

Promoting the Rule of Law through Evaluation and Performance Measurement in Nigeria: Challenges and Prospects

Innocent Chukwuma and Eban Ebai
CLEEN Foundation

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Introduction

The contemporary interpretation of the doctrine of the rule of law refers to a cluster of ideas, the best known being related to the principle of legality, prescription of procedural standards in the administration of justice, the separation of powers, promotion of material justice and individual rights and the maintenance of public order (Fombat, 2005). Very recently, economists and development specialists have begun to discuss the “Rule of Law” as the enforcement of private contracts (Mullarkey, 2010).

To promote uniformity in usage and understanding of the rule of law, the UN Secretary General in his report to Security Council in 2004, provided a detailed definition:

‘The “rule of law” refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.’

This definition of the rule of law thoughtfully presents the concept as a collection of principles that can be used to inform the structure, operation, reform, and evaluation of law-related institutions across societies. It emphasises equity, accountability, and avoidance of arbitrariness, and it is rooted in fundamental principles of human rights, as well as the more traditional concept of the supremacy of the law. Cognizant of this, programmes to foster the rule of law in Africa have mushroomed in the last decade. However, well-grounded knowledge about what factors ensure successful outcomes from these programmes, and why, remains scarce.

Ignatieff and Desormeau (2005:1) argue that ‘a measurement revolution has been underway in the fields of development and governance’, a phenomenon which can be recognised through the ever-increasing volume of and spreading influence of numerical indices in measuring development and governance in issues like corruption, human rights, crime and safety as well as the rule of law. Alemika and Chukwuma, (2007) state that, sub-Saharan Africa appears to have been left behind in this “measurement revolution”, as decisions of government and other policy makers are not based on systematically collected and analysed information. This tends to produce a culture of planning and administration based on anecdotal evidence, experience, tradition and hunches with attendant ineffectiveness and inefficiency on the rule of law (Chukwuma, 2008). Against this background and through the use of surveys and justice indicators the CLEEN Foundation has identified challenges, areas of strength, and paths to pursue in order to promote the rule of law in Africa, with a specific focus on Nigeria.

Challenges for Successful Promotion of the Rule of Law in Nigeria

1. **Lack of constitutionalism and constitutional democracy:** results from national public perception surveys, key informant surveys, and administrative data collection and analyses conducted by the CLEEN Foundation (as well as other indicators) show that a major challenge to the promotion of rule of law is the lack of constitutionalism and constitutional democracy. The problem has not been the absence of constitutions, but rather the ease with which constitutional provisions are abrogated, subverted, suspended, or brazenly ignored.
2. **Efficient and Ineffective Legal and Judicial systems:** The formal legal systems do not provide the expected outcomes in terms of justice delivery, and they lack the capacity and logistics to perform their duties. The Electoral Laws and systems in most African countries, including Nigeria, have not provided fair ground for democratic accountability and the rule of law. There is also the prevalence of widespread impunity for government actors and elites, increasing violent crime, political instability, pervasive corruption, disease, and poverty, all of which present huge challenges to the rule of law in Nigeria/Africa.
3. **Collection of reliable official statistics on the rule of law:** Various institutional, operational and capacity failures with respect to information management as tool of planning, decision making, monitoring and evaluation have presented a major challenge.^{1,2} This challenge is particularly acute with specific reference to crime and victimisation statistics. Some countries in the developing world, including Nigeria, do not prioritise grounding of public policy and decision-making on reliable information and statistics. The rule of law sector in these countries, neglects collection, analysis, and utilisation of rule of law information as essential input to their planning, operations, and administrations. Countries and rule of law sectors that ignore or fail to collect and utilise vital statistics for planning and administration usually lack necessary capacity and political will to do so.
4. **The lack of performance measurement and impact assessment:** Through the use of surveys and indicators to measure performance and assess impact in the rule of law sector, the CLEEN Foundation found that the low public confidence in the Nigerian criminal justice system constitutes a major challenge in the promotion of the rule of law. The level of confidence was measured through the rate of reporting of crime to the police or the formal justice sector. In a 2005 survey, 29.7% of respondents reported crimes, and in 2006, this figure dropped to 11.4%. The 2011 edition of the National crime and safety survey (NCSS) found that 56% of all victims of crimes reported to family and friends and only while only 16% reported to the police. Respondents who reported to the police were asked if they were satisfied with the handling of their complaints by the police and nearly half of them (48%) said they were dissatisfied and 37% felt satisfied. When asked why they were not satisfied, perceptions related to police ineffectiveness were the most commonly cited, ranging from police did not do enough (59%) to police were slow to arrive (12%). Other issues highlighted included corruption (18%) and incivility (10%). in previous surveys of the CLEEN Foundation in 2005 and 2006 similar responses were obtained. 22.1% of respondents asked this question in 2005 and 36.2% of those asked 2010 said the police did not do enough to apprehend the offenders. Also, 13% (2010) said the police demanded money (bribe). A careful analysis of the reasons noted by respondents indicates that their dissatisfaction derived from three principal ineffectiveness of the police, police disrespect of complainants and lack of integrity/ corruption. These developments not only indicate declining rates of public confidence in the police in Nigeria, but also represent a challenge to rule of law and formal justice systems.

5. **Corruption:** This is another challenge to the criminal justice system in Nigeria, as the police was said to be the most corrupt criminal justice institution with 29.7 % of respondents reporting it as corrupt; the same score was 3.9% for lower courts, and 2.8% for the high court. These levels of corruption present huge challenges to the criminal justice sector and thus the proper functioning of the rule of law. In Nigeria, as in many African countries, policies on rule of law reforms are often formulated, implemented and discarded without any rigorous data analysis on whether they worked or not. And if they did not work, what were contributing factors, etc. This no doubt highlights the need to search for a way out.

Important innovations, insights, and/or positive trends to addressing rule of law challenges

There are several innovations, insights, and positive trends addressing the challenges facing the promotion of the rule of law in the region. African countries, including Nigeria, have overwhelmingly subscribed to most international and regional human rights and rule of law norms and standards, ratified numerous major human rights treaties, and enshrined these norms and standards in their constitutions and national legislations. Yet, significant gaps remain in their realisation.

1. **Acceptance of alternative or supplementary sources of information on the promotion of the rule of law:** In Nigeria policy makers have realised that there are alternative, supplementary sources of information to promote the rule of law to those collected by the police, courts and prisons. For instance, the two Presidential Commissions on police reform and reform of criminal justice administration in Nigeria established in the last several years have relied heavily on the findings of crime and safety surveys conducted by the CLEEN Foundation in carrying out their assignments. Their recommendations have also reflected the findings of the same surveys. The Presidential Commission on reform of criminal justice administration recommended the development of a national crime prevention strategy that would incorporate the views of the community in the determination of policing priorities.³
2. **Openness to capacity building and other skills acquisition:** The police and other criminal justice actors are open to human rights and rule of law capacity building to enhance their daily activities. CLEEN Foundation, with the support of the Justice for All programme of UK Department for International Development (DFID), has conducted several training programmes for the police, including Training of Police Conduct on Electoral Duty, and ongoing Police Training on Human Rights and Conflict Prevention. Feedback from these trainings exercises indicate police's interest in capacity development.
3. **Growing Interest in use Indicators to Measure Performance of Justice Institutions:** Criminal justice agencies such as the public prosecution, police and correctional services are beginning to show keen interest in using low cost and tailored justice indicators as management tools for measuring the impact of their reform programmes and evaluating the performance of key officials in delivering their institutional goals. CLEEN Foundation in collaboration with the Harvard Criminal Justice Program and the Lagos State Ministry of Justice in Nigeria, has over the past three years successfully piloted and demonstrated the usefulness of simple and easy to measure justice indicators in identifying major challenges plaguing effective management of pretrial detention, the types of reforms needed to address the challenges and measuring the impact of the reform programmes in addressing the problems. The success of the intervention has not only encouraged the Lagos State Government to extend the use of justice indicators in measurement of victims satisfaction in the state's criminal justice system but has also attracted other states such as the Imo State in the Southeast of the country to understudy the Lagos experience with a view to replicating it.

In April 2012, the State collaborated with the CLEEN Foundation and Open Society Justice Initiative in organising a summit on management of pretrial detention in the state, which brought together stakeholders from the police, judiciary, prisons, ministry of justice, civil society organisations and public prosecution to strategise on the use of data and indicators in driving reform of pretrial administration in the state and general promotion of rule of law and performance measurements in the justice system.

How the international policy community, (UN), could contribute to increase the impact of these innovations/insights/trends

There is need for the UN and international policy community to encourage African countries to democratise and open up through constitutional and institutional reforms to ensure separation of powers and accountability amongst governmental institutions.

Resource - both human and material - should be provided through civil society organisations and state actors to build capacity of state officials in the criminal justice sector. Research and planning departments should be incorporated in all criminal justice institutions to measure progress and impact of reform programmes as well as performance of key officials.

There is need to address the poor working conditions, and to increase the work force in the criminal justice sector in order to enhance the operation of the system in accordance with the rule of law. Holistic forms of reform should not be imported and implemented in Africa without the input of local realities.

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Endnotes:

¹ *Crime and Policing in Nigeria: Challenges and Options*, Lagos: Network on Police Reform in Nigeria (E.E.O. Alemika & I.C. Chukwuma eds., 2005) available at <http://www.cleen.org/CRIME%20AND%20POLICING%20IN%20NIGERIA.pdf>.

² E.E.O. Alemika and I.C Chukwuma, *Criminal Victimization and Fear of Crime in Lagos*, Lagos: CLEEN Foundation (2005).