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## Revisiting AFSPA: A Moral Analysis and Beyond

**Jeremiah Amai Veino Duomai**

**Department of Philosophy, Delhi University, Delhi, India**

**E-mail: jeremiahduomai@gmail.com**

### Abstract

Armed Forces (Special Powers) Act, 1958 has been in place in the Jammu and Kashmir and certain regions in the North East for decades. The Act has been misused from time to time, resulting in harming civilians' lives. The controversy surrounding the Act generally viewed as draconian law has been doing the rounds in academic and political circles for long. Army excesses under the garb of AFSPA have been noted vociferously by several commissions of inquiry. However, the immunity provided by the AFSPA has prevented prosecution of the erring security personnel. The Act has legal status. But is it morally and ethical okay to bestow such sweeping powers onto the army when its misuse has been a common knowledge? This paper argues that the problem in disturbed areas, especially in the North East region, requires going beyond empowering the army to protect the territory. It requires a different imagination of what India is – or ought to be.

**Keywords:** AFSPA, Security Personnel, Governance, Moral Obligation

### Introduction

On 26<sup>th</sup> February, 1826, at the end of first Anglo-Burmese war, under the Treaty of Yandaboo signed between the British empires and Burma, the latter was made to give up its brief occupation of Assam, Manipur, Cachar, Jaintia and other territories in present day Myanmar. Until then, the territories in present day India were neither under the British rule nor the Burmese kingdom. In 1885, at the end of the third Anglo-Burmese war, Myanmar became a Province of British India. It was only in 1937 that Burma Province was sliced off from British India, culminating in attaining independence from the British Empire in 1948. When Burma Province separated in 1937, had territories Burma gave up in 1826 were separated too, it is highly unlikely that Nehru or anyone would have objected to it. However, ten years later, in the mid-forties when the Nagas under the leadership of Naga National Council (NNC) asserted their right to self-determination, declaring independence on 14 August 1947, Nehru was unwilling to accept this development. Nehru was perhaps led to take this stand to ensure the survival of the newly formed Union then.

After all, if one group is allowed to leave, another group might too ask for similar provision. But the political development then led Nehru to send in the army to quash Naga nationalism. The Parliament passed the Armed Forces Special Powers Act (Assam and

Manipur) in 1958, and that same year the President of India gave his assent on 11 September and empowered the army to quell the Naga nationalists who are in Assam and Manipur. (Nagaland as a state had not yet come into existence then.) Thus for the last fifty six years now, it is the quasi-military rule that has guided the political narrative in Nagaland. However, over a period of few decades, due to different political developments, the Act got implemented in different states with an altered name – Armed Forces (Special Powers) Act, 1958, commonly known by its acronym AFSPA.

### **Misusing AFSPA**

The Act has seven sections. The controversial clauses of the Act are in section four and section six. Section four gives different kind of power to the armed forces; and the different kinds of action to be performed by the armed forces is granted immunity in order to prevent the armed forces personnel from being dragged to the Court. Thus section six says 'No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.'<sup>1</sup>

Had the security personnel strictly acted within the power granted by the AFSPA, the controversy perhaps would not have surfaced to this magnitude as it is today. Unfortunately, it has so happened that even when there was gross violation of the limit set by the Act, no security personnel has ever been prosecuted for the last fifty six years. This has led the people in the 'disturbed area' to interpret the Act as giving the security personnel the license to do virtually every possible action the security personnel could imagine. In September 2012, Human Rights group submitted to the Supreme Court a list of 1,528 cases of killing in Manipur alone since 1979. In January 2013, Supreme Court set up a Judicial Commission on AFSPA headed by retired Supreme Court Judge Santosh Hedge, with J M Lyngdoh, former Chief Election Commissioner and A K Singh, a retired IPS officer as members to investigate six sample cases of fake encounter deaths. Interestingly the Commission found that all the sample cases of encounters were fake ones thus giving credence to the public perception about high-handed and arbitrary behaviour of armed forces personnel deployed in disturbed areas.

On 15 July 2004, a group of elderly women, with their clothes totally stripped off, came out to the street in Manipur to protest against the killing of Thangjam Manorama. Manorama was picked up on 11 July by security forces for her association with an outlawed group Revolutionary People's Front. The same day her dead body was found by a villager. Forensic tests later confirmed that she was raped before spraying bullets on her private parts. She was also brutally tortured.

Irom Sharmila has been on fast unto death since 5 November 2000. She began her fast to demand lifting of AFSPA after 10 civilians, while waiting for bus at Malom, were killed by security forces on 2 November 2000. The security forces claimed that the firing that led to the death of the civilians was in response to the bomb attack by a local militant group. Whether the civilians were caught in cross firing as the security forces retaliated in self-defence or whether the security forces projected their anger on the civilians and shot them after the bomb attack, the truth would never be known as the Court would never give its judgement. These are sample instances where the actions of the armed forces require

critical scrutiny and yet the immunity provided by the Act apparently comes in to protect the erring security personnel.

### **A Moral Inquiry**

Article 3 of Geneva Conventions make provisions for the protection of non-combatants, surrendered armed forces and wounded soldiers in times of armed conflict. In the context of AFSPA, though it is a case of armed conflict, it is rather a counter-insurgency measure taking place within a nation-state. Since it is only a counter-insurgency measure, protection for the lives and property of the non-combatants (civilian population) must be given top priority. After all, the reason for the existence of the state is to protect the lives and property of the citizens. Given these circumstances, there are some moral issues that must be raised: Section 6 of the Act does not provide immunity to those security personnel who commit rape or kill innocent people through fake encounter. However, the fact that there has been no prosecution of the security personnel who rape and kill by means of fake encounter surely raise a moral question: Is the dignity and lives of the people of the 'disturbed area' lesser than those of other region? If such vices take place in other regions of the country, whether one is in the army or judiciary or whatsoever, the perpetrators of the crime would be booked and brought to the Court for trial. The inability of the judiciary to act even when the army personnel acted beyond their power given to them is morally untenable.

AFSPA has been in place for 56 years now. If strong armed tactic is to work, it is plausible to suppose that it should have worked. One of the reasons why it has not worked is because strong armed tactics tends to feed public anger against the security personnel. Given this inadequacy, it is high time to put effort on to winning the trust of the local people, a key tactic in counter-insurgency, instead of providing such sweeping power to the armed forces. Fifty six years of strong armed tactic, resulting in the loss of innocent lives in term of several thousand and a huge expense of tax payers' money, is long enough to indicate that the Act is politically inexpedient and morally unjustifiable.

In Chhatisgarh alone, from January 2008 till June 2013, 485 security forces lost their lives due to Maoist violence; besides 696 civilians were killed<sup>2</sup>. From 2005 to May 2010, altogether 10,268 civilians and security forces have lost their lives due to violence related to Maoist activities in the country<sup>3</sup>. Despite such recurring violence and killings, there is no AFSPA in the Maoist-hit areas. Compare this with Nagaland which has no death of security forces for over fifteen years now due to militancy related activities. This discriminatory policy between different regions makes present AFSPA morally untenable.

### **Way Forward**

The status of AFSPA as it is today requires a change. Given the kind of power permitted by the Act, will the security personnel necessarily cross the limit and act beyond the power given by the Act? If the answer is positive, then one must insist that the Act as it is, cannot be sustained. A society built on the pillar of liberal democracy cannot justify an Act that will necessarily prompt security personnel to act beyond the powers given, and then provide immunity for the illegal action committed on the civilians.

However, say, rape or fake encounters are not a necessary outcome of the Act, and then punish those personnel who acted beyond the power given to them. Any security personnel

who commit rape or kill innocent people through fake encounter, should be court martialled or be brought to the Civil Court. Cases of rape or fake encounter deaths are not granted immunity by AFSPA. The recent ruling that sentenced seven soldiers to jail for killing three Kashmiri youth by luring them with the promise of jobs is a major landmark in providing justice to the victims of army excesses. No one would seriously raise voice had the security personnel acted only against the armed militant groups. Security personnel engaging in an armed combat to kill the armed militant groups is a fair fight. It is such cases of fake encounter killing or rape that bring bad name to the army and also the AFSPA for providing immunity to the erring army personnel.

Need of the hour is to ensure creative engagement of armed forces in combating separatist violence without putting common people under any kind of harassment. More space about North East needs to be given in mainstream Indian imagination and remaking of modern India. Thus pursuing a more inclusive policy must include taking that which comes out from the North East –both thoughts and practice –as authentic Indian. Unless such a more robust state's policy and public imagination are pursued, political resentment and discriminatory tone will dominate the political narrative of those who belong to the North East region.

Maintaining status quo and letting the armed forces guide the political narrative of the North East region is a indolent and politically inexpedient way of providing governance in the region. As of today the main emphasis is on protecting the territorial integrity; the human or the cultural element of the people in the region is not given significance. More and more educated young of the region are aware of the rights provided by international law and the Constitution to the people unlike it was in the past. And when such discriminatory policy of the government are read and observed, it is the tone of resentment that begins to shape the thinking of the educated younger generation. It is high time for New Delhi to review the Act and begin providing multi-pronged governing policy instead of continuing lackadaisical policy for the North East region.

Given that the North East region has become part of the nation-state called India, addressing the economic and political discomfort prevailing in the region is a moral obligation on the part of the government in New Delhi. The historical baggage cannot be ignored. The different ethnic groups which enjoyed significant measure of freedom to exercise its way of life before the arrival of the British Raj and its subsequent incorporation into the Raj has to be taken into consideration, and therefore providing space to allow the people to retain and reconstruct their way of life is a moral obligation the state must bear in mind in addressing the economic and political matters in the North East region.

#### **End-notes**

1. [http://www.mha.nic.in/sites/upload\\_files/mha/files/ArmedforcesAct1958-290813.pdf](http://www.mha.nic.in/sites/upload_files/mha/files/ArmedforcesAct1958-290813.pdf) ( Accessed on 14.09.2014).
2. <http://ibnlive.in.com/news/over-1100-killed-in-naxal-attacks-in-last-6-years-chhattisgarh-govt/407206-3-235.html> ( Accessed on 20.9.14)
3. [http://zeenews.india.com/news/nation/naxal-violence-over-10000-people-killed-in-past-five-years\\_636453.html](http://zeenews.india.com/news/nation/naxal-violence-over-10000-people-killed-in-past-five-years_636453.html) ( Accessed on 20.9.14)

## Corporate Social Responsibility as Legal Obligation: An Indian Perspective

**Kamal Kishore**

**Apeejay School of Management, New Delhi, India**

**Email: kamalk1951@yahoo.co.in**

### **Abstract**

The concept of Corporate Social Responsibility (CSR) as a voluntary or mandatory measure has invited attention of corporate watchers for long. In India, large corporates have generally been contributing to CSR activities on voluntary basis in the form of charities and other initiatives. The industry has been resenting any regulation on CSR spending by the government. The advocates of mandatory form of CSR have, on the other hand, been arguing that if CSR has to make a demonstrable impact on societal needs, it can be done only by legislation. The regulation will also remove differences in understanding of CSR activities and streamline spending on CSR. The Government of India has finally promulgated a legislation mandating 2% of net profit as CSR expenditure by the corporates every year. It makes CSR reporting mandatory though compliance is not mandatory. The corporates are required to constitute a CSR Committee at Board level to help in formulation of CSR policy for implementation by the company. This is a step in the right direction but real key will be its implementation by the administrative machinery. This paper examines various nuances of the issue.

**Key words:** Corporate Social Responsibility, Mandatory provisions, Voluntarism, India

*Goodness is the only investment that never fails* – Henry David Thoreau

### **Introduction**

The concept of Corporate Social Responsibility (CSR) originated when companies emerged as a form of business entity and became integral constituent of the society. CSR has taken various definitions and interpretations in its fold. No common definition has so far emerged but there is positive commonality in almost all elaborations. CSR spells corporate altruism. It has now moved beyond corporate philanthropy to corporate responsibility encompassing all aspects of business - employees, market, environment, society etc. Corporate philanthropy and responsibility connote two different things, the latter being much wider than the former. Passive philanthropy no longer constitutes social responsibility. In today's scenario, CSR is not regarded as charity but a long term strategy embedded to core values and principles of the corporate entity.

### **Corporate Social Responsibility Defined**

A well-accepted definition of the concept was given by World Business Council of Sustainable Development: “Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of local community and society at large” (WBCSD, 1998). Further, CSR is understood to be the way companies integrate social, economic and environmental concerns in to their business decision making –it is all about doing business in a responsible manner (Datta, 2012).

All the governments, world bodies, non-governmental organizations (NGOs) and voluntary associations have been forcefully pressing the corporate sector to espouse CSR in the overall interest of human establishment and sustainable development. The United Nations has defined CSR in a broad sense as the overall contribution of business to sustainable development (UN, 2007). The World Bank Institute (WBI) explains ‘Corporate Social Responsibility (CSR) is the commitment of business to contribute to sustainable economic development, working with employees, their families, the local community and society at large to improve quality of life, in ways that are both good for business and good for development’ (WBI, 2003).

The European Union defines CSR as “... the concept that an enterprise is accountable for its Impact on all relevant stakeholders. It is the continuing commitment by business to behave fairly and responsibly and contribute to economic development while improving the quality of life of the work force and their families as well as of the local community and society at large...” (EU Green Paper: 2001). International Labour Organisation (ILO) defines CSR as a way in which entrepreneurs give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven and refer to activities that are considered to exceed the compliance with law (ILO, 2006). CSR involves short-term costs which do not provide immediate financial benefit to the company, but has long term social and environmental impact on community. It is something that creates long-term sustainable development for the society.

What emerges from such expositions is that CSR permeates corporations towards stakeholders other than shareholders also. It expects the enterprises to contribute to welfare of not only capital contributing shareholders but also to other stakeholders like consumers, employees, society in general. In doing so, it has to pay unencumbered attention to societal concerns in areas of environment, sustainable development, labour conditions, human rights and consumer rights.

### **Corporate Perspective on CSR**

The corporate sector has also responded to the need for CSR in more than one way, though the espousal varies across the board. CSR is now widely debated in the board rooms. In India, there is no dearth of large corporations taking lead in CSR endeavours. Contrary arguments have also come to the fore. The role of corporate management is to maximize shareholders’ value and cannot go beyond such legal requirement. The management has to see whether existing legal requirement provide incentive that cause enterprise to act in a

socially desirable manner (Friedman, 1970). However, subsequently stakeholder definition also gained currency and extended to variety of social and environmental concerns.

### **CSR – Voluntary or Mandatory**

Mandatory CSR refers to existence of legal framework for compliance by companies with penal action for acting in variance. Voluntary CSR, on the other hand, is a non-binding concept which motivates companies to pursue CSR without any regulatory pressure. There is enough evidence suggesting that Indian businesses have been engaging in CSR for years without any legal mandate. Leading Indian corporate houses like Tata, Birla, Ambanis etc. have contributed to CSR activities since inception. Many companies have imbibed CSR in their corporate strategy, but some still view it as a public relations or image building tool. Many other organizations have been doing their part for the society through donations and charitable interventions/programmes.

CSR Programs could range from overall development of a community to supporting specific causes like education, environment, healthcare etc. Many CSR initiatives are executed by corporates in partnership with non-governmental organizations (NGOs) who are well versed in working with the local communities and handling specific social problems. Although some companies like the Tata, Birla, ITC, Wipro and Infosys etc. have a solid history of contributing to India's development and social welfare, many companies have hesitated to contribute more than what is minimally required. In Indian regulations neither there had been a legal mandate for CSR contribution nor any guidance on what constituted CSR activity. This resulted in activities relating to employee welfare, canteen and safety facilities in factory compound being labelled under CSR domain. Some even viewed doing statutory activities like minimum wages, gratuity and bonus as CSR.

CSR has been for long a voluntary concept and not mandatory in India. Notwithstanding its voluntary stance, a number of leading corporates have imbibed CSR in their corporate strategy. The vexed question- whether CSR should be voluntary or mandatory, is main focus of this paper. Should CSR spend be a legal requirement or it should be left to the volition of corporate management. Which is better means of promoting CSR – voluntary or regulatory? Such debate has been engaging attention of intellectuals and corporate experts in India and abroad for long and opinions continue to be divided.

### **Rationale of Mandatory CSR**

It will be interesting to start with the well talked statement – the only obligation of business is to make profit (Friedman, 1970). This statement had many supporters and continues to be so even today. It was advocated that a Manager's role is to maximize shareholder value and he cannot go beyond the legal requirements. Friedman also contended that "the idea of social responsibility means nothing for businesses; in fact, since CSR spending involves managers "taxing" shareholders and spending their money without their consent, it is actually an immoral business practice". Many traditional corporate scholars at that time were in unison with above concept. The basic objection against CSR was that applying the shareholders' funds in any way other than the company's business is contrary to the fiduciary duty of company's directors.

Some critics claim CSR to be a tax on consumers saying that it is irresponsible to deploy corporate assets for social cause (Betsy Atkins, 2006). In India, mandatory CSR is a solution to reach places that State cannot reach on its own (Villamayer, 2010). CSR is a kind of stealth tax that impacts on companies' value creation. We already have regulation across certain elements of CSR like carbon commitments in some European countries, environmental protection laws in India and outside. Law does not just aim to achieve a given result but also intended to prevent widely differing and contradictory treatment of same or similar situations. Such a goal is obviously true of CSR as well. But CSR cannot be regulated by conventional legal instruments (ILO, 2008). Thus, law has also to provide a uniform definition of CSR. However, laws may not be sensitive or supportive to real intent of CSR. Indeed cutting edge CSR practices are often not motivated by strict legal requirements but by strong corporate governance and management actions.

More often one can observe a trend in discussion on CSR that voluntary measures can help improve private-sector behaviour, but voluntary activity is no substitute for regulation and there is evidence that companies that espouse voluntary approaches to meet environmental standards are frequently involved in resisting external regulations, mainly in developing countries, where national legislation framework is weak. Even if necessary laws do exist, many governments including those in developed countries do not have political will or effective instruments to enforce (Mazurkiewicz, 2004). As far as compliance of social and environmental conditions is concerned, a study of Nordic companies revealed that Nordic CSR pioneers are sceptical towards CSR and voluntary approaches in global governance and strongly prefer hard law (Gjølberg, 2011). The Standing Committee on Finance of India also suggested CSR to be mandatory for corporates above a specified threshold.

In many instances, CSR initiatives simply consist of unilateral or ad hoc projects from companies, such as developing a code of conduct, a CSR report, or specific projects to improve social and environmental practices in the company without any wider governance implications. The law is necessary to combat the shareholder primacy drive and get across to companies that social responsibility is in its essence, its core, not a voluntary matter (Beate Sjøfjell, 2011).

### **Logic of Voluntary CSR**

On the other hand, there is no dearth of contrary view –the voluntary concept of CSR. By definition CSR is a voluntary commitment. It defines dialogue with stakeholders. Whether companies choose to be responsible or not, has to be left to their discretion. Sooner or later, they will be aware of the benefits of being responsible (Villamayer, 2010). Business has tendency to resist any increased social, environmental regulation, preferring voluntary or soft law approach to good governance (Gjolberg, 2011). Most CSR activities are based on voluntary approach. CSR is connected with values and values cannot be forced by law (Villamayer, 2010). In India, voluntary donations and charities towards temples, social causes by business houses have been prevalent for long. It is also argued that a mandatory CSR will compel corporates to camouflage their financial statements to show compliance of regulation which may even dilute their existing voluntary commitment to CSR. It may open doors for unfair practices and window dressing of accounts.

Business houses recognize CSR contribution but are against its mandatory stipulation in any way. They claim that businesses should not be governed on aspects other than business. Any legal binding on CSR may prompt companies to discover ways and means of skirting it. Voluntary CSR emanates from corporate soul whereas mandatory CSR is imposed from outside and is seen with repulsion particularly as shareholders are concerned about return from providing the risk capital. In businesses, CSR is generally not seen as matter for lawyers. Another view is that CSR cannot be constrained in legal liability as it requires flexibility for its implementation. Some experts espouse both legal and voluntary domain for CSR saying that CSR requires companies to go beyond what the law requires to achieve. CSR is a business imperative whether pursued as a voluntary corporate initiative or for legal compliance reason (KPMG, 2008).

### **International Perspective on CSR**

The European laws require from companies certain disclosures of their performance relating to society, employees and environment. In USA, CSR is voluntary. France has regulations on non-financial reporting. In Denmark, law requires large companies to publish social and environmental information in their activities. There are laws on Directors' duties concerning CSR in some European countries. Hongkong has declared sustainability Development Policy. China has mandatory CSR reporting. New laws are emerging in many countries to incorporate CSR and sustainable development principles and existing laws are being extended to cover the same.

Spain has voluntary CSR approach that has worked well in as much as Spanish companies have figured in the list of global hundred sustainable performance leaders (Villamayor, 2010). UK's Companies Act has now included a provision on Directors' duty in respect of environmental and social impact of their business. This obligation applies to all Directors. In the context of environmental aspects of CSR, there are a number of international treaties and conventions aiming at protection from environmental hazards and related issues. Some well-known principles emanate from OECD, ILO, UN Declaration. In Europe and North America, some States have started legislating in respect of CSR principles. States are tempted to fill the void if CSR continues to be seen as unregulated issue. There are domestic laws in CSR derivatives like anti-corruption, environment, human rights etc. Many laws also apply extra territorially like Foreign Corrupt Practices Act of USA, Bribery Act of UK. Most countries have also local laws for dealing with environmental aspects.

International Finance Corporation (IFC) Washington, has evolved performance standards on environment and social sustainability, which are subject to revision from time to time in the light of changing circumstances. A very important code is Equator Principles formulated in 2003 by a group of international banks in consultation with IFC Washington Standards. Equator Principles envisage voluntary guidelines for managing social and environmental risks in project financing. UN Global Compact is another voluntary framework in the areas of human rights, labour and environment. It encourages businesses to adopt sustainable and socially responsible policies.

The Shanghai Stock Exchange and Shenzhen Stock Exchange have also taken several steps to promote CSR-related activities and their disclosure. Indonesia has passed a law requiring all public companies to issue CSR reports. The U.S. Security Exchange Commission (SEC) had

directed all U.S. public companies to regularly disclose climate related risks in their annual reports to investors (Robinson, 2010).

### **Indian Legal Scenario vis-à-vis CSR**

India's erstwhile Companies Act of 1956 was a comprehensive law but did not contain any provision in regard to contribution towards CSR. It did not even provide a clear definition of what constituted CSR and most provisions focused on investor protection. The Companies Act failed to deliver any important directive connected with CSR in India (Kaul and Gupta, 2011). Companies were therefore left to decide on their own, the policy and spending on CSR. There had, however, been some provision, dealing with charitable contributions by corporates. Section 293(1) (e) allowed for contribution to charitable and other funds (not directly related to business of company) for an amount higher of Rs. 50,000 or 5% of its net profit during last three financial years, with the approval of Board of Directors. Any contribution in excess of this limit required approval of shareholders. This was merely an enabling provision leaving any choice of making donation with the management of company.

In 2009, Ministry of Corporate Affairs in India issued Voluntary Guidelines on CSR for companies. While stating that the business sector also needs to take the responsibility of exhibiting socially responsible business practices that ensures the distribution of wealth and well-being of the communities in which the business operate, the guidelines envisaged that each business entity should formulate a CSR policy to guide its strategic planning and provide a roadmap for its CSR initiatives, which should be an integral part of overall business policy and aligned with its business goals. The CSR policy should, inter-alia, cover the interest of shareholders, workers, environment and focus on ethical behaviour.

In August, 2013, Indian Parliament enacted a new law, Companies Act, 2013, that has attempted to make CSR provision for certain companies. In terms of section 135 of the new legislation, a company having net worth of Rs. five hundred crore or more or turnover of Rs. one thousand crore or more or a net profit of Rs. five crore or more, during any financial year, will be required to constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, with at least one independent director. The composition of the Committee has to be disclosed in Board report. It further provides that 2% of average net profits of the previous three years will have to be spent on CSR activities with disclosure to shareholders about the CSR policy along with reasons on failure of implementation, if so. The CSR Committee shall formulate a CSR Policy, indicating the activities to be undertaken by the company as specified in Schedule VII. The CSR Committee will recommend the amount of expenditure to be incurred on the activities referred to above and monitor the CSR Policy of the company from time to time.

The CSR policy has to be approved by the Board on the basis of recommendations of the said committee. Board has to ensure to disclose contents of such Policy in its report and also place it on the company's website and ensure that the CSR activities are undertaken by the company. The Board should make every endeavour to ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy. If the company fails to spend such amount, the Board shall, in its report specify the reasons for

not spending the amount. Some of the activities covered in CSR policy (Schedule VII) relate to eradicating hunger and poverty, promotion of education, gender equality and empowering women, contribution to the Prime Minister's National Relief Fund.

### **Conclusion**

CSR started as voluntary concept but some aspects of it have been given mandatory nature like antitrust laws, minimum wages, competition laws, health and safety of workers, environmental issues, human rights etc. Some critics favour legal framework for CSR while others advocate its voluntary role. In the absence of mandatory rule, vagueness about CSR spending and activities eligible to be called CSR persisted. If CSR concept has to deliver desired result for all stakeholders, it cannot be left to be entirely at the volition of shareholders and therefore Government intervention is essential. Regulation is intended to prevent widely differing treatment of CSR dispensation. The Union Government in India has, despite lot of resentment and anxiety rhetoric by industry, moved ahead with the passing of legislation dealing with mandatory regulation on CSR. While the new law does not make CSR compliance mandatory, its reporting is made mandatory. In a developing country like India, where Government cannot be expected to do all for welfare of community, a mandatory CSR measure is considered a step in right direction to reach places where State cannot reach on its own. Despite some good initiatives by some large corporations, the concept of voluntary CSR which operated in last 60 years, had not really worked well.

Some issues like tax exemption still need elaboration and may elicit better response from the corporate world. Corporates would be expected to set up special departments to operationalise new provisions and monitor the expenditure. Good corporates will think in terms of developing long and short term implementation plans as well as evaluation system to measure the impact of its CSR initiatives. The enumeration in the law of activities qualifying as CSR clarifies considerable vagueness. It also offers lot of flexibility to industry to adopt CSR in compliance of new regulation. While the mandatory concept of CSR is laudable, the real key lies in its implementation. How the Government is going to monitor CSR spending over a large number of companies. Whether necessary administrative machinery will be in place. Unfair practices or window dressing may not be ruled out, more so in periods of recession. While these issues will be addressed over time, a concrete step has been initiated by the Union Government and now it is the turn of corporate management to ensure its implementation in letter and spirit. Only time will speak about actual implementation of a well-meaning legislation.

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## **Winner-Takes-All Politics in Ghana: The Case for Effective Council of State**

**Ransford Gyampo**

Department of Political Science, University of Ghana, Ghana

E-mail: vangyampo@yahoo.com

### **Abstract**

This paper is the sixth in a series of publications aimed at addressing the severe challenges posed to Ghana's effort at national development and cohesion by the practice of "Winner-Takes-All" (WTA) politics. It discusses WTA politics, highlighting its dangers such as the conferment of excessive powers on the president, marginalization of perceived political opponents and the feeling of exclusion from the governance process by those who do not belong to the government/ruling party. It reviews the performance of Ghana's current Council of State as a potential countervailing constitutional arrangement to bridle the excessive powers of the executive and promote inclusive politics. The paper finally makes recommendations to strengthen the Council of State as an effective check on the powers of the executive and mechanism for promoting inclusive politics in Ghana.

**Keywords:** Winner-Takes-All, Politics, Inclusivity, Council of State, 1992 Constitution, Ghana

### **Introduction**

Winner-Takes-All (WTA) politics can be explained in terms of the partisan monopolization of state resources, facilities and opportunities, as well as the exclusion of political opponents from national governance. It is considered very problematic as it manifests as "a zero-sum tendency in politics" characterized by marginalization and exclusion of actors in opposing groups from access to resources and other entitlements and incentives (Abotsi, 2013). Even though Ghana's constitution provided for Winner-Takes-All, it was only intended to serve as a formula for selecting leaders. It is instructive that the framers of Ghana's 1992 Constitution wanted to ensure an effective executive presidency. However, they did not contemplate a "winner-takes-all situation" by which the political party that forms the government following a general election would in the exercise of its powers, antagonize and completely exclude the political opposition from national governance (ibid).

The scholarly works of Oquaye (2013), Linton and Southcott (1998), Abotsi (2013), Prempeh (2003), and Ayelazuno (2011) have highlighted the pervasiveness and polarizing dangers of the problem of winner-takes-all politics in Ghana and in many other African countries. In addressing the challenges posed by WTA politics, policy and scholarly recommendations

such as the need for an independent parliament to play the role of countervailing authority to the powers of the executive; the need for an inclusive and bi-partisan preparation of a long term national development plan that benefits from the input of all across the political divide and is implemented by all successor regimes; as well as the need for a review and possible adoption of a customized variant of the proportional representation formula for selecting leaders in Ghana have all been discussed by scholars such as Oquaye (2013); Abotsi (2013); Gyampo (2015a) and Gyampo (2015b).

This paper is a radical departure from the studies of the scholars highlighted above. It identifies the absence of an effective Council of State as one major cause of WTA politics in Ghana and discusses the need for a strong Council of State to play a role that checks the unbridled exercise of power and promote inclusivity in a manner akin to the traditional Council of Elders in Ghana and many parts of Africa. One major feature of WTA politics is that it confers excessive powers on the executive arm of government. However, given that power corrupts and absolute power corrupts absolutely<sup>1</sup>, the framers of the 1992 Constitution provided for the Council of State as a possible check on the excessive powers of the executive and WTA politics.

The Council of State emanated from the concept of “Council of Elders” in Ghana’s traditional political setting as. In the traditional setting, members of the Council of Elders were the various lineage and clan heads who represented their people in the chief’s palace and played a key role in checking the political excesses of the chief (Busia, 1951). The chief had no hand in the selection of members of the Council and he was bound to follow whatever advice given him by them. One ground for the removal of a chief was his failure to heed to the advice of the Council of Elders (ibid). The role of the Council of Elders in the traditional setting is therefore to play a role as countervailing authority to the powers of the chief (executive) in a manner that fetters the exercise of power and promote constitutionalism (ibid).

On the contrary, it has been argued that Ghana’s Council of State established under the 1992 Constitution is a mere pale shadow of its counterpart in the traditional setting. How did Ghana’s Council of State evolve? How is it composed? What are its roles? How has it been effective in checking the powers of the executive and promoting inclusive governance? How can it be strengthened to play its role as an oversight countervailing authority to the powers of the executive and an effective mechanism in fighting WTA politics? The subsequent chapters of this paper are devoted to answering the questions posed.

### **The Council of State**

*Brief Historical Note:* The Council of State was perceived with Ghana’s traditional political system in mind as an advisory and countervailing authority to the powers of the chiefs. As indicated earlier, members of the traditional Council of Elders were the respective clan or lineage heads who assisted the chief in the day-to-day administration of the traditional political community. They were in the chief’s palace as of right and proffered authoritative advice on all governance and political issues which had binding effect on the chief (Busia, 1951). Members of the traditional Council of Elders held permanent positions in the chief’s palace and in this regard, their tenures overlapped that of the chiefs. Per their permanent positions, they were the repositories of traditional customs, values and conventions which

imbued them with enough wisdom and positioned them as credible sources of advice to the chief (Oquaye, 2014). The Akans say, “*ye wo ohene no, na obrempon te ase*”, meaning, before the chief was born, the elders were already in existence. This makes it imperative for the chief to listen to wise counsel from the elders (ibid). Again, an Akan chief who for instance attempted to disobey the advice of members of the Council of Elders was quickly reminded that “*nana, wo be to yen*”, to wit, “you came to meet us here in the palace”. The position and role of the Council of Elders in the traditional political setting was therefore an exalted position that made them it a powerful check on the powers and political excesses of the chief (Busia, 1951).

*The Current State of Affairs:* Article 89 clause 1 of Ghana’s 1992 Constitution provides for a Council of State to counsel the President in the performance of his function in a manner akin to what pertained in the traditional setting. However, the Council is perceived as weak in terms of composition and mandate. Generally, the Council of State in Ghana has not been able to work effectively to counter the exercise of power by the President. Three main reasons account for this challenge. In the first place, the President has an overriding power of appointment in terms of the composition of the Council. Notably, the Council of State which was first conceptualized under the 1979 Constitution was crafted with the concept of the Chief’s Council in the traditional system in mind as already indicated.

However, the fundamental principle underscoring the membership of the Chief’s Council in the traditional setting has been ignored. In the traditional Ghanaian society, no chief appoints any member of his Council of Elders. The Council Members are Heads of the various groups or lineages in the society and are sub-chiefs themselves (Busia, 1951). They come to the Council as of right and are independent of the chief. The Members of the Council normally support the chief to rule but if the latter should abuse his position, the Council Members will take a bold stand against the chief. To disregard an advice from the Council of Elders is indeed a ground for removal of the chief.

However, Ghana’s current constitutional arrangements give the President the powers to appoint some members of the Council of State. It is also possible for the President to influence the selection of the other members of the Council from the regions. Most invariably, the President ends up appointing or having an influence over the appointment of almost all members of the Council of State<sup>2</sup>. Indeed, there are three categories of members of the Council appointed by the President. First, Ten People elected from the Regions by the various Metropolitan, Municipal and District Assemblies (MMDAs). Even though the President cannot override this process, he has enormous influence in determining who is elected by the various MMDAs in view of his direct appointment and control over the mayors and chief executives who heads the MMDAs.

Secondly the President is expected to appoint, four (4) persons who come through institutional representation – one former Chief Justice; one former Chief of Defence Staff (CDS); one former Inspector-General of Police (IGP) and President of the House of Chiefs. Here too, the President may have a choice if more than one former occupant is alive. Finally, the President has a free hand to choose or appoint eleven (11) other persons to serve as members of the Council. This is alien to the Ghanaian culture as no chief selects/appoints members of his Council. They are sub-chiefs who come as of right. This results in a

countervailing authority and avoids despotism (Oquaye, 2014). Therefore, the appointment of members of the Council of State by the President certainly undermines the independence of the Council of State and renders it deficient in delivering on its mandate in a manner akin to what pertained in the traditional setting where members owed their office as of right and not to the chief.

The second issue relates to the mandate of the Council which is presently purely advisory and with regards to the President only. Unlike what pertained in the traditional certain, the President is not bound to follow the advice of the Council of State. The Council of State does not also play any role in the day-to-day administration of the state as the Council of Elders did in the traditional political setting. It is instructive to note that the Committee of Experts on the 1992 Constitution made a number of recommendations, which go to the root of the Council's powers<sup>3</sup>. These were not included in the 1992 Constitution and should be revisited. Article 90(1) of the 1992 Constitution provides: "A bill which has been published in the Gazette or passed by Parliament shall be considered by the Council of State if the President so requests". The Committee of Experts provided differently and more broadly under section 4(1) as follows: A bill which has been published in the Gazette or passed by Parliament shall be considered by the Council of State –

- (a) If the President requests;
- (b) If the chairman of the Council of State determines;
- (c) If no less than five members of the Council of State so demand; or
- (d) If the bill was passed under a certificate of urgency.

Notably, this was already in existence by Article 107(1) of the 1979 Constitution. Why was it removed in the 1992 constitution to weaken the Council of State? The Committee of Experts also provided for Judicial Committee of the Council of State akin to the Privy Council in the U.K. Five eminent Judges who are qualified to be Supreme Court Judges under the Constitution and four other experts will be invited to assist the Council of State in a variety of ways and assume membership by dint of their expertise. Among other things, they will assist in determining the constitutionality of a bill, any important measure proposed by the Executive, any appointment or vital issue of State whatsoever. Unfortunately, this was also watered-down in the 1992 Constitution in a manner that has rendered the Council of State a pliable tool in the hands of the President (Oquaye, 2014).

The third issue of relevance is the term of office of the Council of State. Members of the traditional Council of Elders held their office so long as they lived. They were already in the chief's palace before the chief was installed and they remain when the chief is no more. However by article (89) (6) of the 1992 Constitution of Ghana, the appointment of a Member of the Council of State can be terminated by the President with the prior approval of Parliament. In the view of Oquaye (2004), this is enough to tame an independent mind because any person can be removed by a President since the President can easily obtain a majority through his/her majority party in Parliament.

### **Effectiveness of the Council of State**

Given the above challenges, we do not need a soothsayer to tell us about the ineffective role of the Council of State in bridling the powers of the executive and checking WTA politics. Indeed, in the IEA-WTA public consultations held in 2014, the Council was variously

described by a cross-section of Ghanaians as “superfluous” “toothless bull dog” “unnecessary” “wasteful charge on public expenditure” “too much attached to the President”, “not capable of giving independent or meaningful advise”. It was in demonstration of the lack of confidence in the Council of State that many well-meaning Ghanaians called on the President to broaden consultations beyond the Council of State in seeking or appointing a new chairperson of the Electoral Commission.

Civil society organizations such as the Institute of Economic Affairs (IEA-Ghana), Ghana Centre for Democratic Development (CDD-Ghana), Institute for Democratic Governance (IDEG) and other seasoned statesmen including the national chairmen of the four main political parties with representation in parliament were unanimous in calling on the President not to only rely on the advice of the Council of State (which he is not bound to follow) but to consult key stakeholders in Ghana’s democracy to promote inclusive politics and ensure easy acceptance of the appointee. These calls arose as a result of the dent on the mandate, credibility and effectiveness of the Council of State. Professors Daniel Adzei-Bekoe and Kofi Nyidevu Awoonor, former Chairmen of the Council of State during the administration of the respective regimes of Kufuor and Atta Mills regime have all recounted their frustrations as chairs of the Council at one point in time or the other. Whiles Kofi Awoonor lamented the appointment of party faithful and sycophants to the Council in a manner that compromised their sense of objectivity and complained about the presidency not being easily accessible to the Council<sup>4</sup>, Adzei-Bekoe noted that “...the Council has really no powers. Even though the President is obliged to consult us on certain appointments, he was not bound to take our advice...”<sup>5</sup> The comments from these eminent statesmen speaks volume about the ineffectiveness of the Council and satisfy the akan adage that “when the toad comes from the sea to tell you the crocodile is dead, you don’t challenge it”.

### **Recommendations**

In addressing the weaknesses of the Council of State, some Ghanaians including the IEA-WTA Advisory Committee have recommended the need for the Council of State to be transformed into a Second Chamber of Parliament with oversight responsibilities beyond their current advisory role. However there are clear cut conditions that countries must satisfy in order to opt for bicameralism<sup>6</sup>. The two most important of these conditions include the size of a country’s population and the nature (homogenous/heterogeneous) of the population (O’Neill, 2006; Ball and Peters, 2005; Chazan, 1982). In terms of size, Ghana is a relatively small country of just about 25 million people compared to countries like Nigeria, US and other populous countries that have Second Chambers. Again, research and empirical studies on the nature of Ghana’s population points to a fairly homogenous population compared to the heterogeneous nature of the Nigerian, UK or US population. In other words, even though Ghanaians seem to be polarized, the population is homogenous. There are about 92 ethnic groups in with the major ones being the Akan (49.1%), Ga-Adangbe (8.0%), Ewe (12.7%), Grunsi (2.8%), Guan (4.4%), Gurma, (3.9%), Mande-Busanga, (1.1%) and Mole Dagbani (16.5%).<sup>7</sup> The ethnic diversity of the country has nevertheless not seriously dented and compromised the homogenous nature of its population (Frimpong, 2006; Handelma, 2006). Again, in spite of the fact that recently ethnic-voting seems to be rearing its ugly head in voting patterns, the kind of divisive ethnic cleavages and divisions in the population of the magnitude that warrants the adoption of a Second Chamber is not what is witnessed in Ghana today (Shillington, 1992; Chazan, 1982; Frimpong, 2006). It is

even more significant to note that even though Nigeria's population is heterogeneous with over 250 ethnic groups<sup>8</sup>, their adoption of a Second Chamber has not solved the fragmentation and feeling of marginalization by some ethnic minorities (Handelma, 2006). In this regard, for Ghana to transform its Council of State into a Second Chamber as a solution to WTA politics may be simplistic.

To give more teeth to Ghana's Council of State, first, the entire architecture captured in the 1992 Constitution should be reframed in line with the recommendation of the Committee of Experts who drafted the Constitution. Article 89 (1) of the 1992 Constitution says: "There shall be a Council of State to counsel the President in the performance of his functions". By Section 3(1) under Council of State, the Experts provided: "The Council of State shall aid and counsel the President, the Council of Ministers, Parliament and other organs of State in the performance of their functions under this Constitution or under any other law".

Secondly, in terms of composition the Committee of Experts provided for "all former Presidents able and willing to act as members of the Council of State". President Rawlings rejected this because he did not want former President Hilla Limann (Shillington, 1992, Oquaye, 2014). However, the era of personal idiosyncrasies should be over and as a people, we should include former Presidents and Vice Presidents on the Council except those who left office on impeachment.

Third, membership of the Council of State should emphasize institutional representation without a single nomination from any serving President. Mike Oquaye's list of institutional representation is instructive and may be considered as follows:

- i. Every former Chief Justices
- ii. Every former Chief of Defence Staff or General Officer Commanding the Armed Forces.
- iii. Every former Inspector General of Police.
- iv. Every former Governor of the Bank of Ghana.
- v. Every former Speaker and deputy Speaker.
- vi. Every Former Majority and Minority Leader of Parliament.
- vii. Every Former Auditor-General.
- viii. The Secretary General of TUC
- ix. 10 chiefs, each from the 10 Regional Houses of Chiefs.
- x. 10 women, nominated by the Regional Queen mothers, though nominees need not be Queen mothers.
- xi. Representatives of identified Civil Society groups - The Christian Council, The Catholic Secretariat, The Muslim Council, the Ghana Bar Association/Professional Bodies Association, the Ghana Journalists Association, Women Groups, Student Groups, TUC, Association of Ghana Industries etc.

Furthermore, the term of office of members of the Council should be six years and separate from that of the President. By Article (89) (6), the appointment of a Member of the Council can be terminated by the President with the prior approval of Parliament. As argued earlier, this is enough to tame an independent mind because any person can be removed by a President since the President can easily obtain a majority through his/her majority party in Parliament. It is recommended that once a person is brought to the Council by an

institution, only that body can recall the member by a prescribed method devoid of political manipulation.

The new Council of State should be free to operate and advise ALL State bodies. Hence, Article 92 (8) should be amended. It reads: “The Council of State may, with the approval of the President, commission experts and consultants to advise it or assist it in dealing with any specific issue”. In the view of Oquaye (2014), this is tragic as it makes it difficult for the Council to investigate any controversial application of public funds and corruption associated with the President or his ministers. The question is, will the President approve such request? The Council should be empowered to independently engage experts to help it arrive at “scientific” conclusions in all its investigations. The Council of State should be strengthened to become so inquisitorial that it can even advocate impeachment process against the President where necessary.

Another anomaly is found in Article 90(1) of the Constitution: “A bill which has been published in the Gazette or passed by Parliament shall be considered by the Council of State if the President so requests”. The Committee of Experts provided differently and more broadly under section 4(1) as follows: A bill which has been published in the Gazette or passed by Parliament shall be considered by the Council of State –

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Notably, this was already in existence by Article 107(1) of the 1979 Constitution. Why was it removed in the 1992 constitution to weaken the Council of State? The Experts also provided for Judicial Committee of the Council of State akin to the Privy Council in the U.K. Five eminent Judges who are qualified to be Supreme Court Judges under the Constitution and four other experts will be invited to assist the Council of State in a variety of ways and assume membership by dint of their expertise. Among other things, they will assist in determining the constitutionality of a bill, any important measure proposed by the Executive, any appointment or vital issue of State whatsoever. Why this was also sacrificed?

### **Conclusion**

A return to the recommendations on the Council of State by the Committee of Experts who drafted Ghana’s 1992 Constitution as well as the provisions of the 1979 Constitution on the Council of State would help strengthen the Council and enable it deliver on its mandate in a manner that checks the excesses of the executive and reduces WTA politics. Indeed, the advice from such a strengthened and powerful state body may not be binding but can certainly not be ignored by the President.

### **Endnotes**

<sup>1</sup>See Lord Acton @ <http://www.brainyquote.com/quotes/quotes/l/lordacton109401.html>

<sup>2</sup>See article 89 clauses 2 to 4 of Ghana’s 1992 Constitution

<sup>3</sup>See Committee of Experts’ Report on Ghana’s 1992 Constitution

<sup>4</sup>Author interviewed Prof Kofi Awoonor on 11<sup>th</sup> September 2011 in Accra.

<sup>5</sup>Interview with Prof Daniel Adzei-Bekoe on 23<sup>rd</sup> September 2015 in Accra.

<sup>6</sup>A bicameral legislature is a Two-Housed Legislature, divided into a Lower House or First Chamber and an Upper House or Second Chamber.

<sup>7</sup>Ghana Statistical Service Report (2000)

<sup>8</sup>Nigeria, Africa's most populous country, has more than 250 ethnic groups. The most populous and politically influential ones are the: Hausa and Fulani 29%, Yoruba 21%, Igbo 18%, Ijaw 10%, Kanuri 4%, Ibibio 3.5%, and Tiv 2.5%. See more details at <http://start.csail.mit.edu/startfarm.cgi?query=How+many+ethnic+groups+exist+in+Nigeria>.

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## Leadership Challenges and Economic Development in Nigeria

**Tanko Saidu**

**Department of Economics, Sokoto State University, Sokoto Nigeria**

**Email: tankosaid@yahoo.com**

### **Abstract**

Political economists are of the view that economic development does not happen by accident in any country rather; it is the result of careful planning and efficient allocation of resources under a leadership that is committed to achieving that task. Nigeria has enjoyed over five decades of political freedom without meaningful development. The study identified bad leadership as the primary threat holding Nigeria's economic greatness in the past and at present. Specifically, these problems are corruption, running an expensive democratic system, and the immunity of prosecution enjoyed by political office holders for as long as they are in power. The Nigerian economy has for decades remained physically handicapped because all monies and materials that are provided meant for developmental projects were either end up in private pockets or being mismanaged. On the Nigerian democratic system, Nigeria is the only country in the world that spent over 80% of its national income on politicians and political processes rather than on physical developmental projects. The study suggested an emergency for a thorough sanity in the Nigerian body politic. On the aspect of corruption, no country can develop in the hands of parasites; against this background, stiff penalties must be introduced even if it means capital punishment. That will guarantee the possibility of a corrupt-free Nigeria and the realization of practical development.

**Keywords:** Leadership, Corruption, Economic Development, Nigeria

### **Introduction**

Outside the territorial landscape of traditional development models, the creation of economic development and its sustenance are not solely determined by the availability of economic factors but also the quality of institutions that manage economic resources (Moses et al, 2013). Within the spotlight of this analytical paradigm, the standing proclamation is that no matter the amount of economic resources a country has; the development and utilizations of such resources largely depends on leadership or management. In any event, where the management of national resources is entrusted in the hands of parasites and kleptomaniacs, there will be no need for rocket science to make a logical conclusion for pessimism and hopelessness in terms of achieving the targeted objectives and better results.

No economy has ever grown to the age of maturity if the fundamental body structures of development parameters are under the tutelage of misguided personalities because bad leadership and economic development are inversely related just as poor management and development are mutually exclusive. Evidence of that is Nigeria. Nigeria has all the financial and material resources to be an economic powerhouse not only in Africa but the rest of the world. The monies, materials and other resources that are provided meant for developmental projects in education, infrastructure and all other social services that add values to human lives are either mismanaged or diverted for private gains. The leadership environment in Nigeria has become a money making venture and an avenue for easy stealing of national wealth with political protection. Beyond political rhetoric, the Nigeria's economic backwardness is as a result of bad leadership.

For more than five decades, Nigeria has failed to provide meaningful life for her citizens as a result of the lacked of political will. The problem of Nigeria is underdevelopment. The problem of underdevelopment in Nigeria is corruption and the problem of corruption is bad leadership. From structural perspective, the ugly picture of economic backwardness in Nigeria is the paradox of growth without development. Statistically, in the late 2014 Nigeria was ranked the biggest economy in Africa (CBN report, 2014). But in practical terms, it is an economy whose growth has never reflected in the living standard of Nigerians. Economic indicators such as poor industrialization, high rates of unemployment and poverty are coming from a history of exponential growth. In modern economic literature, the consensus is that the profit of economic growth is economic development because there would be no economic development without growth (John etal, 2010).

If the Nigerian economy was practically growing; then the fruits of those growths have always been enjoyed by the privileged few or the nation's elites especially those who occupied political seats of power with parasitic ideologies that at all times promote the commanding erosion of national wealth for exclusive benefits via the created holes of leakages and externalities. No functioning economy anywhere in the world thrives if the leadership of that country ignores the industrial sector, promotes the importation of foreign goods and remained insensitive to national insecurity. No democratic country anywhere in the world can create economic development if over 80% of its national income is spent on politicians and political processes. With regard to the former in particular, the Nigerian industrial sector was historically murdered by the country's leadership both past and present by refusing to provide enabling environment for investors, market behaviours and sustainable confidence.

Nigeria is an economy that operates without electricity; with decaying infrastructure and a country that is enveloped with insecurity and terrorism. Apart from the loss of human lives and destruction of properties of higher commercial values, their second round effects are the destabilizing forces against investor confidence both local and foreign. Because of the extreme government's neglects to the country's educational sector which is the engine growth of manpower productivity, the nation's tertiary institutions have been feeding the economy with unqualified graduates and unproductive manpower. Across every aspect of Nigerian economy are structural deformities and broken value chain which have tremendously made it absolutely impossible for Nigeria economy to develop. The Nigerian economic disabilities have been consciously allowed to remain permanent because there

are people who profits from the underdevelopment of Nigeria (Sanusi, 2014). A permanent pregnancy is an abnormal situation to the mother and her unborn child. Bad leadership is the primary cause of all problems in Nigeria politically, economically and socially. Bad leadership is the problem of corruption in Nigeria and all other components of development stimulus.

Furthermore, although the incidence of corruption today has become a global cankerworm, but within the satellite picture of Africa, the name Nigeria is synonymous with corruption (Benga, 2013). The name corruption has become the principal identity for Nigeria and Nigerians; it has tarnished the face value of the country's international respect and world's admiration. The transparency international in its 2004 report on worldwide corrupt practices, in that report, Nigeria was rated the third most corrupt country, beating Haiti and Bangladesh to the second and last positions respectively. However, the report was an improvement over that of 2000 when Nigeria was reported as the most corrupt country in the world. Statistically, Nigeria's Corruption Perception Index (CPI) was 1.2 in the year 2000, contrasting those of Finland (10.0), Denmark (9.8) and New Zealand (9.4).

The aim of this study is to contribute to the existing related literature not only in terms of re-examining the challenges of economic development in Nigeria from political perspective but also by extension to suggest the possible way forward towards overcoming such challenges. The paper is organized into five sections, this section introduced the paper. Section two provides definition of terms and conceptualities on leadership, corruption and economic development. Section three is literature review while section four outlined leadership problems in Nigeria and their threat to economic development. Section five comprises summary, conclusion and recommendations.

### **Concept of Leadership**

The term leadership is a burden of responsibility, it is any task of group representation by an individual, group of individuals or an organization based on trust, ability, capacity and the capability to deliver the goals and objectives of the group in good results (Muhammed, 2014). "Leadership has also been described as *"a process of social influence in which a person can enlist the aid and support of others in the accomplishment of a common task"* (Wikipedia). Moreover, to understand the primary task of leadership assignment, there is the need to define who is a leader, the purpose of leadership and the qualities of a leader.

In the book of Robert Greenleaf's (Chapter 8) characterizes a leader as *steward* or *servant-first*. The needs of participants are the foremost priority for servant leaders, whose role is to pave the way and provide support for participants to function at their best. Greenleaf provides several criteria for evaluating successful servant leadership: Do those served grow as persons? Do they, while being served, become healthier, wiser, freer, more autonomous, more likely themselves to become servants? And what is the effect on the least privileged in society? Will they benefit or at least not be further deprived?

In a related concept, one of the Nigeria's famous orators Alhaji Yusuf Maitama Sule in most of his public lectures defined a leader as a servant. *A leader is one who gives his all, who sacrifice his health for the health of his people, who sacrifice his comfort for the comfort of his people, a true leader is like an umbrella under a heavy rain or a shelter under a sunny*

day. He was also of the view that if any congressional prayer goes wrong it is the *imam* leading it that destroyed it. This is an analogy to the function of a leader in terms of result delivery that if a nation fails to achieve its desire goals and objectives, it is the leadership of that country that is responsible.

The purpose of leadership in any organization, groups or societies both at micro and at macro level is to help achieve maximum efficiency in the struggle of creating or improving or advancing their collective goals and objectives (Mark etal, 2011). In the case of a state, leadership is a necessity; the purpose of leadership in a state is to manage national resources efficiently and effectively in such a way that improves the general quality of life or their standard of living. Experiences have shown that only good leadership produced good result. Good leadership are the collections of leaders who are honest, morally high, incorruptible, reliable and dependable. But in a situation where these qualities are found wanting, the people that occupies leadership's positions only lead themselves; and the prime of objectives of achieving economic prosperity, good standard of living or the general quality of life remains in the horizon.

Attitudinal characteristics of bad leaders are as under:

1. Corruption and immorality
2. Injustice and dishonesty
3. Selfish interest when it comes to decision making
4. Exploitive and manipulative
5. Lacked of confidence in their abilities
6. Risk takers
7. Arrogance
8. Inconsistency
9. Too much failure to achieve the targeted objectives
10. Too much excuses
11. Too much abuse of power and personality
12. Self-promoting
13. Extreme defence of person and properties
14. Lacked of integrity
15. Narrow minded and opinionative
16. Too much public Criticisms etc.

### **Concept of Corruption**

The word corruption has not yet received a particular definition acceptable by all but it is a word that is associated with negativism in all spectrums or dimensions. According to British English dictionary, the term "*Corruption involves any act of impairing integrity, virtue, or moral principle or the act of loss of purity, integrity and depravity*". Again within the parameter of intellectual discourse, an attempt was however made towards defining corruption by Yaru quoted in Yelwa, (2011:2) as: "*Corruption is a multi-dimensional phenomenon and hence has been defined in multiple ways. Generally, corruption in public sector is simply the abuse of authority by the public officials to make personal gains in the discharge of their official duties. It encompasses activities ranging from bribery, embezzlement, extortion, fraud, favouritism, dishonesty to related illegal or unauthorized*

*behaviours in pursuance of personal objectives*". Even though the above definition is not yet popular, but it is a definition that is rich from leadership perspective.

### **Consequences of Corruption**

Corruption from the point of view of every perspective is very costly. It undermines confidence in government and its moral authority diminishes. Economically, corruption entails leakages just as misallocation of resources is worsened by corruption. Corruption can only exist for continuity if there are arbitrage opportunities for people to be corrupt. In a situation where corruption exist in government, it becomes extremely hard to fight that scourge because it is the government that is corrupt and fight corruption at the same time, they are absolutely mutually exclusive. Government officials will not press for change in the regulations from which they enrich themselves (Owolabi, 2004).

In the work of (Apol, 2012) cited that corruption aggravates income inequalities and poverty; those who benefit from bribery, kickbacks and preferential deals are not likely to be among the poorest. Corruption adversely affects economic growth, as it acts as additional tax on enterprises, raises costs and reduces incentives to invest. "Informal payments" on public projects may be many times their actual cost. Corruption imposes a heavy burden on small and medium-sized enterprises, and tends to shift government spending away from socially beneficial investments, such as health, education, roads and communications towards unneeded "white elephant" projects, or lower quality infrastructure.

Corruption moreover reduces domestic savings and investment and stimulates capital flight, as it weakens domestic banking system. Corruption is one of the most important inhibiting forces on investment, growth and development, thereby lowering the living standards of the people. Pervasive corruption often discourages donors from providing more aid, which harms opportunity once again for economic growth and development (E.A and Owolabi, 2004).

### **Concept of Economic Development**

The term economic development has received various definitions from different scholars; but although it was defined using different words, they all converged in the same meaning which is the general improvement and the sustainability of quality of life. According to Maryann etal (2014) *Economic development can be define as a collection of activities that expand capacities to realize the potential of individuals, firms or communities who contribute to the advancement of society through the responsible production of goods and services.*

According to Amartya Sen (1999) Economic development can be measure by the degree of freedom acquire by citizens of a country. He argues that human development is about the expansion of citizens' capabilities. Economic development is also defined as the sustained, concerted actions of policy makers and communities that promote the standard of living and economic health of a specific area. Economic development can also be referred to as the quantitative and quality change in the economy. Such acts can involve multiple areas including development of human capital, critical infrastructure, regional competitiveness, social inclusion, health safety, literacy, and other initiatives (Leoesbs, 2014)

From the above definitions we can conclude that the ultimate result of economic development is greater prosperity and higher quality of life; however, these goals can only be realized through sustained innovation, activities that lower transaction costs through responsive regulation, better infrastructure and increased education and opportunities for more fruitful exchange. Only by appreciating the role of government as a vehicle for collective action can we ensure our economic future. Moreover, the logic of economic development requires certain capacities that require collective action through government. For government to be effective in creating economic development there is a need for performance and impact measurement systems that are able to provide decision support for strategic investments, to assess progress made in the catalytic capacity-building function, and to assess the limitations and barriers that prevent the utilization of capacity that government investments build. More than simply ex-post evaluation, there is potential for continuous improvement and adjustment when metrics are monitored. However, it is important to be sure that measurement is done well and reflects an understanding of the complex process of economic development.

In all cases, it has become clearer that good governance, sound infrastructure, education and manpower development, adequate investment, technology and market availability, security of lives and properties, institutional qualities and the like, their availabilities and accessibilities are the necessary condition for achieving sound, stable and sustainable economic development in any human society. Based on these proclamations, what are the state of these factors in Africa particularly Nigeria?

### **Literature Review**

In a publication by JICA research institute (2013) titled 'development challenges in Africa towards 2050 highlighted problems such as bad leadership, absence of right economic policies, corruption and resource mismanagement, weak political, social and economic and institution of justice, uncontrolled population, conflicts and insecurity, macroeconomic instabilities, lacked of adequate investment in education, infrastructure, human and material development, poor technology, import dependency among others are the commonness shared attributes facing all African economies just as employment, poverty and hunger have been for decades their principal identities. But recently in some of these countries, positive signals for change have started showing up as a result of coherent adjustments that have taken place in such countries. After decades of disappointing performance, growth has been strong over the last few decades and offers the foundation for transforming the continent over the next two generations.

The recent improved performance has also raised the aspirations of Africans across the continent and renewed global interest in Africa, including FDI. What Africa, its leaders, and its partners do now will determine whether the rising aspirations of Africans and global expectations are met or not. In their report, it was made clear based on prediction by optimism that Africa will soon catches up with the rest of the world to narrow the gap in terms of living standards and productivity. It describes a future for Africa of individual prosperity in cohesive societies, competitive economies, and strong regional-global interaction. Under such a scenario, by 2050 per capita incomes would grow six-fold, moving from one quarter of the global average to one half. The number of poor would be reduced ten-fold to fewer than 50 million. The majority of Africans would join the middle class.

Africa's share of global GDP would triple to 9 percent. This is a vision of what could be but it is not a prediction. It is only one of several possible scenarios and actions taken today that will be the key to determining which is realized.

But of-course there are few African countries that are still lag behind, a country like Nigeria that is supposed to be on the lead but is still battling with issues of bad leadership, corruption and terrorism; if these trends continue at the present momentum or above, then it is not unlikely that it might not be among those with disappointing result in the 2050 visionary perspective.

Victor (2010) in his study for reviewing the challenges facing Nigerian economy identified: human development challenges, leadership and governance challenges, corruption challenges, infrastructural and institutional challenges, lacked of technological capabilities, macroeconomic challenges, market challenges, political parties without ideologies and disrespect for the rule of law as the principal stumbling blocks that are holding the economy stagnant or from moving forward. The author argued development and economic prosperity in any economy does not happen by accident but from a result of creating right policies along with good governance. Unfortunately, these three fundamentals which are the lacked of good governance, technological backwardness and unproductive manpower are the first major issues to be address if the economy of Nigeria is to be put on the right pedestal for real growth, economic prosperity and development.

Ibrahim Sada (2014) in his study identified two fundamental factors that have been retarding the possibilities of developing economies towards achieving economic development. These factors are corruption and insecurity. The author is of the view that because of corruption, funds that are meant for development projects in education, infrastructure and in social sector are either missing or diverted for private used especially by government officials. The menace of corruption in developing economies for decades had remained at the pinnacle as one of the biggest stumbling blocks that stops countries like Nigeria from moving forward. On insecurity, the author is of the view from an investment perspective; that no investor will want to put his funds in an environment where uprising has become the order of the day and that no country will develop where investors are running away. Nigeria is a classic example of that where the incident of boko-haram in the northern region did not only brought about the loss of thousand lives or the damages of properties of higher commercial values but also encourages mass exodus of investors to other countries that enjoy relative peace. These two fundamentals must be address immediately for real development to take place. The author recommends good governance, introduction of stiff penalties to corrupt public officials, establishment of strong justice system and the application of egalitarianism in the allocation of resources that prevent conflicts.

Dahida and Akangbe (2013) identified corruption as the biggest constrain to Nigeria's economic development. Their main objective was by extension, to identify the way forward. The author argued that art of corruption among the Nigeria's public officials from top to the bottom and from bottom to the top has become legal for as long as you know how to do it smartly. In some cases even if one is getting caught, it thereafter ended in the court without prosecution. This is in spite of the existence of EFCC and ICPC. Nigeria is a country that is

blessed with abundant mineral resources (richest in Africa) and with a population of human beings that exceed 150 million (largest in Africa). But because of corruption, over 80% of its population lives in abject poverty. The authors are of the view that if the problem of corruption alone will be tackled, Nigeria will surely develop. If the funds meant for education, agriculture, infrastructure and other sectors are properly channel, properly executed, development will come a reality in Nigeria. They were of the view that fighting corruption in the country requires leadership that will make fight against corruption a priority. Because of this, the authors recommended, that Nigerians should join hands together and forget about religion, tribe, ethnicity and the like when it comes to chosen their leaders. The problem of Nigeria is underdevelopment. The problem of underdevelopment in Nigeria is corruption and why corruption continued to eat up the present and future greatness of the country is the domination of bad leaders in the country at all levels. Thus, Nigerians must sacrifice any temporary benefit and converge their efforts towards installing good leadership; this is the prerequisite for getting out of the wood and for moving forward.

Olabanji and Ese (2014) investigate the impacts of insecurity on the socio-economic development in Nigeria. They were of the view that available data for ethno-religious conflicts, politically-based violence, economic-based violence, militancy, insurgency and organized group violence among others are on the rising. As for their causes, the authors were of the view that the growing rates of unemployment, poverty and hunger and the deterioration of social welfare are the principal factors. These also are as a result of government failure at all levels. Terrorism and other sorts of insecurity have been with Nigeria since independence and they have contributed extensively towards the lacked of social welfare, material development and political stability in the country. Specifically, the authors found that insecurity in Nigeria has brought about loss of million lives, hard injuries and damages of properties; it has created tensions and mistrust, dehumanization of women, children and men and economically, it has slowdowns internal trade, encourages investment outflows and inflows, increases unemployment, poverty and hunger which on vicious cycle help in creating an environment for resentment and fertile ground for recruitment of youths into the band wagon of militancy and insurgency in the country.

### **Leadership Challenges in Nigeria as a Threat to Economic Development**

Beyond political rhetoric, economic development in any country or in any parts of the world does not happened by accident rather, it is a combined result of good governance, careful planning and engagement of resources efficiently in areas that creates, improves and strengthens economic, social and political parameters of a society that add value to life. That is not the case in Nigeria perhaps since its creation. The Nigeria's political environment and it doesn't matter whether is the military or civilian has always been crowded with leaders that are parasitic, kleptomaniacs or inexperience; at all times it has been a calibre of men and women who lacked the qualifications to be in positions of power or to lead a nation. Nigeria has all the available resources humanly and materially in a capacity that is capable of leading African economies in terms of development and to be considering even among the biggest economies in the world but it is a land of misery and remarkable contrast primarily because of bad leadership, corruption and resource mismanagement. The face of Nigeria's leadership problems has the following identities:

*Expensive democratic system:* Although globally, democracy has today become the most acceptable system of government; theoretically sound, I don't think anyone would suggest a better system that guarantees personal freedom and liberty of the people and above all the opportunity to choose leadership of your choice by majority at all levels. But in practice, that is where the problems emerged particularly with Nigeria. The Nigerian democratic system is very expensive, available data has shown that the Nigerian politicians in relative terms earned more than any country in the world. According to World Bank reports in 2007, 90% of Nigeria's annual income is spending on 1% of its population and this one percent is none but the politicians. It is the remaining 10% that are divided for social services, payment of salaries and developmental projects. How can a nation develop?

From another perspective, many political analysts are of the view that most of the Nigerian politicians do not come into politics to serve but to make money; another fertile ground that incentivized the recruitment of bad elements in positions of power. No nation can develop in the hands of parasites or through the paper developmental ideologies guided by misguided men.

*Immunity of prosecuting political office holders:* One of the weaknesses of Nigeria's constitutions is the provision of immunity to political office holders. For as long as one is occupying political seat of power, that person is too big to go to jail or court until his/her administration is over. And the tradition that has been ongoing is that every political leader will make sure that his/her political friends succeed him/her in office as a price for political protection. Consequently, politicians in Nigeria used this advantage to do whatever they like. They become too powerful and seldom to their primary assignment. Apart from disrespect for the rule of law, stealing of public funds and resource mismanagement, they rarely placed the national interest above their personal interest. This however is another threat to national development.

*Corruption and impunity:* The name Nigeria today has throughout the world become synonymous with corruption. Corruption in Nigeria has become a means of livelihood; it is informally legalized for as long as you can steal public funds without getting caught. The annoying side of is that of impunity. For decades, the money and resources that were provided for developmental projects in education, infrastructure, health and other sectors end up in private pockets or for personal used. Take electricity for example, every year Nigeria provides billions of naira meant for reviving the sector, but the incidence of darkness has been growing from bad to worse. And this is true for all other sectors, the monies have been taken, at the end of the day neither the money nor the practical results of projects executed on ground and nothing happened.

Apart from stealing of public funds that is at the pinnacles among the major issues responsible for the underdevelopment of Nigeria for decades yet, there are people that are benefitting from underdevelopment of this country. Why should provide light for example if they can profit by importing electric generators? Why should provide security if they can profit from importing ammunitions? Why should provide jobs if the incidence of hunger will make it easier and cheaper to buy people's vote during election? Why should revive industries if they can profit from importing goods from abroad? It will not be an exaggeration for any objective analysts to be pessimistic in the futuristic greatness of

Nigeria for as long as the present state of affairs in the country continues at the same momentum.

### **Summary and Conclusion**

The paper identified bad leadership as the primary threat to Nigeria's economic development in the past, at present and even for the future unless necessary action is taken towards establishing sanity in the political environment of the country. The biggest aspect of bad leadership in Nigeria is corruption. Because of too much corruption in Nigeria, monies and material that were provided meant for developmental projects end up in private pockets or for personal used. Structurally no one will visit Nigeria and failed to notice the effect of a backward society.

Structural indicators of underdevelopment such as decayed infrastructure, bad roads, lacked of electricity and underdeveloped manpower are the fundamental characters of the Nigerian State. Socially, there is no security of lives and properties. With very bad educational standard, evidence of that statistically from practical experiences, over 80% of tertiary institutional graduates do not just faced unemployment but they are not employable in the private sectors. In every angle of the Nigeria's body structure is backwardness in terms of development as a result of bad leadership. It is true that Nigeria has many problems, but the solution to these problems is simple. Good leadership is the solution to all Nigeria's problems politically, economically and socially. Bad leadership is the mother of all problems that Nigeria has. For as long as the affairs of Nigeria continue to be guided by misguided men and women, our present disabilities will be relatively better than our future.

### **Recommendations**

1. Good leadership can only be brought into power by the Nigerian masses through the ballot boxes. Nigerians must come together as one family to vote for leaders who are honest, who comes into politics to serve but not to be serve. Leaders who are not corrupt irrespective of their tribes, religion or any inclinations; this must be the necessary condition or requirement.
2. Secondly when there is good leadership, there is the need first of all to clean up all loopholes and arbitrage opportunities that allow leakages and dis-functionalities. The cost of running government in Nigeria is too expensive. Salary structure and allowances of politicians must be reducing in order to release more funds for developmental projects.
3. To totally fight corruption significantly, there is the need for the independency of EFCC and ICPC. In addition to that, stiff penalties must be introduced even if it means capital punishment. This will help significantly in the art of war against corruption because even if one is not God fearing, will eventually abide by the law by law fearing and there will be decency among all characters.
4. Nigerian economy can only develop to a level that provide adequate jobs, eradicate poverty and make life better for her citizens if and only there is visionary leadership. This also suggest that having good leadership is one but having right policies from manpower development, education, security and investment are another. Priorities in these areas must be given in order to have balance growth and development that would be sustainable.

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