LEGAL JURISPRUDENCE AND AFRICAN GOVERNANCE IN THE TWENTY-FIRST CENTURY

ISINKAYE Kehinde Abiodun
Department of Political Science, Olabisi Onabanjo University
Ago-Iwoye, Ogun State, Nigeria
kehindeisinkaye@yahoo.com,
kehindeinsinkaye@oouagoiwoye.edu.ng

Abstract: The paper assesses the legal jurisprudence in the context of African governance system and identifies jurisprudential impediments such as weak applicability of law, political interference in the administration of the state, bad governance practices, lack of democratic practices, clear travesty of justice and vagrant violations of human rights. It further observes that those jurisprudential impediments have hamstrung the development and improvement of law govern society in Africa in the twenty-first century. They have also slowed down the process of enhancing governance in African states through lack of transparency, accountability, responsibility and legitimate authority. It concludes that rightful application of law, governance reforms, an inclusive governance system, entrenchment of constitutionalism and prompt application of law in cases of violation of law, African governance system will be enhanced in the twenty-first century.
Keywords: Legal, Jurisprudence, Africa, Government, Governance.

Introduction

It is axiomatic that human society must be law governed to achieve a peaceful and orderly social organization. Law is an instrument of social control and it performs other functions such as preservation of public order, protection of the citizens from what is offensive or injurious and provides sufficient safeguards against exploitation and corruption of others. It sources, efficacy, and sustainability are predicted on the alignment of law with the history and social processes of the human society. Fundamentally, jurisprudence or legal theory helps to beam the light on different aspects of law and its alignment with the socio-political development in a given society. In the twenty-first century, African governance processes are witnessing transformations in legal, political and social aspects of the society, with high expectations of reduction of authoritarianism, bad governance and crisis of governance and entrenchment of good governance practices across the continent. Hence, the paper examines legal processes of African states and identifies factors that have induced jurisprudential impediments in African governance processes in the twenty-first century. It offers suggestions on ways to ameliorate the ugly situation and reposition African governance for better performances in the contemporary time.

Literature review

This is intellectual excursion into the existing body of knowledge under investigation to determine the advancement in the body of knowledge and it provides a background regarding the aspects that have studied and those not yet studied in the problem being investigated (Adetayo, 2011). We begin the review of literature with legal jurisprudence.

Legal jurisprudence

The concept of law has been approached from different perspectives by legal theorists, luminaries and practitioners, publicist, political scientists and others overtime. According to Pound (1923) law is an instrument of social control backed up with power of sanction. Law has equally been conceptualized as a command from a determinate authority, elevated above the addressed of such commands, who in turn, exhibit a habit of obedience to such commands because of fear or certainty of punishment in case of disobedience. This encapsulates the Justinian or Imperative conception of law with their main characteristics of trinity of sovereign, command and sanction (Oyebode, 2011). Hence, the necessity of laws arises from the paramount consideration of guaranteeing security to the norms of social behavior. The law exists to serve social purposes and the people obey because their beliefs, desires and prejudices must be considered in the determination of rules laid down by the state (Johari, 2012). As a corollary, jurisprudence deals with extrapolations, rationalization and exposition of laws in a bid to roll back ignorance and enhance the applicability of law (Oyebode, 2011). Jurisprudence is a multi-faceted and traditionally studied from different schools of thoughts in law that comprise of philosophical, analytical, historical, sociological realist, geo-political among others. In different periods, modern jurists have resulted to fusing different school of law together (Adedamola, 2011).

In essence, jurisprudence is the amalgamation of the art, science, psychology and epistemology of law. It is the scientific and systematic analysis, synthesis and presentation of certain abstracts general and theoretical ideas about law and legal systems with a view to discover ultimate truth and principles common to all human societies and with the possibility of improving upon the functioning of law (Adedamola, 2008). Legal jurisprudence is majorly concerns with the study of the origin and history of law, the principles and workings of law, law as ideal in the society and consideration of the relationship of law to other aspects of human society (Adedamola, 2008). The jurisprudential study of law in the context of African governance revolves around the importance of law and identification of factors that have induced weak workability and unenforceability and vagrant violation of laws in African states in the contemporary period. This was emphasized by Omokeke (2018) in his inaugural lecture observed that the post-colonial governance in Africa is characterized by subversion of law and political indecency, ethnicity, religious sentiments, ethical misbehavior among others. Hence, the crucial line of enquiry is the need for legal regime and right application of law to reposition African states in the twenty-first century is highly desirable.

African governance

Fundamentally, the notion of governance extends beyond the idea government as an institution that carried out public services, as it involves the interactions between citizens' political representations and administrative machinery that provides a special view of citizens' opportunities to influence and participate in policy-making, development and services processes in a policy. It takes more pluralistic patterns of rule than the government and places more emphasis on the political processes of a state (Geiler, 2018). In the twenty-first century, governance involves multi-stakeholderism as a guiding philosophy with respect to standards and protocol of governance as it provides for avenues for dialogue and coordination. Multi-stakeholderism is a governance approach a rooted in the idea that the

governance process is best served by including all interested stakeholders as well as those with relevant expertise (Haggart and Keller, 2021). Governance architectures embrace state bureaucracy, civil societies, consultants and experts, community groups, target groups among others. Kaufman, et al (1999) identified six dimensions of governance which include (a) voice and accountability, (b) political stability and absence of terrorism (c) governance effectiveness (d) regulatory quality (e) rule of law and (f) control of corruption. Very important is the governance processes in the contemporary time e.g. that can involve contract awards, coalition, networking, counterpart funding, consultancy, public hearing, community participation among others.

Governance has different aspects such as good governance, bad governance, and democratic governance among others. This explains the character of the state and its political processes over time. African governance processes have exhibited deviation from the expected norms and this can be ascribed to notable challenges in African states. In his view, Saliu (2010) notes the governance environment in Africa that inhibited successful realization of public policy is characterized by contradictions and such contradistinctions include (a) lack of openness and transparency as it is closed to citizens and state holder to contribute to policy making. Secondly, limited participation in public affairs due to constitutional constraints, political manipulations, and non- recognition of talents, among others. Political thuggery, violence and uneasy political succession have characterized politics and governance in African states in the contemporary time. Thirdly, weak structure guarded by the suffocating level of control by the leaders, as political leader dictates instructions which reflects their interests and that of their supporters. Lastly, the challenge of poor service delivery has been the same of African underdevelopment in the contemporary period. Lack of technological breakthrough, insufficient energy and water supply, insecurity and the infrastructural climate of the conflict is dilapidated. Indeed, African countries are embroiled in crisis if governance arising out of personalization of leadership and misuse of power which is at variance with the declared state objectives, selfish material gains, bad run state institutions, neglect of welfare services, corruption among other (Benson, 2010). Hence, the need for legal framework and strong application of law to guide and regulate governance systems in African states is glaringly undeniable in the contemporary period in African states.

Theoretical Framework of Analysis
Theoretical framework can be regarded as an intelligent mental construct that consists of propositions and taxonomies designed with insightful and well-informed reasoning that forms the platform within which social phenomena can be thoroughly analyzed for the purpose of providing clear understanding about the issue of under investigation. It provides the significance, rational, justification and legal basis for the study (Chukwuemeka, 2002). It is on the basis of this that the paper adopts eclectic mode by situating the paper in two theoretical frameworks of analysis.

Institutional Theory of Politics
Institutional theory was popularized by the classical political thinkers (Plato and Aristotle) and has attracted attention till date in political studies and analysis. From the age of enlightment, notable political philosophers such as Charles Montesquieu, Harold Laski, Agurupa Appradorai and lately Beth Simon, Phillip Selznick or among others, are

proponents of the institutional theory. Institutional theory is closely related to legal theory of political science but it is different significantly because it gives identity to the systematic study of politics. It consists of the study of organization and functioning of government and its various organs, political parties and other institutions affecting politics (Gauba, 2007) institution comprises of both formal constrains such as rules and regulation and informal constraints such as conventions, codes of conduct, norms of behavior institution, define and limits the set of individual's choices and their presence in the society govern and set the directions for human behavior (Aremu and Miah, 2008). Public institutions influence administrative and socio-political players in two ways. Firstly, they offer the degree of predictability as they provide models of behavior and sets of a protocol which are ready for immediate application. Secondly, institution provide moral and cognitive framework to allow matters to make sense of the event and act appropriately in specific situations [Thoenig 2013]. Several rules are designed to regulate the processes and behavior of actors and these rules often reflect the values of society and how members think society should be organized for effective governance and collective progress. These values and rules constitute the various institutions and structure of administration. Hence, institutions exist mainly to deal with the uncertainties and frictions of human interactions and achieve public goals. This combination of formal and informal rules and their enforcement characteristics formed part of institution. (Ayede, 2021).

Institutions are amenable to changes to reflect changing circumstances in human society but such changes are hindered by some factors such as institutional perversion (Dereliction of duties), unintended consequences of institutions (red-tapism, corruption), low technology and political intervention (Chang, 2007). This has been the bane of political institution in Africa since that 1960's decade of political independence. This has tendered to hamstring the gateway of effective performance and expected service delivery to the citizens.

Sociological Theory of Jurisprudence
Sociological jurists are development oriented legal positivists because of their strong passion for progressive development of law in society. They are of the view that positive laws constitute a means of social control, catalyst of progress and positive change in society (Adedamola, 2011). Sociological jurisprudence had its foundations in England, continent Europe and America with Jeremy Bentham, Rudolt von Sharing and Ow Holmes as its leading progenitors and apostles. The school of thought is concerned with three interesting phenomena and they are the civilization process in human society, the jurisdictional process and the judicial interpretation (Adedamola, 2011). According to Johari (2012) sociological approach considers the state primarily as a social organization whose component parts are individuals and society should be treated as the basis of political as of all other sciences. It is a network of numerous associations and groups which play their own part in the operation of the political process of a country. The law of the state is binding either because of the force of some myth working in the background or because of the fair of punishment arising out of its infraction. Instructively, the sociological school of jurisprudence holds that law should be find in the norms and values of the society and legislation and juristic science (Ogasakin, 2006). The relevance of jurisprudence to societal equilibrium is that it helps to discover the intricacies and interplay of sociological factors in legal processes in line with the aspirations and yearning of society and discovery of

indigenous and communal values and aspiration necessary in the legal process of a state. An enquiry into value orientations, attitude, habits, beliefs and prejudices of the law becomes indispensable to ascertain the possible responses and chances of success of any social measure. Hence, the concern of legal and institutional studies into social motivation of a group is about constitutional and legal frameworks and development, as well as such issues such as the rule of law making, interpretation, administration and enforcement of laws and their implication in a political community (Ikelegbe, 1995).

Methodology
The paper utilized the qualitative research design and descriptive research method was adopted to gather data from secondary materials such as books, journals, magazines and other published materials that are relevant to the research work. The paper is a conceptual paper which relied on thick literature reviews, theory building, author' viewpoints and other logical insights from published works from laws and political science. Data analysis involves the textual, descriptive and explorative analysis to unravel jurisprudential impediments in African governance processes in the twenty-first century.

Discussion of findings
Arising out of literature review, theoretical explorations and textual an explorative analysis of relevant data from books, journals and other published works, we draw relevant data together for further discussion on the issue under the research. African governance processes are expressing transformations in the twenty first century and the promotion of transparency, accountability, and responsibility are taken roots in the affairs of African states. However, there are challenges which still impede the transformation processes in the continent. Such impediments are discussed, below.

Firstly, weak applicability of law in African states in the twenty first century. law is an instrument of governance as it one of the great instruments of enforcing the responsibility of administration as authorized acts and excess of administration are corrected by the commands under the provision of law of the land (Sharma, 2012) as strong deviation from the expected norms, are vagrant violation of law, circumvention and unnecessary litigations in a bid to circumvent the law is dominant in Africa. Indeed, post-colonial governance in Africa has been characterized by subversion of law, political indecency and ethical misbehavior formed by ethnicity and religions sentiments among others (Omoleke, 2018). Adegbami (2023) identified some of the challenges to legal regimes in African states as consisting of (1) Societal factors: These include the encouragement of wasteful and excessive spending by the career officers, political office holders and individuals in the country. This is expressed in their crave for expensive cars, houses, chieftaincy titles among others. (11) Lack of punishment for corrupt public officials as minor or no punishment is meted out to corrupt public officials that were involved in unethical practices. (111) The challenge of politicization and political interference in the activities of administrative institutions in Nigeria. The administration of law is always interfered with "order from above" and highly placed political officers tend to threaten lower-level officers to hand off on a case, thereby, forestalling legal prosecution of cases in the country. The situation is not equally helped with the prevalence of weak institution for enforcing administrative law in the country. This situation is equally not helped by societal factors like poor remuneration and poor conditions of service of law enforcement agents, delay in

judicial process, low or no punishment for corrupt officials, among others (Adegbami, 2023).

Secondly, bad governance practices are common in most African states in Twenty-first century. Conventionally, law direct political office holders to do right things as stipulated his constitutional and administrative laws in a country (Omoleke, 2018). Law and state are like Siamese twins that can hardly be separated. A state is regarded as an entity because it possessed territorial integrity in which quanta of laws are administered and enforced. A mass of social problems is addressed by the state through direct activity, supervision or regulation (Omoleke, 2018). In most African states, governance is inhibited through circumvention of law-based greed, selfishness, ethnic reasons and some undue interference in the political system of a state. The two globally known broad categories of law (constitutional and administrative laws) are abused in many African states. Constitutional law as an instrument of governance deals with distribution and exercise of the functions of government and the relations of government authorities to one another and the individual citizens and groups in the society. It extends to the procedure for electing members of the political class, the relations between chambers, the intergovernmental relations and the procedure for amending the constitution. Administrative law, on its part is concerned with the management of governmental institutions, regulation of the conduct of bureaucrats, their duties and rights and steps to remedy cases of maladministration. Both legal instruments have been per versed and applied inaccurately by African leaders in the time past. Hence, General Sanni Abacha, Samuel Deo and a host of others have misused powers while is public office. As Adamolekun (2005) submits governance crisis underlay the literary of African development problems. To him, lack of countervailing power in African states, as a result, state officials in many countries, have served their own interests, without fear of being called to account and politics becomes personalized and patronage becomes essential to maintain power. This has negatively affected legal and peaceful coexistence in African states. The quest for good welfare and economic developments for over fifty years had insignificant success in Africa countries. This is because of lack of good health facilities and basic amenities, coup d'états and bad governance, social and internal insecurity, civil wars, high incidence of poverty, increased corruption cases and political instability still dominate the continent (Adefeso, 2020). The challenge of bad governance is far from being overcome in among African states and this has unquantifiable negative consequences on the people.

Thirdly, lack of observance of democratic governance in most African states. The expected legal norms demand that law should be seen as an important variable to determine effective governance in a state. This is usually measured through observance of rule of law, constitutionalism and obedience to court order by the state functionaries and machineries of power in a state. Contrary to above dictates of democratic governance, African states continue to experience crisis of governance till date. There is need to promote social equity, a minimum standard of human welfare, viable economy and a clear character which aims to promote civil liberties and human rights, political, electoral pluralism and health, education, justice in African states (Olukoshi, 1996). Adejumobi (2004) has identified poor culture of constitutionalism in Africa in the twenty- first century. They are the legacy of colonialism with the pedigree of weak constitution as an instrument of empowerment but domination. He argues that the domain of civil law which is the terrains of rights and privileges and customary law that emanated from customs and tradition do not constitute

modem constitution that could serve as the basis of constitutionalism. The process of colonization was not accompanied with radical transformation of the inherited colonial structures and post-colonial leaders assumed the image of colonial rulers and they have continuously failed to open the political spade. Hence, cultures of authoritarianism, domination and control subsisted.

Fourthly, lack of concrete development of democratic institutions and culture. There is tension between development and democracy as democracy and constitutionalism took back seat when compared with developmentalism. The problems of underdevelopment, poverty, malnutrition and disease were considered to be much more important that investing in democracy and constitution. Also, the de-prioritization of democracy and constitutionalism and adoption of Marxist socialist ideology in the 1960 and 70s in some African states in order to receive welfare packages has been the bane of African states. Also, the phenomenon of groups, counter coups, wars, insurgencies, rebellions and military role in many African states (Adejumobi,2004). Six of African states are currently under military in the twenty-trust century. Reconfiguring Africa has in promotion of logic and principles of constitutionalism through which democratic practices and values can be engendered are highly essential. Hence, the challenge of democratic deficit exists as a strong impediment and still insurmountable in African states till date. Infact, there is growing consensus in Africa today that the realization of the full citizenship right requires the practice of democracy as democratic project involves the institutionalization of the rule of law, expansion of the political space to accommodate the marginalized state of the society and the position of the fundamental right to achieve democratic dividend in Africa in the contemporary period (Ajutumobi, 2004)

Fifthly, clear travesty of justice in African states in the contemporary period. Expectedly, law as an instrument of social control through the application of sanctions and punishment of offenders, who are violators of established legal codes and practices. Johari (2012) underscores the basic fact that justice is primarily concerned with the how rewards and punishments are distributed to individuals in a rule-governed practice and a congenial atmosphere that is provided by a democratic set up. In contradistinction to the social condition above, African governments and politics have been characterized by travesty of justice as judicial processes in many states in the Africa have corrupt judges and legal processes have been abused. Adekoya (2022) in his inaugural lecture identified challenges of accessing justice in Nigeria and African states consisting of (a) complex const procedure that is lawyer-centred (b) cost of filling, service legal fees and transport cost (c) non justifiability of social and economic rights (d) inefficient administration of justice, corruption and (e) the chilling effects of accessing justice for the poor in the society. Hence, different challenges, complex legal procedure, poverty and negative social value that places premium on wealth acquisition, irrespective of success, have clouded the process of accessing justice in African society.

Sixthly, vagrant violation of human rights in many African states: Traditionally, law helps to secure individual freedoms, liberty and human dignity in human society, cases of abuse of human rights dotted Africa continent since the attainment of political independence of African states in the sixties. Fundamentally, human right and by extension, human dignity is highly desirable as the human world is cruel, characterized by uncertainty and the scope of uploading human rights lies in the proclamation of this right both natural and international (Agwu, 2003). Different schools of thought in human rights include the

universalist that believe that all human possess the same rights and that they are immutable, the relativists who contend that rights are relative to culture and value of the society and the multiculturalists who hold the view that keeping in mind the social and cultural location in the multi racial societies and accommodation of differences and maintain equality of each individual regardless of race and ethnicity (Rourke, 2008,). In Africa, we believe that the notion of rights is relevant to all human beings, even though it has received more elaboration in the west because of the thinking collective and the command lifestyle (Enemuo, 2015). Incidentally, Agwu (2003) notes that in the whole of Africa many are still suffering from the loss of right of dignity due to crushing poverty and the people are yearning for or dire need of restoration to their natural rights in countries such as Cote Devoir, Mali, Burkina Faso, Sudan in different regions of the continents. So poverty and political crisis constitute potent factors that continually induce human right violation in Africa.

Seventhly, the challenge of weak state capacity of African states in the twenty first century. Many African states are poor, poverty stricken and this challenge have induced conflicts in most states. There are protests over lack of basic necessities of life and there are contestations over distribution of resources such that many are witnessing military take-over the machinery of the in some African states. The ability to deploy both soft and hard powers within and among states is lacking making the governing ability of states to be weak. Rule enforcement tends to suffer in situations where state capacity is weak and human condition continues to deteriorate. This situation is equally not helped the lack of political will to implement some policy guidelines due cost implication, vested interest, political squabbles, political coalition, ethnic cleavages among others.

Conclusion

From the foregoing, it is controvertible that African governance processes have encountered jurisprudential impediments and timely amelioration is indeed necessary as law and constitution remains a relevance point in ensuring quality governance and democratic development in the continent. Very crucial in ameliorating the observed challenges are the promotion of law governed society, rather than state authoritarianism, an enduring governance reform that allows for contributions of non-state actors to policy making and evaluation, politics of inclusion and accommodation of political pluralism and a veritable political space for non -governmental organizations and adequate legal sanctions for maladministration as it appears between and among governmental agencies in most African states. This is highly necessary to reposition African governance system in the twenty first century.

References

1. Adamolekun, L (2005). Governance Context and Reorientation of Government. In Adamolekun L (ed.), Public Administration in Africa. Ibadan: Spectrum Publisher. pp. 3-16.
2. Adedamola, F (2011) Jurisprudence, Durban: Butterworth publisher
3. Adefeso, H (2020). Nexus of political instability, corruption and development in Africa, A call for Sequential Policy Reform. In Aransi, I., Awodele, A., and Nofiu, S. (eds.), Contemporary Issues in Nigeria Public Administration. Ile-Ife, obafemi Awolowo University Press.

4. *Adegbemi, A and Ganiyu, A (2023) Constitution and Administrative Law in Nigeria: Are They Instruments of Governance? Public Governance, Administration and Finance Law Review, 8(1), 55-71 https://doi.org/10.53116/pgaflr.6650

5. Adekoya, C. (2020). Betrayal of the Poor in Accessing Justice in Nigeria: The Judas in Our Midst. Olabisi Onabanjo University Inaugural Lecture No 103.

6. Adetayo, E. (2011). Guide to Business Research and Thesis Writing. Ibadan: Rasmed Publisher.

7. Agagu, F. (2003). The Human right to Dignity: The Philosophical, Historical and Jurisprudential impediments in the 21st Century Nigeria. Journal of International Affairs, 29(1x2), 50-56.

8. Ajetumobi, S. (2004). Democracy, Good Governance and Constitution in Africa. In Ahaire, S. (ed.), Governance: Nigeria and The World. Lagos: CENCOD publication.

9. Aremu, F. and Maih, M. (2008). Economic Backwardness in Nigeria and Bangladesh: An institutional analysis, Nigerian Journal of International Affairs, 34(2), 29-48

10. Ayede, E. (2021) If Gold Rusts, What will Iron Do? Politicians, Academics and institution building institutions, University of Ibadan Inaugural Lecture.

11. Benson, K. (2010). Governance and Accountability in Nigeria. In Omotosho, F. and Agagu, A.,and Abegunde, O (eds.), Governance, politics and policies in Nigeria. Porto Norvo: Editions Afigue publisher.

12. Chukwuemeka, E. (2002). Research methodology and Thesis Writing: A Multi-Disciplinary Approach. Enugu: Hope rising publisher.

13. Gauba, O. (2007). An Introduction to Political Theory. Delhi: Macmillan Publisher

14. Geiller, S and Tree, T (2019). Using Government Website to Enhance Democratic E-Governance: A Conceptual Model for Evaluation, Government information Quarterly, 17(12): 98-108 https://doi.org/10.1016/j.giq.2019.01.003

15. Haggart, B and Killer, G (2021). Democratic legitimacy in Global Platform Governance, Telecommunication Policy. https://doi.org/10.1016/j.telpol.2021.102152

16. Johari, J. (2012). Contemporary Political Theory: New Dimension, Basic Concept and Major Trends. New Delhi; Sterling Publishers.

17. Kaufman, D. Kray, A. and Lobatan, P. (1999). Governance matters, World Bank Policy, Research working paper No 2196

18. Lasko, L. and Olukoshi A (1996). The Crisis of the Post-Colonial Nation-State Project in Africa. In Olukoshi, A. and Lasko, L. (eds.), Challenges to the Nation-State in Africa. Upssala: Nordiska African Institute

19. Ntalaja, G. (2009). Challenges to State Building in Africa. In Oculi, O. and Nasidi, Y. (eds.), Brain Gain for African Resistance. Zaria: Ahmadu Bello University Press.

20. Omoleke, I. (2018). Administrative law and Politics: The Tripartite Holy Alliance of Good Governance, Inaugural lecture series 312, Obafemi Awolowo University, Ile-Ife

21. Oyebode, A. (2011). Norms, Values and Attitude: The cogency of international law, University of Lagos Inaugural Lecture

22. Pound, R. (1923). Interpretation of Legal History. Review International Journal of Ethics, 34, (1) 91-93

23. Saliu, H. (2010) Democracy, Governance and International relations. Ibadan: College Press

24. Sharma, P. Sadana, B. and Kaur, H. (2012). Public administration in Theory and Practices. Delhi: Kitab Mahal Publisher

25. Theonig, J. (2005). Institutional Theories and Public Institutions: Traditions and Appropriates, Hand book of Public Administration. London: Sage publisher