

**“THE RULE OF LAW: THE ROLE OF CIVIL SOCIETY IN NIGERIA”**

**BEING THE TEXT OF A PRESENTATION MADE BY MIKE UTSAHA AT A ROUNDTABLE ORGANISED  
BY KONRAD ADENAUER STIFTUNG AND HELD ON TUESDAY JUNE 10, 2014**

**AT**

**3, RUDOLF CLOSE, OFF KATSINA-ALA CRESCENT, MAITAMA- ABUJA, FCT**

## **PREAMBLE:**

I would like to begin this presentation by thanking my good friend and colleague of many years, Samson Adeniran and, through him, to equally thank Mrs. Hildegard Behrendt-Kigozi, the Nigeria Country Representative of Konrad Adenauer Stiftung (KAS), and all the other colleagues in their office, for the invitation extended to me to make a modest contribution to the continuing dialogue on Media and Civil Society engagement for a democratic Nigeria. This invitation means a lot to me and I take it very seriously for many more reasons more than one.

Firstly, I am extremely delighted at this opportunity to share with you all my experiences within the last few years and, in particular, on a very important topic in our democratization process – **the rule of law**. Secondly, speaking at an event organized by Konrad Adenauer Stiftung is for me a glorious home coming. I refer to it as a glorious homecoming because in April 2000 I was part of a team of civil society activists from the West African sub region who participated in a unique summer school in Germany on "the role of civil society in the decentralization process in Africa". All seventeen of us drawn essentially from anglo-phone west Africa spent some time in Akademie Klausenhof in Dingden and then in Bonn, and also had the opportunity to visit the headquarters of KAS in Sankt Augustine. Being my first visit to Europe that experience has left an indelible mark on me and most importantly, it was a turning point in my life.

Additionally, within the last few years I have had a rich, robust and mutually beneficial relationship with the Nigeria office of KAS. As Provincial Secretary of Justice Development & Peace Commission (JDPC) Kaduna Province, we collaborated with KAS on the flagship enlightenment programme Vision Nigeria and long after I left the Province the programme continued until it was brought to a close recently. Through the instrumentality of this relationship I have facilitated high level meetings and interactions between senior officials of the Catholic Church in the Province of Kaduna and senior officials of the German government.

It is my hope and expectation, therefore, that this opportunity would open up a new vista in my relationship with KAS and hopefully lead us in the direction of a mutually beneficial relationship between KAS and The Kukah Centre, where I am at the moment Director.

## **INTRODUCTION:**

I have been requested to speak on the topic "**The Rule of Law: The Role of CSOs and the Media**", and it is perhaps important to begin with some conceptual clarifications. Although this isn't an academic paper as such, it is perhaps important to mention the fact that the relationship between civil society and the media has been a hotly contested terrain over the years. While there are scholars who have held and expressed the view that the media is in fact part and parcel of Civil Society, there are also those who feel that the media and civil society must be treated as separate and distinct entities. I share the former view – in other words, I consider the media as part and parcel of civil society, and if this is the case then, it would appear that the media is only a small segment of the wider civil society, and in this presentation I would like to treat these two as one and the same thing.

For the avoidance of doubt civil society, as the name suggests, is broadly defined as that segment

of society that is not, statutorily or otherwise, part and parcel of any of the three constitutionally recognized branches of government. It is for this reason that others would rather refer to civil society as non-state actors. The notion of actors being non-state clearly presupposes that those actors are not state officers even though they may support the state in the task of governance.

I think the problem of a precise identity for civil society in Nigeria stems from our struggle for the enthronement of a democratic government and the role played by various non-governmental organizations, especially pro-democracy and human rights NGOs, and the nomenclature that was adopted for them by the international development partners in ushering in the current democratization process. Invariably, the term civil society was interchangeably used and applied to describe NGOs. It is this restrictive use of the term civil society that has now led us to the point where the otherwise wide all encompassing segment of society has now been reduced to just NGOs. Invariably, I have slightly modified the theme of this presentation to now read: **“The Rule of Law: The Role of Civil Society in Nigeria”**. I have taken the liberty to introduce the Nigeria imperative in the theme just so that it is clear, even to a casual observer, that this is a Nigeria centred presentation as opposed to a much wider and general presentation.

#### **THE 1999 NIGERIA CONSTITUTION:**

The concept of the rule of law is self-explanatory and requires no further definition or description of any kind. It basically pre-supposes that law does not only exist but that it is supreme and has overriding influence on the society. In Nigeria, as it is the case elsewhere too, the Constitution is the supreme law of the land and it does set the tone for any discussion that touches on the rule of law. Unsurprisingly, the Constitution stipulates as follows *“this constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the federal republic of Nigeria”* S.1 (1). Furthermore it states that *“if any other law is inconsistent with provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void”* S.1 (2). What comes to mind immediately after reading these sections of the Constitution is whether at all the situation on ground in Nigeria is in substantial compliance with the constitution as envisaged, and the answer, unfortunately, is a resounding No!

Fifteen years into our democracy Nigerians continue to agonize over countless situations where the law and the constitution have not only been rubbished completely but also utilized as instruments for perpetrating injustice, disharmony and confusion. The law can be brazenly broken without any fear of the consequences and even occasionally where culprits have been arrested it is the case that they are most likely able to escape the long arms of the law due to inefficiency, ineptitude and compromise on the part of law enforcement agencies. Nigeria is probably the only country in the world where citizens are rewarded for breaking the law or engaging in conduct that is inimical to the democratization process. One area in which this situation may be seen is in the area of compliance with the provisions of the Electoral Act. This law criminalizes certain conduct and actually confers power on the Independent National Electoral Commission (INEC) to prosecute offenders accordingly. Till date it has been difficult for INEC to carry out this task. Right now campaigns for the 2015 elections have reached feverish pitch and yet the law is very clear that campaigns can commence only when it is ninety days to the election. Unfortunately, even the President of Nigeria Dr. Goodluck Jonathan has also been

very active in breaking the relevant sections of the Electoral Act with respect to campaigning before the stipulated period for that activity, and this is a rather regrettable situation. And like I mentioned earlier it is not only the constitution or the Electoral Act that have come under abuse or violation over the years, several other laws have suffered the same fate for some time now. In view of the fact that this presentation is made within the context of an on-going dialogue, it might be necessary to commission a process of documentation that will not only identify but will equally document the patterns and manifestations of infractions of the law and some of the greatest culprits in this respect. So, what do we do under the circumstances, or better still, what should be the most appropriate response of the civil society to this unfortunate situation. It is to this that I will now turn.

#### **CIVIL SOCIETY AND THE RULE OF LAW:**

It would be a great disservice to KAS and to the civil society in Nigeria if I leave this gathering with the impression that we are a nation of law breakers and that there isn't a likelihood of us demonstrating respect for our laws. The truth is that civil society in Nigeria has made significant contributions to the emergence of a legal regime that is not only reflective of respect for the rule of law but one which encourages the implementation of the emerging pieces of legislation. It is not in doubt at all that civil society is largely responsible for the emergence of the Freedom of Information Act (FoIA) a law that had spent the longest period within the legislature and experienced many more setbacks than any Bill previously brought before the National Assembly (NASS) before it was eventually passed. After its passage civil society has not only been in the forefront of sensitizing members of the public on its existence but has been in the forefront of advocacy for its implementation. But it is not only the FoIA that traces its legislative paternity to the role of civil society but there are others like the Fiscal Responsibility Act, the Child Rights Act and one which has yet to be passed but which is of interest to civil society – the Petroleum Industries Bill (PIB).

Another area in which Nigeria civil society has contributed to the emergence of relevant pieces of legislation is the quality of participation they have adopted during legislative public hearing on relevant Bills pending before the NASS. This activity has largely been facilitated by networks and coalitions formed for this purpose, and this would include the Citizens Forum for Constitutional Reform (CFCR) Electoral Reform Network (ERN) Legislative Advocacy Coalition on Violence against Women (LACVAW) Nigeria Coalition on the International Criminal Court (NCICC) and many others. These groups have provided insights that would otherwise be unavailable to our legislators and have also provided support of a technical nature especially in the area of sharing information on international best practices.

It is, in my view, not enough to facilitate the emergence of pieces of legislation, especially if the emerging laws may not be applied to given situations. Indeed, I daresay that Nigeria does not lack the availability of laws suitable in any given situation; rather it is the challenge of implementation that confronts us. But like we have always pointed out no society can progress beyond a certain level without utmost respect for the rule of law. Unfortunately, in Nigeria law breaking is a routine exercise and there is very limited fear of any consequences for breaches or infractions of the law. And in my view this is perhaps the greatest challenge to our development as a nation

and to the entrenchment of the democratization process. Once people have lost a sense of fear of the law catching up with them what follows is impunity and recklessness. Often times the society is worse off for it, and I guess this is our situation in Nigeria.

#### **REMEDIAL ACTIONS THAT MAY BE ADOPTED BY CIVIL SOCIETY:**

In the face of this daunting and seemingly insurmountable challenge I hold the view that there is still a lot that may and should be done by civil society in Nigeria to remedy the situation. The following remediation processes are therefore suggested:

1. **Advocacy and Sensitization** – Nigeria civil society has done very well in the area of advocacy and sensitization and it is encouraged to continue to do even more in this direction. Prior to the emergence of the Freedom of Information Bill (FoIB) Nigeria had never witnessed the kind of sophisticated, rich and robust advocacy that accompanied this Bill. It is not therefore a surprise that the Bill eventually became law after so many setbacks. I will like to take this opportunity to pay glowing tribute to the organizers of the #bringbackourgirls# campaign for their resilience. This is clearly manifested in the recent reversal by the Inspector-General of Police IGP of an initial order by the controversial Commissioner of Police Federal Capital Territory (FCT) Command who had earlier on, in flagrant disregard for the Constitution and the rule of law, banned any further protests in the capital city. We must continue to sensitize Nigerians about their rights under the constitution and other laws and encourage them to make claims and demands on public officers, elected or appointed, to respect the rule of law and conduct themselves in a manner that is backed by law. Specifically with regard to the media this role has constitutional backing in s. 22 which states as follows: *“the press, Radio, Television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people”*. The media is already doing very well in this regard and they can only be encouraged to do even more.
2. **Public Interest Legislation** – Another tool that has been used with beneficial results by civil society over the years is public interest litigation. The idea is really to use this as a platform to draw attention to areas in our national life where gaps exist, thus requiring interpretation and application of relevant laws and the constitution. Invariably, public interest litigation isn't about winning, and is rather about drawing attention to those issues requiring policy review or alternative action. Right now I am aware that arrangements have been concluded by a group of civil society actors to challenge in court this emerging trend where Governors that are about leaving office facilitate the adoption of legislation that avails them huge and outrageous sums of money in pensions. This is a welcome development and I encourage civil society to do even more in terms of identifying other public policy issues that would require this mode of intervention.
3. **Collaboration with Relevant agencies of Government** – against the background of long years of military rule and the antagonistic relationship that existed between military authorities and civil society, there continues to be a certain level of mutual distrust between government and civil society in Nigeria. While we advocate for the continuation of the watchdog role which civil society plays there is a need to close ranks with government particularly in areas

where collaboration is much more helpful than an antagonistic relationship. It is the late Tajudeen Abdulraheem who once stated that most times non-governmental organizations are not only non-governmental but also “anti governmental”. This situation has to change and we must begin to make conscious efforts towards narrowing the gap that exists between civil society and government but without necessarily losing our watchdog role. More importantly, civil society activists are encouraged to take greater interest in the political process and begin to aspire to elective offices. It is my hope and expectation that with a critical mass of civil society activists in government there is a greater likelihood of bringing about the change that we desire.

4. **Separation of Powers** – one area of our national life in which, in my estimation, we have not fared too well is the quality of vertical and horizontal separation of powers that we have practiced over the years. There appears to be a disproportionate focus of attention on the government at the centre to the detriment of what is happening in our respective states. Then again there appears to be an over concentration of powers within the executive branch of government to the detriment of the other two branches. It is in this regard that I wish to use this opportunity to salute the courage of Olisa Agbakoba, Esq. SAN who instituted a suit leading to a recent judgment by an Abuja Federal High Court directing the judiciary to become self accounting without any interference on the part of the executive branch of government. Initiatives such as this must be encouraged and supported by well meaning individuals and organization.
5. **Facilitate Emergence of Think-Tanks** – although civil society has been very active in holding government accountable in many ways it does appear that we have operated largely without the contributions of think-tanks and this is not a healthy development. Civil society must therefore make conscious efforts towards ensuring the emergence of think-tanks that will not only act as a check on government but would make informed contributions that would shape and refine the public policy process in Nigeria.

#### **CONCLUSION:**

I have stated earlier on that no society can make any meaningful progress in an atmosphere characterized by disregard for law and order. Respect for the rule of law remains, in my view, the most potent instrument that would lead us in the direction of development and growth. I therefore welcome this opportunity to contribute to the process of fashioning an appropriate mechanism for the enthronement of the rule of law and I once again would like to thank KAS for this opportunity. It is my expectation that we shall follow up on this session with a strategy session where we can more concretely identify and assign roles to ourselves that would suit our primary tasks and would be in conformity with comparative advantage.

Thank you very much for listening.