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Rule of Law Initiative:

Programs Unit
NIGERIAN BAR ASSOCIATION

About Nigerian Bar Association (NBA)

The Nigerian Bar Association (NBA) is the umbrella body of all lawyers admitted to practice law in Nigeria. The NBA is made up of 88 branches, spread across the 36 states in Nigeria. With a membership base of about 50,000, it is reputed to be the largest professional Association in Africa. In Nigeria, the Nigeria Bar Association remains the top professional association. It has members in every sphere of endeavor in the country and this gives it a credible platform to be a change agent, an ideal it has been committed to since inception.

NBA was officially recognized by law in 1933. It has continued to act as the conscience of the nation especially as it relates to the promotion of democracy, respect for rule of law and social/economic empowerment. It was in the vanguard for the fight for democracy and presently is committed to democracy consolidation and the entrenchment of the rule of law. It uses its enormous human resources to constantly appraise and engage government policies and programs. It has a highly respected voice in the country.

The NBA is committed to be the vanguard for the promotion and defense of the rule of law, good governance, social justice, and the dignity of all persons. It has as its mission to use the law as an instrument for social change. Using its specialized Programs Unit, the NBA has designed and is executing programs in the area of Electoral Reform, Justice Sector Reform, Governance and Democracy, Economic Reform and projects on Human Rights Promotion in Sub-Saharan Africa.

The new executives of NBA are led by Olisa Agbakoba, SAN, OON, FCIarb, the founder and former president of Civil Liberties Organization, CLO. The new members of executives believe that the NBA must be repositioned and re-engineered not only to face the challenges of the 21st century, but also to face the challenges of connecting law with development.

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Rule of Law Initiative: A Tool For Development

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By

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ENDNOTES

1. Specific advocacy strategy are still being worked out
2. For extensive discuss on the justice sector in Nigeria see Udo Jude Ilo, *Needs Assessment for the Justice Sector in Nigeria*, July 2007
3. For more information on Combating Corruption please see Nigerian Bar Association, *Controlling Endemic corruption in Nigeria (Revised Edition)* July 2007

I. CONCLUSION

The rule of law initiative represents an understanding that no society can develop or progress without the entrenchment of rule of law. The rule of law creates the calming balance between diverse interest in the society and also between state powers and individual liberty. As such it behoves on every member of the society to contribute to the process. Entrenching the rule of law would require a partnership between the public sector, private sector and civil society. A synergy between these key players will go a long way in boosting the campaign for the rule of law. In this regard, the NBA proposes the establishment of the **Rule of Law Initiative Trust Fund**. This fund will be used to reform and strengthen the necessary components of the rule of law, engage in media campaign and awareness and also support organisations working in the area. Corporate organisations are invited to be part of this rule of law campaign. Together we can make Nigeria work.

A. INTRODUCTION:

There is a general agreement in Nigeria that for our country to develop and achieve its potentials as a nation endowed with rich human and natural resources, the rule of law must be entrenched. This understanding is further strengthened by the obvious nexus between rule of law, constitutional democracy and economic governance.

The Federal Government had at the Annual Conference of the NBA restated its commitment to the rule of law. Drawing from this declaration, the NBA had written to the Attorney General of the Federation calling for a holistic rule of law initiative which would involve massive legal reform, institutional support and public advocacy. Government has accepted this invitation and had recently launched the Rule of Law Initiative signifying a partnership with the NBA and a commitment to rule of law enforcement. The challenge is to move from the conceptual notion of the rule of law to practical implementation of the components; a move from concept to reality. How do we ensure that Nigerians appreciate and respect the rule of law? What are key components of the rule of law? How do we address the challenges of poor democratic culture? How do we sustain the rule of law process with institutions? These are some of the basic questions that need to be addressed in our stride towards a rule of law state. This would require a partnership between every sector in Nigeria. The gains of a rule of law culture can never be quantified.

Our concept of the rule of law in essence is that government actions are guided by law and that there is a reasonable balance between state powers and individual freedom. As such laws must be certain, predictable and realistic. Individual rights must be protected within the framework of social and economic development. Discretionary powers of officials must be exercised within the realms of reasonableness and subject to judicial review. The state must be subject to law and state actions hinged on legal frameworks that assures individual liberty and national development.

Nigeria is emerging from a chequered past characterised by military leadership which entrenched the culture of impunity; a political class that emerged from an undemocratic culture; structurally deficient national institutions and a poverty ridden social class. The transition from military to civilian rule in 1999 offered hope and opportunity to rebuild and reposition the nation socially, politically and economically. However the gains of this process did not materialize because of the absence of the rule of law and the inability to use the law to jumpstart reforms and sustain development. These are the challenges that are presently facing the nation

The integral nature of the rule of law in driving national development cannot be overemphasised. Its centrality to the survival of constitutional democracy is inviolable. As such at the heart of our democracy consolidation, law and order and economic revival is the rule of law. The Federal

framework of legal accountability in the form of probe by the National Assembly, the Federal Government and the office of the Attorney General. Horizontal accountability would require coordinate agencies like the Human Rights Commission, Public Compliant Commission and law enforcement agencies having the enabling environment to check and input on the activities of the anti graft agencies. No agency should have a free reign to pursue anti-corruption agenda. The horizontal, vertical, political and legal accountability ensures that the law and not passion guides the system. It limits the extent of manipulation and selectivity and further enhances credibility. The international dimension in the vertical accountability as regards pressure that can be mounted by international organisations and financial institutions helps to maintain focus and objectivity in the system. The challenge therefore is to create a coordinated anti-corruption framework that is credible, effective and transparent³.

NBA Intervention:

The Nigerian Bar Association has published a book on Controlling Endemic Corruption in Nigeria. We are also planning a major international conference to identify key actions necessary to eradicate corruption in Nigeria.

cannot effectively entrench the rule of law. Corruption breeds inequality in the society, destroys the foundation for good governance and breeds non-participatory governance. To ensure the rule of law, corruption must be tackled head on and reliable framework put in place to ensure enforcement of the law.

In most cases, the zeal to eradicate corruption and anger towards the perpetrators of corrupt practices may lead to aggressive attitudes which are not in tandem with due process. As such the challenge would be to balance effectiveness and adherence to due process.

The success of anti-corruption crusade rests on a number of structures. One would be the adequacy of the laws to effectively provide a comprehensive framework of offences relating to corruption, proper procedures and penalties. Also a justice system that is both effective and above reproach is important. The credibility of the process must not be in doubt. In this case perception and reality must be such that satisfies the expectations of the people. Most importantly, there must be overlapping agencies working on anti-corruption to ensure objectiveness and effectiveness.

Fundamentally, there has to be accountability. Activities of the anti-corruption agencies must constantly be under scrutiny. Accountability has both political and legal coloration. The political accountability refers to the perception of Nigerians on the activities of the agencies. When there is a crisis of credibility, this would trigger the

Government has recognised these hallowed realities and has committed itself to the promotion and protection of the rule of law. The Nigerian Bar Association (NBA) has as its motto 'promoting the rule of law'. The NBA is convinced that the only way to ensure good governance in Nigeria is to promote the rule of law. Ensuring institutionalised economic governance, respect for human rights and democracy consolidation can only be achieved by the rule of law.

This work is part of the NBA contribution to the Rule of Law Initiative. It is an advocacy manual that attempts to highlight the key components of the rule of law promotion in Nigeria and presents roadmaps on how to achieve the entrenchment of rule of law. This work recognises that the sure way of entrenching rule of law in the country is to build and strengthen institutions of governance through law and also have a government guided by law.

B. BACKGROUND:

Nigeria is a growing democracy and an emerging economic force. The challenge before government now is to harness the immense human and natural resources available in the land to ensure development and consolidate democracy. Through out the globe, there is a realisation that nations must work hard to better the lives of their people. The challenges of the time and the quantifiable targets for government are captured in the Millennium Development Goals (MDG). MDG represents a global agreement setting out key standards that nations should achieve by 2015. The goals

include the following:

1. Eradicate extreme poverty and hunger
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDs and other diseases
7. Ensure environmental sustainability
8. Develop a global partnership for development

The reality on the ground is that Nigeria is still struggling to fulfil basic benchmarks in some of these areas. Imbibing a rule of law culture will no doubt remove some of the bottleneck hindering our MDG especially as it relates to poverty reduction, environmental sustainability and global partnership. No nation would want to partner with lawless country. Thus the task of achieving a rule of law state is fundamental to the overall growth of the nation.

Strict adherence to rule of law offers a unique opportunity to improve the lot of the nation in that it will enhance good governance, respect for fundamental rights and create an enabling environment for economic development.

To ensure the rule of law in Nigeria, there are obvious challenges that have to be addressed especially in the area of constitutional governance, electoral system, justice sector and security issues. The above list represents some of the key components of the rule of law. The Nigerian Constitution

and practice. Law and legal reform are central to economic development and social transformation. Economic development can only thrive in an environment where the law is respected and the rules of the game are enforceable. The court system must be such that can command the trust and respect of investors as regards the protection of their interest and predictability of regulations.

There are two dimensions to ensuring economic development through the rule of law. One is to root economic policies in the law. This would mean using the law to create institutions and regulations that kick-start and sustains economic development. But legal reform must be broadly focused on removing bottlenecks so that the private sector will be vibrant and competitive as well as empowering the people to more meaningfully engage in economic activities. Legal reform work should be comprehensive and strategic. The second aspect would imply strict adherence to the provisions of the law so enacted. Here the court system and the enforcement of court judgment play a very central role.

Our contention is that there is an intricate nexus between the promotion of rule of law and economic development. Economic development cannot be achieved in an environment where the rule of law is not respected.

H. ANTI-CORRUPTION

Corruption and the rule of law are opposed to each other. A society confronted with endemic corruption problems

any overbearing influence from government and this ensures objectivity.

Some of these institutions include:

The Independent National Electoral Commission

Public Compliant Commission

National Human Rights Commission

Legal Aid Council and

National Judicial Commission

By definition, these institutions play a central role in protecting individual liberty, promoting accountability and ensuring a proper democratic culture.

However, the 1999 Constitution has not provided a solid framework for optimal effectiveness of these institutions. There are concerns about their fiscal and structural independence, ambit of their powers and the qualification of its members. These concerns have to be addressed to ensure their effectiveness. Section 9 of the South African Constitution which provides for the Institutions that promote democracy is illustrative here because of the guarantees of independence and effectiveness which the South African Constitution provided for. We recognise a need for urgent review of the legal framework establishing these institutions within the context of a holistic constitutional amendment.

G. ECONOMIC REFORM (LAW AND DEVELOPMENT)

The failure of development in Nigeria can easily be described as the failure of law as a transformative discourse

which represents the basic framework for our nation's life is fraught with inaccuracies and inadequacies which have impacted negatively on governance and constitutional democracy. Being the grundnorm of the land such lacunae taint other laws and institutions of governance and by extension impact negatively on the rule of law in Nigeria.

C. COMPONENTS OF RULE OF LAW IN NIGERIA

The concept of rule of law means different things to different people. Cultural differences demands that the content of rule law may vary from country to country. The principles are the same but the specifics have to address contextual challenges. In the Nigeria context, we believe that to achieve the rule of law and by extension sustain democracy and economic growth, the following components need to be addressed.

1. Constitutional Review:

Nigeria is a constitutional democracy. What this implies is that the whole democratic structure beginning from government powers, institutions and individual rights are rooted in the constitution. Section 1 (3) emphasises the supremacy of the constitution and rightly provides that any action taken or law passed which are inconsistent with the constitution are null and void to the extent of their inconsistency.

In effect, the constitution is fundamental to the promotion of the rule of law as the basic law of the land. In effect the provisions of the constitution should promote the values of

fairness, due process, individual rights and enabling framework for the promotion of good governance and economic governance.

However, there is a general consensus amongst Nigerians that there is an urgent need for constitutional reform. The content of this reform maybe controversial but they are certain unassailable ingredient which a constitutional democracy must embody. This will include a constitution that protects individual rights whilst creating space for government activities and powers. The constitution must promote and protect devolution and separation of powers amongst the various organs of government. It must create solid national institutions to ensure efficiency, independence and professionalism (EFCC, INEC, NJC et al). Safeguard and promote economic participation. The Constitution must promote the growth of democracy and people oriented leadership.

There are basic elements of a good constitution and this revolves around the process of passage. These basic standards include:

- Inclusivity: The constitution must be owned by the people. In effect it is in the spirit of rule of law for the people to have a say in how they are governed. Ownership ensures credibility and comprehensive of the constitution
- Validity: The constitution must be subject to a referendum
- Transparency: Process must be transparent to ensure

enforcement and also emphasis the need for cooperation amongst the various jurisdictions in Africa.

(d) The Administration of Justice Commission

This Commission was established under the Administration of Justice Commission Act of 1991; cap A3 Laws of the Federation of Nigeria 2004. It is charged with the duty of supervising and monitoring of the activities of the key institutions of the justice sector. Till date this commission has been moribund. The activities of the various institution of the justice sector are not coordinated, reforms are episodic and incoherent and the sector has suffered neglect. It is also trite that when the justice sector suffers, rule of law suffers.

We recognise however the willingness of government to revitalize this Commission but we must underscore the need for speed.

F. STRENGTHENING THE INSTITUTIONS THAT PROMOTE DEMOCRACY

Institutional building is one of the key components of ensuring a rule of law culture and promoting democracy. The institutions that promote democracy are established to give meaning to individual rights and also ensure that actions of government are within its constitutional powers. Its independence ensures that its duties are carried out without

Furthermore, the absence of a comprehensive continuing legal education program for lawyers has not helped in entrenching the culture of rule of law.

NBA Intervention

1. In this regard the NBA has established the Centre for Continuing Legal Education which will provide compulsory capacity building programs for lawyers. The challenge then is to greatly enhance the rule of content of such trainings.
2. NBA is embarking on the review of the Fundamental Rights Procedure Rules in Nigeria to bring it up to date with current challenges. The key issues of jurisdiction of state and Federal High Court which has occasioned controversy and the procedure for leave to enforce fundamental rights are the major challenges to be addressed in this review.
3. Training for Lawyers in Nigeria on the Sub-Regional Mechanisms for the Promotion of Human Rights is aimed at increasing the capacity of lawyers to appreciate international trends and dimension in the protection of human rights.
4. International Conferences on the African Court on Human Rights and the Community Court of Justice. This forum will offer lawyers international exposure and comparative appraisal of the challenges of human rights

credibility

In essence, for Nigeria to achieve the entrenchment of rule of law, it has to review its constitution to create a proper democratic atmosphere which addresses the imperatives of a rule of law state.

NBA Intervention: The Nigeria Bar is committed to two key areas of reform under the constitutional reform initiative.

They include:

- (a) Review of the 1999 Constitution to enhance the protection of rule law
- (b) Promotion of the culture of constitutionalism

We propose in achieving the former to empanel a working group that will produce a strategic draft on Constitutional reform. The focus of the draft is to make recommendation on the relevant reforms in the Nigerian constitution which will entrench and promote the culture of rule of law. This draft will be reviewed by the National Executive Council of the Nigerian Bar Association comprising of about 300 lawyers. The Final Draft becomes our advocacy material¹. For the latter a comprehensive action plan is being mapped out to promote constitutionalism in Nigeria.

D. ELECTORAL REFORM

In a democracy, the rule of law is manifested in an independent judiciary, a free press and a system of checks and balances on leaders through free elections and separation of powers amongst the various organs of government.

One of the greatest threats to the rule of law is the problem of electoral corruption. It attacks the essence of the rule of law in the sense that the process that produces the government is in clear conflict with the rule of law and as such robs the process of credibility, transparency, due process and legitimacy, the core values of the rule of law. Individuals' rights of expression is eroded and elected officials are imposed on the people just like in dictatorships.

The sad reality of Nigerian political system can be traced to our political history which has been under the grip of the military for so long. The transition in 1999 was a hurried exercise which created an irony of democracy in an undemocratic environment. Before 1999, government appointment was perceived as an avenue to amass wealth. The obscene wealth displayed by appointed officials entrenched a culture of rent seeking and desperation to acquire power on the part of politicians. Politicians were ready to go outside the law to turn elections around in their favour.

The rule of law requires a transparent electoral system which creates an even playing ground for candidates and a

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- b. Administration of Justice Commission Bill
 - c. Legal Aid Council (Amendment) Bill
 - d. National Human Rights Commission (Amendment) Bill
 - e. Community Service Bill
 - f. Victims of Crime (Remedies) Bill
 - g. Elimination of Violence in Society Bill
 - h. Prison Act (Amendment) Bill
 - i. Police (Amendment) Bill
 - j. Arbitration and Conciliation Bill
 - k. Legal Practitioners Act Amendment Bill

NBA Intervention:

The Nigerian Bar Association has already published the National Needs Assessment for the Justice Sector which serves as our advocacy tool for the reform of the justice sector. We will soon convene a legislative dialogue with the lawyers' caucus in the National Assembly to push for the passage of the Bills.

(c) Rule of Law Content of Legal Education and continuing legal Education

Building a culture of rule of law requires the appreciation of the concept and its components by lawyers and law students alike. The present curricula of Law Faculties do not emphasize training on rule of law and other developmental concepts. Lawyers have a fundamental role to play in enthroneing the rule of law culture. There is an urgent need to review the content of the training program for law students.

judgement debt is not factored into the debt profile of the Government in Nigeria underscoring a fundamental gap in the rule of law in Nigeria.

- This will make a clear statement to all agencies of government that this is not business as usual. A transparent process of registration of judgement debt will ensure the promotion of the rule of law culture in Nigeria.

NBA INTERVENTION

The establishment of a Judgement Registry in the 88 branches of the NBA: All judgement secured against government will be registered in the branch where the case is heard. A quarterly publication of these rulings or judgement will be embarked upon by the NBA. This way the courts are affectively monitored and obedience to court orders ensured.

(b) Justice Sector Reform Bills:

More than 8 years of justice sector reform effort have provided an appreciable number of legislative initiatives aimed at the strengthening the court system, professionalizing institutions and providing access to justice. The NBA has been part of this process and firmly believes that the passage of these Bills will adequately place our justice sector in a position to deliver on its potentials. The bills include the following:

- a. Criminal Justice Administration Bill

politically aware citizenry whose votes must count. This way there is participatory democracy and an accountable government. To achieve this, our electoral system requires an urgent reform. The recent move by the Federal Government to inaugurate a Presidential Working Committee on Electoral Reform is a welcome development but what would be more important is using this avenue to create a credible, reliable and participatory electoral framework that will make every vote count. There can be no rule of law without a credible electoral system.

NBA INTERVENTION

NBA intervention in this regard targets two main components namely: Reform of the Electoral System and the reform of Nigerian Political Culture. The specifics of this intervention include:

1. Constituting a Multi-Sector Working Group on Electoral Reform: This working group will comprise of professionals and experts in the area of electoral systems. With the help of technical assistants, this group will review the NBA Strategic paper on electoral reform, incorporate new views and recommendations from further consultations and prepare a blue print for holistic reform of the electoral system
2. Result of the NBA working group research and consultation will be presented to the Presidential Working Group and the National Assembly using the

forum of the Lawyers Caucus

3. Public orientation program on the new political culture using the 88 branches of the NBA

E. JUSTICE SECTOR REFORM²:

The justice sector is a very important component of the rule of law. In some quarters, the rule of law is synonymous with obedience of court order. This might be a simplistic understanding of the concept of the rule of law but it goes further to underscore the importance of the justice system in building a rule of law culture.

The courts must be available to protect the interest of individuals as well as promote the development of the nation. This would require an ingenious balance between state powers and individual liberty. The courts system must be independent, accountable, efficient, impartial, accessible, affordable and credible.

The key institutions of the justice system must be structurally strengthened to be able to discharge their duties professionally. Safety and security must be ensured and the police force equipped to be professional and efficient. Court processes and procedures must be structured to enhance easy dispensation of cases and quality judgement. In particular, the NBA identifies the following key areas of the justice sector which require urgent attention:

(a) Obedience to Court Rulings:

The last administration thrived in disobedience of court orders. This was a great threat to the entrenchment of democracy and rule of law in Nigeria. Interestingly the present administration has maintained its commitment to the promotion of rule of law and enforcement of court of judgment.

However, aside from the high profile cases involving government which attract national attention, there are other small cases involving smaller government establishments which may never come to limelight even if disobeyed. Also there are backlog of judgement debt/rulings against the government. The challenge therefore is to put in place a mechanism for ensuring enforcement of courts rulings against government. To this end we propose the following:

- A review of the Sheriff and Civil Processes Act especially as regards the power of the Attorney General to approve the execution of Judgement against the Government
- Establishment of judgement depository by the Attorney General of the Federation and the State Attorneys General. Here all judgements against government are deposited and the AGF or AG as the case may be is able to determine the outstanding judgement debt of the government and issue periodic advisory to relevant agencies for compliance. It is important to note that