROGRAMME OF TRANSPORTATION

In the transportation sector, the State government is committed to facilitate intra-city, inter city and inter state transportation. To this end, government has continued to support the Delta Line company with additional fleet of vehicles under the State Urban Taxi scheme. Recently the Urban Transit Bus Service was initiated in our major cities. Over and above all of this, there is the ongoing Asaba International Airport project. An international runway is being designed for construction for the Osubi Airport. Government is currently creating the enabling environment for the Koko, Sapele, Warri and Burutu ports to be put into optimal use. Currently the good news is that the Warri port is the second busiest sea port in the country next to Tinian Island port of Lagos. The overall objective of the transportation programme is to encourage free mobility of people, goods and services throughout the State, to and from the State in order to promote cohesion and stimulate economic development of the State.

INFRASTRUCTURAL DEVELOPMENT AGENDA

The socio-economic dimensions of the rule of law must necessarily be directed at the provision of an accepted level of infrastructural development to create an enabling environment for the people to engage in gainful socio-economic activities. Such infrastructure will include road network, electricity, public institutions such as schools, hospitals, etc.

The state government's agenda of infrastructural development is designed to strengthen infrastructural assets of the State such as road network, educational institutions, hospitals, electricity, etc. To this end, the Asaba-OgwashiUku-Oleh-Ughelli Road is being dualised to link Ughelli-Warri expressway to service the Warri port and facilitate the haulage of goods to and from the port to Asaba and the Onitsha market. In the same way, the Ugbenu-Koko road is undergoing dualisation to service the Koko port and the Koko Free Trade Zone. When both projects are completed, there will be a network of dualised roads around the State to facilitate movement of people and goods from our seaports and the two airports.

The Warri Industrial Business Park is on the drawing board and it is expected to be a center of industrial and business activities.

In the energy sector, apart from buying into the National Independent Power Project (NIPP) the State is also committing huge resources into its own Independent Power Project in order to ensure availability of adequate supply of power to meet the energy needs of Deltans.

In the health care delivery sector, the Teaching Hospital, Oghara inherited by the Uduaghan administration has been completed and will soon be commissioned for improved health care delivery in the State. The schools in the riverine areas of the State that were destroyed during the Niger Delta crisis are being reconstructed so that they can reopen to classes.

The net effect of the three-point agenda is to ensure the systematic implementation of the socio-economic dimensions of the rule of law in the State as an engine of transformation of the State into an economic hub that provides equal opportunities for all resourceful Deltans and all those who reside and work in our State to live fulfilled lives.

CONCLUDING REMARKS

From the foregoing, it can be seen that the socio-economic dimension of the rule of law is very critical if the concept is to appeal to the people in a democracy. Indeed, the more a government applies the socio-economic dimension of rule of law, the more credible will be its claim to good governance. Although there have been no clear indices of good governance, in our circumstances it can be said a government that is committed to poverty alleviation and providing a reasonable living standard for the people; guaranteeing the security of life and property of the people; the maintenance of law and order and the provision of an accepted level of infrastructural development in furtherance of democratic process under the rule of law,¹⁰ is a government that is delivering good governance. In this sense, there is a close connection between the indices of good governance and the Millennium Development Goals (MDGs). Any government that is committed to the

implementation of the MDGs can safely lay claim to good governance. In this regard, Delta State is a model.