

# THE RULE OF LAW AND PEACE BUILDING IN NIGERIA: THE ROLE OF THE BAR

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## INTRODUCTION

Peace is the harbinger and pivot for sustenance of democracy anywhere in the world. Democracy is no doubt a vehicle of development, where it operates. It cannot therefore be erroneous to posit that without peace, there cannot be development in any society. It is equally however paradoxically true that conflict, which is the opposite of peace, is an inevitable aspect of human endeavour<sup>1</sup>. But, despite the position of conflict in man's life, it cannot be accommodated in all its forms and ramifications<sup>2</sup>. This is different from peace, which is welcomed anywhere, anytime and in any form, amidst mankind and other beings. Thus, no better issues will any serious country, yearning for a sustainable development, pay attention to, than the matter of peace.

To say the obvious is to state that Nigeria, like other countries of the World, is not insulated against conflicts. And conflicts, by their nature, do constitute impediments to development<sup>3</sup>. It will not therefore be out of place for Nigeria, as a country that is seriously thirsty and hungry for development, to continue to work assiduously on peace building. However this cannot be attained unless due regard is paid to the observance and enforcement of the Rule of Law in the polity.

It is unfortunate that the Rule of Law has for a long time been under siege in Nigeria and successive governments have continued to show utter disregard for its advancement<sup>4</sup>. This has manifested in several phases<sup>5</sup>. It cannot therefore be incorrect or an exaggeration to conclude that without improvement on the observance of the Rule of Law, it will be very difficult, if not impossible, for Nigeria to experience peace and this may consequently, impede it from achieving its desired development goals as one of the first twenty leading economies in the world by the Year 2020<sup>6</sup>.

Rule of Law is a concept whose abode is no where other than the Temple of Justice. For it to therefore thrive anywhere, it must be promoted by Ministers in the Temple of Justice<sup>7</sup>. Members of the noble legal profession, commonly known as "Lawyers", are the Ministers serving in the Temple of justice. Since peace building cannot be actualized in Nigeria without the promotion of the Rule of Law and the Rule of Law cannot be promoted without the contributions of lawyers<sup>8</sup>, then lawyers, nobly called "the Bar," must necessarily be involved in the project of peace building in the country.

To this end, this paper discusses analytically for practical effect, the role the Bar can play in bringing about peace in Nigeria through the pivot of the Rule of Law. It will be seen in the course of the paper that the Bar must necessarily be involved for the nation to successfully accomplish its peace building project and the tool to use is undoubtedly the Rule of Law.

### **EXPLANATION OF THE KEY COMPONENTS OF THE TOPIC**

The title of this paper is a combination of some key terms. For a proper understanding of the paper, we shall therefore hereinafter succinctly explain those key components. The terms to be explained are "Rule of Law", "Peace building" and "the Bar".

### **RULE OF LAW**

Simply put, Rule of Law connotes respect for general order of law. It is an ideology that appeals for unalloyed obedience to law and strict adherence to its stipulations<sup>9</sup>. The historical advancement of the concept is widely attached to the theories of early philosophers<sup>10</sup>. More significantly, it has been tied to the thought propagated by Aristotle that "rule of law is preferable to that of an individual"<sup>11</sup>.

In the 13th century, the glory of the exposition of the concept was given to Bracton who made a brave declaration that:

*The king himself ought not to be subject to man, but subject to God and to the Law, because the Law makes him king<sup>12</sup>.*

Expanding the ideology beyond the 13th Century concept, A.V Dicey popularized the concept and presented it in a sense in which it is now understood in the modern days<sup>13</sup>. In his reasoning, he put forth three principles of absolute supremacy of the law, equality before the law and civil liberty of fundamental human rights to explain the purport and connotation of the theory<sup>14</sup>.

We hasten to add that, beyond the exposition of Dicey but also inherent and inclusive of same, Rule of Law covers such matters as:

- (i) Supremacy of the law;
- (ii) Equality before the law;
- (iii) Separation of Powers;
- (iv) Fundamental Human Rights; and
- (v) Strict Observance of Due Process<sup>15</sup>.

It is our humble submission that if due regard is given to the advancement of all the above components of the concept in Nigeria, it will not be long for the country to actualize its peace building project. A proper understanding of the Rule of Law by all the peoples of Nigeria now becomes necessary. It is unfortunate that the vast majority of Nigerians are yet to grasp the spirit and ideology of the Rule of Law in all its

To this end, we feel compelled to explain the concept in the following respective admirable words Oluwarotimi O. Akeredolu SAN and Yusuf O. Ali, SAN both of which were expressed almost at the same moment, place and time<sup>16</sup>. According to Akeredolu;

*Basically, the rule of law means respect for general rule of law, it is an appeal for obedience to law just customs and traditions are observed in a community. Essentially, the rule of law is based on the philosophy of legality and impartiality. It also means absolute supremacy or preponderance of regular law as opposed to influence of arbitrary power. In short, the law rules or reigns over the people in the same way in which a king rules or reigns over his subjects<sup>17</sup>.*

#### **ALI PUTS IT THUS:**

*Rule of law in the layman's language means that everything must be done in accordance to the law of the land. It means equality before the law, irrespective of class, status or influence. Under this concept, the pronouncements of the courts over any issue are supreme and when a matter is submitted to the court, all interested parties must fold their arms and allow the court to do its duty without interference. It also means that obligations that are in court under the law must be fulfilled. In constitutional democracy, it means there is the supremacy of the constitution over any other laws, norms or conventions<sup>18</sup>.*

If the idea of the Rule of Law is understood in the above sense and upheld in that manner in Nigeria, it will not be difficult for the nation to be an abode where peace will be in control. Therefore, a proper understanding and appreciation of the concept is a first step to the project of peace building in the nation. An intensive public awareness and enlightenment is imperative for that to be achieved. We therefore recommend same<sup>19</sup>.

Before we proceed further, it must be stated that time is now ripe for Nigeria to make its citizenry to begin to see, appreciate, understand and imbibe the spirit and beauty of the Rule of Law in the Nigerian nation. Even though the concept has gained universal acceptance<sup>20</sup>, we are not convinced that the approach to its application, operation and implementation can be globally uniform.

To avert a situation where the purport of the theory will continue to elude Nigerians and their leaders, which may be inimical to the attainment of peace in the country, we are of the strong view that there is need for the concept to be studied within the political, cultural, economic, legal, religious and social miliea of the country<sup>21</sup>. This will no doubt aid the nation to achieve through the Rule of Law all the lofty goals it has as its vision 2020. And if this is done, in no time, it will be possible for it "to build a nation where peace and justice shall reign<sup>22</sup>.

### **PEACE/PEACE BUILDING**

The Fourth Edition of the Oxford Advanced Learner's Dictionary of Current English lexically defines peace as "state of freedom from war or violence<sup>23</sup>." It further states that peace connotes a period where a nation, community, country or even family witnesses a state of freedom from war or violence<sup>24</sup>. We can rightly state that peace building is a process, step and effort made to bring about peace where same seems not to have been firmly planted. Placing this understanding within the frame work of the title of this paper, then, our concern is to state and bring out the role which the Bar will have to play in the process of bringing about peace in Nigeria<sup>25</sup>.

Be that as it may, it must be noted that before peace can be said to exist anywhere, the citizens must be free from all forms of violence, be it political, economic, legal, social, or religious<sup>26</sup>. In fact, we are convinced that this is the kind of peace Nigeria wants to bring about, after the actualization of its peace building project. We are equally in no doubt, that the Rule of Law is indeed an indispensable tool it must adopt to realize this project. Thus, this paper is of timely significance and relevance<sup>27</sup>.

## THE BAR

Firstly, it is worthwhile to state that the word the "Bar" is used here in a very restrictive technical sense. If we are to be guided by the dictionary usage of the word, which will be most misleading, we will understand it to mean "a piece of solid material"; "narrow band" or "strip of metal across the ribbon of a military metal to show service in a particular area or an additional award of that metal"<sup>28</sup>. "Bar" without "the" will not make any sense to fit in to the scope of this paper howsoever<sup>29</sup>.

Therefore, in a simple technical usage of the word, "the bar" refers to those who belong to the legal profession in a particular country, but subject to restrictions that may be placed by law and practice on the sense of the usage in the country. For example, in Britain, "the bar" simply means all those who belong to the profession of barrister with the exclusion of those who are solicitors<sup>30</sup>.

This is in contrast with what operates in America where "the bar" refers to all those who belong to the legal profession be it trained or practicing as barristers, solicitors, judges, corporate practitioners, in house officers or academics<sup>31</sup>.

In Nigeria, the correct position is that the bar comprises of every person duly enrolled by virtue of the Legal Practitioners Act<sup>32</sup>, regardless of areas of specialization or practice after the enrollment, be it as public officers, judges, advocates, solicitors, corporate practitioners, academic, in-house officers or even as private sole proprietors or employees<sup>33</sup>. It must therefore not be mistaken that a legal practitioner is only a person that is actively engaged in the practice of law and whom the laymen usually recognize and appreciate as lawyers<sup>34</sup>.

In essence, a legal practitioner is statutorily a person entitled, in accordance with the Act, to practice as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings<sup>35</sup>.

Thus, it does not matter whether such a person actually chooses to practice as a barrister or as a barrister and solicitor or not<sup>36</sup>. This explains why the body called the Nigerian Bar Association has as its membership, legal practitioners as recognized in the Act, rather than only those who engage in the active practice of law, whether as barristers or as solicitors and barristers alone<sup>37</sup>. Hon. Justice (Professor) Niki Tobi captured this when he observed:

To this end, the bar of focus in this paper is that umbrella body for all person entitled to practice as barrister and/or solicitor in accordance with the provisions of the Act

popularly known as the Nigerian Bar Association as an entity itself and its members as individuals<sup>38</sup>.

To be more specific, the bar as used in this paper, will exclude lawyers who serve as judges or in other judicial capacities. This is because they, as distinguished from other legal practitioners, are specially known as the Bench<sup>39</sup>. And a research that will touch or discuss their role will definitely be captioned to reflect the word "the bench"<sup>40</sup>.

Premised on the foregoing, it is obvious that this paper is constrained to focus mainly on the role which legal practitioners in Nigeria, with the exclusion of those of them serving in judicial capacities, and their umbrella body, will play, in seeing to the actualization of peace in the country, particularly through the instrumentality of the Rule of Law<sup>41</sup>.

### **THE NEXUS BETWEEN THE RULE OF LAW AND PEACE BUILDING**

As earlier observed, there cannot be any development anywhere without peace. Peace can only be attained when law and order is maintained<sup>42</sup>. On 8th June, 1992, the High Court of Lagos State<sup>43</sup> through the mouthpiece of Hon. Justice A. A. Aka painted the nexus between the rule of law and peace in the following admirable, instructive and energizing words; saying:

It is this court's view that the right to life, right to personal liberty, right to freedom of expression, thought, conscience and religion, right to lawful and peaceful assembly and association which are vital to human existence and democracy in this nation cannot be compromised. On the other hand, chaos and unruly behavior should be stamped out. It is not an instrument of civilization and the Rule of Law. No nation can thrive and progress without peace<sup>44</sup>

We hold the view that it is only through a jealous preservation and advancement of the Rule of Law that Nigeria can succeed in its peace building efforts. How can a country progress and develop when, its citizens live in fear and do not have all their fundamental rights secured? Here is the nexus between the Rule of Law and peace building. Nigeria cannot therefore pretend to bid for developments without negotiating for peace which cannot be bought save with the price of the Rule of Law

### **COMMON INSTANCES OF BREACH OF PEACE IN NIGERIA**

It will be a fruitless effort for Nigeria to charge the Bar to bring about peace in the country through the instrumentality of the rule of law, without showing clearly instances where disregard for the Rule of Law had brought about breakdown of peace and order.

Thus, for practical guide to the bar, we shall endeavor to identify areas where rule of law can best be invoked in building peace in Nigeria.

According to the 2003 report on violent conflicts in Nigeria as collated by Peace and Development

Projects (PEDEP)<sup>45</sup>, Nigeria has always witnessed violence in the following forms:

1. Political and Electoral violence;
2. Communal clashes and Ethnic clashes;
3. Civil Disturbances and Violent Clashes;
4. Intra and Inter-Faith Conflicts and Religious Violence;
5. Campus cultism and Violent Activities; and
6. Violence Associated with Social and Economic conflicts.

If we carefully study the factors that usually lead to any of the above forms of violence in the country, none of them will be unconnected with the disregard for the Rule of Law. It therefore follows, as the day follows the night, that upon the occurrence of any of the above incidents, the nation cannot concentrate on development efforts. We shall therefore analyze the quotas which the bar can contribute, to avert the state of such violent conflicts in future, albeit through the instrumentality of the Rule of Law.

Before we proceed, it must be stated that apart from the above instances, disregard for the Rule of Law also features in other circumstances, which must equally be addressed if the nation, must be rid of violence and accomplish its peace building effort<sup>47</sup>. Every act of violation of human rights is a sheer Disregard for the Rule of Law and a threat to national peace and security<sup>48</sup>. In as long as the executive at my level continue to disobey orders of courts, the project of peace building will be difficult to actualize<sup>49</sup>. The country cannot therefore close its eyes to all these matters, if truly it wants the rule of law to progress the interest of peace and development<sup>50</sup>.

## **THE ROLE OF THE BAR IN PEACE BUILDING THROUGH THE VEHICLE OF THE RULE OF LAW**

The role which the Bar will have to play in the peace building project in Nigeria can best be discharged through the vehicle of the rule of law. This is more so because:

*"The last hope of a common man in this nation is in the courts of the land, which are the Temple of Justice. The Bar is the collective noun of Lawyers who are in the main Ministers in the Temple of Justice. Rule of Law is not an end itself, but a means to an end. The end result of Rule of Law is nothing but justice. Rule of law cannot therefore thrive, unless Ministers in the Temple of justice contribute their quotas<sup>51</sup>."*

That being the case, we hold the view that the role of the Bar in the actualization of the peace building project in Nigeria through the vehicle of the Rule of Law will include:

1. Respect for the Rule of Law by the Bar;
2. Staunch promotion of Democracy by the Bar;
3. Advocacy for good governance;
4. Vanguard in the Anti-Corruption Crusade;
5. Educating, Orientating and Creating better awareness on the Rule of Law among Nigerians;
6. Selling the Gospel of Settlement Options to Clients;
7. Embracing the Spirit of Peace and Peaceful Dispositions;
8. Adherence to Rules of Professional Conduct;
9. Mapping out a Legal Panacea to the MEND and Boko Haram etc. Problems;
10. Promotion of Social Justice;
11. Active Participation in Electoral Conducts, Reform, Practice and Law; and
12. Standing as Advocates of the Ideology of Unity in Diversity.
13. Promotion and Collaboration with Civil society groups in the promotion of rule of law and good governance.

We shall presently embark on short elaboration on each of the above to drive home the essence of this presentation.

## RESPECT FOR THE RULE OF LAW BY THE BAR

By section 2(1) (c) of the NBA Constitution, the objective of the bar shall be "The promotion of the principle of the Rule of Law including Fundamental Liberties and the independence of the Judiciary<sup>52</sup>." There is no way this objective can be actualized without the bar itself paying homage to the Rule of Law. Respect of the Bar for the Rule of Law demands that members of the noble profession, in whatever capacity, must not engage in any act or activity that can jeopardize the security and peace of the country. A situation where a member of the bar will aid or abet unlawful prosecution, detention or even destruction of a fellow citizen cannot be in the good spirit of the Rule of Law. This may be challenging, but it is truly what is demanded of them<sup>53</sup>.

We hold the view as always, that it is the responsibility of the Bar to see to the advancement, growth and progress of the Rule of Law in the Nation, if the Bar must by any standard be adjudged as respecter of the Rule of Law and lover of peace in the nation<sup>54</sup>.

It is also equally fitting to demand of the Bar, a demonstration of respect for the Rule of Law, which is the sole means by which peace can be built. They must not hesitate to take the bull by the horn when the Rule of Law is being trampled upon<sup>55</sup>.

In this light, the actions of the NBA, in 2006 when disrespect to court judgments reached an alarming crescendo, are commendable<sup>56</sup>. The NBA is encouraged to take similar action as a last resort whenever and wherever such flagrant disregard of the Rule of Law occurs in the country

Failure to do this will definitely cripple the Rule of Law and peace may never be attained:

*".....it is a slap on the Bar for Rule of Law to be messed-up by anybody in this country. It should be taken that the Bar is not in existence if we can still be reading it on the faces of Newspapers how fundamental liberties of citizens are being trampled upon by the police. This is a great challenge the Bar must brace up with<sup>57</sup>."*

If the bar will not respect the Rule of Law, who else will? The inevitable task of ensuring that the Rule of Law is strictly observed falls squarely on lawyers, judges, that is the Bar and the Bench, the operators and interpreters of the law<sup>58</sup>. Without this being done, the Bar will not be able to contribute to peace building in the country vide the tool of the Rule of Law. Therefore, we urge the Bar to be much more respectful, more than

ever, to the Rule of Law as that is a way it can contribute its quotas to peace building in the nation <sup>59</sup>.

### **PROMOTION OF DEMOCRACY BY THE BAR**

There is no way Rule of Law can be utilized to achieve peace without the operation of democracy. In every sense, democracy is the haven of the Rule of Law, just as the Rule of Law is the haven of peace<sup>60</sup>. Electoral process is now a universal accepted tool of democratic dispensation. The bar therefore has to play the role of checking political and electoral violence in the interest of democracy<sup>61</sup>. This will be in accord with the Bar meeting up with the challenge posed to it sometime ago by the International Congress of jurists which emphasized that members of the noble profession must now be performing as social engineers and not merely as legal technicians<sup>62</sup>.

On this note, it is our humble submission that, for peace to reign in Nigeria:

*"As social engineers, the bar must brace up to the threat, (sic) posed by rigging of elections, corruption, disobedience to court orders, and its attendant consequences particularly in our nascent democratic experience<sup>63</sup> ."*

As a corollary to this, it is also suggested that the NBA and the Bar must lead the battle by example. One way to effectively do this would be the instilling of proper internal democracy within the NBA itself. The ugly events of Port Harcourt 1992, which marooned the NBA for eight crucial years must never reoccur<sup>64</sup>.

Also, the Bar must not jettison its responsibility as Ministers in the Temple of justice. This is one way for the sustenance of democracy in the country.

### **ADVOCATING FOR GOOD GOVERNANCE**

In the words of Chief Afe Babalola SAN,

*"Governance... concerns that aspect of administration relating to a common society or community towards realizing common goals in an orderly fashion. "Governance" may either be 'good' or 'bad'... the test to be applied in determining whether a certain type of governance is good or bad will depend on the correlation of the majority of the subjective determinants of the individuals, units or free-will agents constituting the society or community subject to the governance<sup>66</sup>."*

Therefore, it is our view that, having put all the subjective determinants of Nigerians to consideration, for there to be good governance in Nigeria, Rule of Law must be promoted<sup>67</sup> and without the Rule of Law, peace can never find an abode in the country. The Bar must be reminded that good governance demand that the Nigerian government must be democratic in the sense of free and fair elections on a universal suffrage and there must be transparency and accountability<sup>68</sup>.

Also, as already discussed, there must be respect for the Rule of Law and independence of the judiciary must be jealously guarded<sup>69</sup>. This is a pivotal role the Bar must play for there to be room for the Rule of Law and peace in the Federation.

On what the Bar must ensure to promote good governance for there to be peace in the country or any part thereof, the Supreme Court per Eso JSC (as he then was) had this to say:

*"In exercise of his powers as a matter of order, peace and good government, the Governor must have recourse to law. The Governor is certainly not there to seize the power of other functionaries nor is he there to rule in dictatorship in disregard of the established laws of the land. That would not bring order or peace or good government<sup>70</sup>."*

That being the case, it must then be emphasized that for the Bar to aid peace building in Nigeria, it is its role to advocate, promote and facilitate good governance by always speaking out bravely and loudly, against any threat to Rule of Law in the country whether the threat features at the judicial, legislative executive, social, political or at any other level and regardless of whose horse is gored<sup>71</sup>."

## **STANDING AS VANGUARD IN THE CORRUPTION CRUSADE**

The widely known on-going legal, social, religious political and economic war in Nigeria is against corruption and corrupt practices. Various measures have been put in place to win the war. There; political, religious, economic, social and legal strategies already mapped out<sup>72</sup>. This may not be surprising as the country itself is convinced that corruption is the number one enemy of its development; progress<sup>73</sup>. Corruption is no doubt a usual aftermath of violation and disregard for the Rule of Law. In a bid to rid itself of corruption, shortly after it returned to democratic practice in 1999, Nigeria enacted various laws and put in place many bodies to drag corruption out of its territory<sup>74</sup>. These include TN Independent Corrupt Practices Commission Act<sup>75</sup>, the Economic and Financial Crimes Commission (Establishment) Act, and the Money Laundering Act<sup>76</sup> amongst others. The benefits that will accrue from these statutes

depend on the attitude and effort of those in whose hands they will be applied. The Bar is no doubt a stakeholder in this struggle.

For the Bar, its major role is to ensure that all these laws are not used as instruments for the promotion of corruption, rather than fighting it. On this note, the Bar must rise up to determine the proper position about the procedure of plea bargaining especially as it is now being adopted by the anti-corruption commissions in favor of those accused of corrupt practices<sup>78</sup>. We are of the view that application of plea bargaining procedure in Nigeria is an affront to the Rule of Law as there is yet to be any aspect of the Nigerian law that allows same<sup>79</sup>.

In addition, members of the Bar called upon to defend persons accused under the anti-corruption statutes must, in the best tradition of the Bar, remember the cardinal stipulation of the Rules of Professional Conduct in the Legal Profession, to maintain and uphold the truth at all times. In particular, they must not put up any line of defense incompatible with the facts as it is known to them<sup>80</sup>.

Therefore, for peace to be built in Nigeria through the channel of the Rule of Law, the Bar must have zero tolerance for corruption in all its ramifications. After all, the Bar cannot deny the fact that it has the mandate "to build a nation where peace and justice shall reign<sup>81</sup>."

Therefore, it is the role of the Bar, in contributing to the peace building project in Nigeria and advancement of the Rule of Law, not to shy away from calling its erring members to order, whenever they are found wanting in the corruption crusade<sup>82</sup>.

### **CREATION OF BETTER AWARENESS ABOUT THE RULE OF LAW**

Ignorance is not only a disease, but an epidemic that infuses fear, confusion and violence into the society. It can equally seep through the fabric of peace and damage it beyond repairs. There is no way the Rule of Law can be appreciated without a sound understanding of its nuances. The Bar must therefore take it upon itself the responsibility, to create better awareness about the Rule of Law.

First, there is need for the theory of the Rule of Law to be presented to the Nigerian masses in the appropriate form, which will appeal to their reasoning, understanding and appreciation. In a developing country like Nigeria, what the Rule of Law connotes and should purport must go beyond merely ensuring adherence to formalistic laws<sup>83</sup>. Rather, as once opined by Dr. T O. Elias CJN (as he then was), the only means by which the Bar can make Nigerians submit to the Rule of Law and thereby contribute to peace building in the country is to make Nigerians appreciate the rule of law as:

- a. an indispensable tool of economic development, orderly advance and social progress of their fatherland;
- b. a preservative measure for their moral and cultural improvement; and
- c. the only means by which the unity of the various ethnic groups in the nation can be enhanced.<sup>84</sup>

Similarly, as earlier observed, the Bar must present the Rule of Law to the citizens within the context of their language, culture and values. To this end, it will be most apt to recommend for a forum that will be charged with this assignment by the NBA.

At every NBA conference, it is strongly advocated that the Rule of Law should be a subject of discussion for further awareness<sup>85</sup>.

It is worthy of mention to state that the NBA now has a Rule of Law Committee as one of its standing committees and one of the agenda of the Committee is the creation of awareness of the concept of the Rule of Law in the country and from the grassroots.

#### **ACTIVE PARTICIPATION IN ELECTIONS TO GUIDE AGAINST MALPRACTICES**

It can rightly be posited, that the genesis of conflicts, unrests and all forms of violence that have been confronting the Nigerian nation for decades is not unconnected with the platform on which its leaders emerged to assume the mantle of leadership<sup>86</sup>. Since election is now the only platform validly recognized in the country, if peace must be attained, the process must not be toyed with. The Bar as social engineers "must face up" to the threat posed by rigging of elections in the Federation<sup>87</sup>. The active role which the Bar played in the 2007 and 2011 elections through the various elections monitors of its own is indeed commendable as a right step in the right direction<sup>88</sup>. This must be maintained as a culture. But, it should not be limited to only election days alone. Other programmes that will enhance people's conviction about maintenance of law and order, throughout the period of elections should be implemented earlier before the election approaches<sup>89</sup>.

#### **MAPPING OUT A LEGAL PANACEA TO THE NIGER-DELTA AND 'BOKO HARAM' PROBLEMS**

The Problem of the Niger Delta and Boko Haram, as being currently witnessed, is no doubt one of the greatest threats to peace, facing the nation. It is a triple headed hydra, threatening all at once to decimate Nigeria's economy, spawn a new wave of

unprecedented criminality and thirdly, but worst of all, to the country peace and stability, trigger of another secessionist hostilities<sup>90</sup>. The Niger Delta imbroglio seems to have stemmed basically from marginalization, discrimination and neglect<sup>91</sup>, while that of the Boko Haram seems, allegedly, to have emanated from the extra-judicial killing of the erstwhile leader of the group. All of these are avowedly antithetical to the Rule of Law. One then dares posit that if the Rule of Law had been allowed to prevail from the first discovery of oil at Oloibiri in 1958(in the case of the Niger Delta crisis)<sup>92</sup>, or when the leader of the Boko Haram sect (in the case of the Borno originated group) the wanton injustices and concomitant restiveness which now pervade the country would not have arisen. Happily, the concept of the Rule of Law is not a one way steam engine, a reverse gear exists which can be engaged to resolve past injustices. Members of the Bar, must as a matter of urgency, coalesce in appropriate fora to explore the necessary legal panacea to this impending storm before doom befalls the nation.

Undoubtedly, the Boko Haram Conundrum is more complex than mere legal issues, but it must be acknowledged that a lot can be achieved by basing the solutions on firm legal foundations.

### **PROMOTION AND COLLABORATION WITH OTHER BODIES**

The Bar must establish synergy with civil society organizations, other professional associations and trade unions in spreading the gospel of the promotion of the rule of law in preference to the rule of force.

The battle for the promotion of the rule of law and the attainment of peace is not a project that can be executed by only a segment of the Nigerian Society. It is an all inclusive, all embracing union call to the fatherland.

Having gone this far, it is pertinent, at this stage, that we make some recommendations for the Bar on how it can use the Rule of Law to contribute to the ongoing peace building project in Nigeria. Thereafter we shall make our concluding remarks.

### **RECOMMENDATION**

Premised upon the role of the Bar stated above on utilizing the platform of the Rule of Law to contribute to peace in Nigeria, we further recommend as follows:

1. The Nigerian Legal Education should be reformed to train legal practitioners as social engineers rather than mere legal technicians.
2. The Bar should educate Nigerians about the significance of the Rule of Law and peaceful co-existence, adopting the approach they will best

appreciate within their cultural, social and religious milieu. A faith-based approach is recommended

3. That discussion on the Rule of Law and Peace should be a major preoccupation of the Bar at all its micro and macro fora.
4. The Bar should proclaim and make itself recognized by the public as the lead champion of the Rule of Law, peacemaking and the champion of the causes of the poor.
5. The Bar should, as a matter of responsibility, develop interest in checking excesses of the government and its agencies in violating the fundamental human rights of the Citizens. The Security agencies must of course be the area of focus.
6. The Bar should always play a key role in bringing about amicable settlement of any upheavals and conflicts that may ensue in any part of the country.
7. The Bar should begin to show active concern about how a lasting solution can be brought to the MEND and Boko Haram problems.
8. The Bar should ensure that those accused of corruption, electoral offences and looting of the nation's treasuries are brought to justice<sup>94</sup>. Any step that may aid the perversion of justice must not be encouraged<sup>95</sup>.
9. The Bar should collaborate with the judiciary for the enthronement of truly democratic government, as only then will a good society conducive for the Rule of Law and peace be attained<sup>96</sup>.
10. The mistake of focusing on the executive arm of government alone as the only arm that have disclaim for or having the sole duty to uphold and observe the Rule of Law should be reviewed. Every person and authority in the nation should be enlightened as duty-bound to promote the rule of law.

## **CONCLUSION**

In this paper, we have discussed the role of the Bar in the ongoing peace building project in the Federal Republic of Nigeria, using the tool of the Rule of Law. We have discussed the inseparable nexus stringing the rule of law, peace and development

together, placing the Bar in the core Centre as their overseer. We have also shown that the Bar is the concentrate body of members of the legal profession in Nigeria. They are Ministers in the temple of justice. The Rule of Law has as its abode in the temple of justice. Peace does not exist, where the rule of law is not observed and respected. For peace to reign in Nigeria, the rule of law must be advanced; but the Rule of Law cannot be advanced, save Ministers in the temple of justice are involved. This paper has therefore shown that the bar is an indispensable, duty-bound role player in the peace building project. If the project succeeds, the Bar must definitely share from the glory and if otherwise, in no way will it be exonerated.

Therefore, if the various roles identified for the Bar in this paper, together with the recommendations put forth, are given practical trial, it will make the dream of a peaceful country a reality. Nigeria needs and deserves real peace and not the peace of the grave yard.

1. Dr. Harald Bammiel, in the forward written to Annual Report on Violent Conflicts in Nigeria 2003 (peace and development projects/Friedrich Ebert Stiftung, 2004) PVI.
- 2 It has been show that conflict can be categorized under two broad headings tagged the progressive and Destructive categories. Thus, it would appear that conflict, if it is in the progressive from, may be accommodated. According to Herald, *ibid*, “progressive conflicts are resolved in non-adversarial manners and they produce or generate ideas that are primitive of positive developments in the society”. This can support the argument that progressive form of conflict may be accommodated.
- 3 See Herald, *ibid*
- 4 See Olawarotimi O. Akeredolu, “Rule of Law in Nigeria: Extract Profile and challenges for the Bar,” being the keynote Address Presented at the 1008 biennial Law Week of the Nigeria Bar Association Ilorin branch held between 14<sup>th</sup> and 16<sup>th</sup> may, 2008
- 5 See Yusuf O. Ali, “Rule of Law in Nigeria: Extant profile and challenges for the bar: A Discussion of the keynote Address Presented at the Ilorin NBA Biennial Law Weeks”
- 6 The aspiration of Nigeria is to become the 1st leading economy in Africa and one of the twenty in the world by year 2020. For the efforts and challenges facing the country so far to achieve this, see Chukwuma C. Soludu, *Can Nigeria Be the China of Africa?*
- 7 Yusuf O. Ali *ibid* Note5.
- 8 This in fact is a duty of the legal practitioner to the society. See for instance the pronouncement of pats-Acholonu JCA in *Kotoye v.Saraki* (1995) 6NWLR (pt. 402) cited in A.A Sanda, *A compendium of Notable pronouncements of our jurists Through Cases* (Spectrum Books Limited: 2002) p15.
- 9 Akeredolu. *op cit*.
- 10 See P. A. Oluyede and D.O. Aibe, *Cases and Mute mils on constitutional Law in Nigeria* (University Press Plc, Ibadan: 2003) p57.

- 11 Ibid. See also Chief Mike A.A. Ozekhome, "The Rule of Laws and Fundamental Human Rights" in Den Dele Adesina (E-in-C), *Burning Issues in the 1999 Constitution* ("NBA, Ikeja Branch: 2000) p1 1 -171 at 119.
- 12 P. A. Oluyede et al Op cit 57
- 13 See Hon. justice H. O. Ayoola, "Law, Lawlessness and the Rule of Law" in Yemi Akinseye-George(ed), *The Legal Profession and the Nigerian Nation* (international Legal and Allied Research Network: 1998) pp51-64; O. Hood Philips and Pall Jackson, *O Mood Phillips Constitutional and Administrative Law Sixth Edition* (Sweet and Maxwell 1978) pp14-18; judge Wiley Y. Daniel, "The Rule of Law" in *Nigerian Law and Practice journal*, March, 1997 (Council of Legal Education, Nigerian Law School) pp114-122; and, Hakeem Ijaiya, "The Rule of Law and Democracy in Nigeria" in *The jurist* vol.9, 2004 (Law Students Society, University of Ilorin) pp238-263.
- 14 Akeredolu op cit.
- 15 Yusuf O. Ali op cit.
- 16 As par the papers they both respectively presented at the 2008 Biennial Law week of the Nigerian Bar Association, Ilorin Branch in May 2008.
- 17 Akeredolu op cit.
- 18 Yusuf O. Ali op cit. See particularly his interview of Monday, 19 May 2008 in Dolapo Ekanade a-d Bukola Olajide, "Tribune Law Interview with Mallam Yusuf O. Ali (SAN), NigeriaTribune19 May,2008 pp26-27.
- 19 The Bar cannot shy away from this as its responsibility. We particularly suggest a public campaign move for this purpose throughout the Federation.
- 20 See the pronouncement of Adekeye JCA in the cases of UGO v. UGO (2008) 5 NWLR (Pt. 1079) 1. His Lordship says: "This world has become a global village where the rule of law and justice as they affect human relations are universal.
- 21 For example, it will be Interesting to study, Rule of Law from the perspectives of the Sharia and Customary Law. Papers and other write-ups that has been written on this are therefore worthwhile to be studied. On this see, O. S. Oyelade, "Analysis of African Concept of Human Rights" in I. Adeniyi Olatunbosun (Ed), *legal issues for contemporary justice in Nigeria* (Essays in Honour of Hon. Justice M.O. Onalaja (Rtd) (Equity Chambers, Faculty of Law, Obafemi Awolowo

- University, Ile-Ife:2007) pp200-224; M. Ayua (Mrs), "The Rule of Law in Nigeria " in I. A. Ayua (Ed), Law, Justice and the Nigerian society (Essays in Honour of Hon. Justice Mohammed Bello) (N.I.L.S. Lagos:1995) pp69-90; M. A. Ambali. Democracy on the scale of Islam (Shebiotimo Publications, 2004) pp8-81; Yusuf O. Ali, "The concept of Rule of Law Under the common Law and the Shariah" in Al-Mujtahid vol.1 No.1 (Muslim Ummah, Nigerian Law school:1997/98) pp6-15
- 22 See the Last verse of the second stanza of the Nigerian National Anthem.
- 23 A. S. Hornby, Oxford Advanced Learner's dictionary (Forth Edition) (Oxford University Press- 1989)
- 24 Ibid.
- 25 This specification is necessary as the Bar can play role in other matters affecting the nation apart from peace,
- 26 See the PEDEPS Annual Report on Violent Conflicts in Nigeria 2003 op cit.
- 27 See Ben Nwabuoze, Constitutional Democracy in Africa: Volume 3 (Spectrum Books Limited: 2004) pp19-33 for a better appreciation of the essence of this paper.
- 28 A.S. 1 Hornby, Oxford Advanced Learner's Dictionary op cit.
- 29 We must be sure that we pronounce it as "the Bar."
- 30 Oxford Dictionary op cit.
- 31 Ibid.
- 32 CAP 20 Laws of the Federation of Nigeria, 1990 (Hereinafter referred to as the Act).
- 33 For a detailed and all encompassing study on this, see Niki Tobi, The Nigerian Lawyer (Law Research and Development Forum Limited, Lagos: 2002) and Orojo, Conduct and Etiquette for Legal Practitioners (Sweet and Maxwell: 1979).
- 34 To vast majority of Nigerian Masses, a Lawyer (i.e a legal practitioner) is only a legally trained person who appears in court. Once a person is not in active practice as this, he is not regarded as an able and "true" lawyer.
- 35 Section 2 of the Act

- 36 Niki Tobi, *The Nigeria Lawyer* Op cit.
- 37 See Article .3 of the constitution of the Nigeria Bar Association (adopted at the Delegates Conference held in Calabar on 31st August, 2001).
- 38 Niki Tobi, "The professional and the quest for Genuine National Integration and Development" in Yemi Akinseye George op cit, p27
- 39 Ibid
- 40 See for instance, Ayo Olarewaju, *The Bar and The Bench in Defence of the Law in* (Nigeria Law Publications Ltd, Lagos: 1992)
- 41 It is equally possible for them to contribute through other means, but we are convinced that the channel of the Rule of Law is the best of them.
- 42 Even at the international level, it is being demonstrated that with failure of some regimes to maintain law and order, the peace of the world is being threatened. See Yusuf O. Ali, "Isreal Palestine Conflicts: A Threat to Global peace" in At-Tibyan vol.1 2007-2009 (NAMLAS, O.A .U, Ile-Ife) pp17-28.
- 43 This was in the case of Femi Falana v. A.G. Federation &Ors, Suit No. M/288/92 at the Lagos Judicial Division: reported in Ayo Olarewaju, op cit pp317-320
- 44 EP's 2003 Annual Report on violence in Nigeria, op cit.
- 45 Boko Haram and MENDE crisis that has consistently rocked the nation in recent years is a typical example of these violence and conflicts which has bedeviled
- 46 Further study, See Prof. Chukwuma C. Soludo, *Law, Institutions And Nigeria's Quest To Join The First World Economy* (Lecture Delivered in of Justice Kayode Eso (Rtd) at the Obafemi Awolowo University, Ile-Ife on July, 25 2006).
- 47 PEDEP's Report on a Living account of how this is true.
- 48 Crew held that subversion of die Rule of Law during the Obasanjo democratic regime is a major factor that retarded the expected development of the country within
- 49 And. See, Ben Nwabueze, *How President Obasanjo subverted the Rule of Law and Democracy* (Gold Press Limited, Ibadan: 2007).
- 50 The sight of the Late President Umaru Musa Yar'Adua in making Rule of Law as its watch word is indeed commendable.

- 51 Yusuf O. Ali, "The Rule of Law: Extant Profile and Challenge for the Bar" op cit.
- 52 2001 NBA Constitution, op cit.
- 53 On this note, we want to commend the converge and concern for Rule of Law of the Learned Counsel that prosecuted the case of NEMI v. A.G. Lagos state (1991) NWLR (Pt. 52) 42 laying down the rule that even to the condemned prison inmate, rule of law of Fundamental Human Rights must still be upheld. If other members of the Bar can be championing causes as this, Nigeria will be better for it. This is indeed a great challenged tor the Bar,
- 54 Yusuf O. Ali, "The Rule of Law in Nigeria" Extant Profile. . . "Op cit.
- 55 We want to recall with pride the various reactions of the Bar to breach of Rule of Law during the military Regime in the country as recorded in Ayo Olanrewaju, opp similar effort must however be made during the current democratic dispensation in similar occurrence repeats itself.
- 56 See Onyekwere J, "Lawyers in mass protest" in Newswatch Magazine, Monday, March, 200, 2006 and also available at [www.newswatchngr.com/editionall/acc/Nigeria/10320090834.lim](http://www.newswatchngr.com/editionall/acc/Nigeria/10320090834.lim).
- 57 Yusuf O Ali, "The Rule of Law Extrant profilr ...." Op cit
- 58 Ayo Olanrewaju op cit p5.
- 59 This demands that no members of the Bar must engage in acts of illegality that are affront to the Rule of Law.
- 60 For the interrelationships between all these concepts see our earlier analysis of the Nexus between the Rule of Law and Peace Building
- 61 Akeredolu, op cit.
- 62 Ibid
- 63 Ibid
- 64 For an account and appraisal of the ugly incident, see Niki Tobi, "The legal professional and the Quest for Genuine National Integrated..." op cit pp36-38
- 65 In his lecture paper titled, Leadership and Good Governance (SSRHN, Ibadan: 2000)

- 66 Ibid, pp5-6
- 67 See also ibid at p11.
- 68 Ibid p 11.
- 69 See Ben Nwabueze, Constitutional Democracy in Africa volume 3, op cit chap.3
- 70 See *Eleso v. Government of Ogun State* (1990) 2 NWLR (Pt. 133) p424 at 437 cited in A. A. Sand op cit p38.
- 71 Yusuf O. Ali, Akeredolu op cit.
- 72 For an insight into this, see Femi Falana, "Corruption, Accountability and Transparency in Governance under the Constitution" in Den Dele Adesina, *Burning issues in 1999 constitution* op cit pp85-112.
- 73 This was the view expressed by President Obasanjo on the occasion of the Formal signing into Law of The Corrupt Practices and Other Related offences Act, 200 said: "During our campaign we promised total war against corruption. Corruption was identified as the number one enemy of development and progress." See Laicamm, Co, *Criminal Code an EFFC Act with Cases and Materials*.
- 74 Foremost of these bodies are the Independent Corrupt Practices Commission (ICPC) and the Economic and Financial Crimes Commission (EFCC).
- 75 It is an Act that came into effect on 13th day of June, 2000.
- 76 CAPEI, *Laws of the Federation of Nigeria, 2004*.
- 77 CAP M18, *Laws of the Federation of Nigeria, 2004*
- 78 See an account of various reactions to the trend of this procedure in the country in Taiwo Kupolati, "Plea Bargain and the Surrounding questions" in *Current Issues in Nigerian jurisprudence (Essays in Honor of Chief Adegboyega Solomon Awomolo pp171-203; A.G Anafi, "Plea Bargaining: The Law and Justice in Legally Speaking vol. 3 February, 2008. (NYSC Legal Aid Scheme, Kebbi State) pp8-11; and Abdullahi Saliu Ishola, "Plea Bargaining: A Tolerable Tool in the Nigeria's Criminal justice System? " in The Jurist vol. 13, 2008 (LSS, University of Ilorin) 239-264.*
- 79 See Abdullah Saliu Ishola Ibid p256.
- 80 Ibid.

- 81 See Rules 15 and 19 (6) of the Rules of Professional Conduct in the Legal Profession, 2007.
- 82 See The last verse of the Second Stanza of the Nigerian National Anthem.
- 83 See Further, Chukwuma C. Soludo, Law, Institutions And Nigeria's Quest To join The First World Economy op cit; R.A. Lawal Rabana, "The NBA New Rules of Professional Conduct: A Review-A Legacy of Olisa Agbakoba, SAN, President NBA" in the Jurist, vol. 12, 2007 (LSS, University of Ilorin) pp215-220; and Charles C. Soludo, The Political Economy of Sustainable Democracy in Nigeria (being the 2005 Democracy Day Lecture).
- 84 Ayo Olanrewaju, The Bar and The Bench in Defence of Rule of Law in Nigeria op cit p4; Ben Nwabueze, Constitutional Democracy in Africa, volume 3, op cit, p20 para 3 thereof.
- 85 ibid, in his own view, Nwabueze has this to did: "The rule of law would be largely a formal concept, rather than a dynamic one which it is supposed to be, if the law only guarantees civil and political rights without also securing to the people in some form the benefits which they ought to have and enjoy as the "social entitlements of citizenship," it is in this sense that development-better life for the people- is also an essential of the rule of law" Thus, Nigerians must be made to appreciate rule of law as culture they must imbibe and observe they must experienced development in their father land.
- 86 See further the communiqué of the 2008 Biennial Law Week of the Nigerian Bar Association, Ilorin Branch as published its Special edition Newsletter, June, 2008.
- 87 See an exposition of this in Ayo Olanrewaju, op cit.
- 88 Akeredolu op cit.
- 89 Ibid.
- 90 J.O. Baiyeshea, "NBA Partnership with Civil Societies For Rule of Law and Credible Elections, "in Jurist vol. 12 op cit p124.
- 91 Ikeddy Isiguzo, "Niger Delta Remains Key to Nigeria's Future: Confab Participants" in Vanguard Newspaper, Monday, February 11, 2008 and also available online at [www.vanguardngr.com/index2.htm](http://www.vanguardngr.com/index2.htm). See also Wahab O. Egbewole, "Millenium Development goals and the Niger Delta" in The jurist vol. 12, 2007 op cit pp 110-123.

- 92 Ibid.
- 93 The introduction of the training of students on Alternative Dispute Resolution (ADR) techniques in the law school curriculum is commendable in this aspect.
- 94 The aspect
- 95 where corruption features in the Legal Profession see Femi Falana, "Corruption, Accountability and Transparency in Government....."op cit pp 102-110.
- 96 is sense, the legality of the application of the procedure of Bea bargaining must be determined.