FRAGILITY OF THE LAW AND ENVIRONMENT

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INTRODUCTION

Fragility is characterized by lack of capacity, and in the context of this paper, often caused by lack of respect for rule of law, implementation of laws as well as degradation of the environment resulting from climate change. Nigeria in situation of fragility is a country with limited ability to govern or rule itself with absolute respect for laws and more broadly to develop mutually constructive and mutually reinforcing relations with citizens. In another premise environmental situation is such that the impact of climate and ability to protect the environment threaten the fragile society. In this perspective, fragility refers to lack of capacity, defined as not only political will, organizational, institutional and financial capacity but also by the lack of existence of common norms, rules and regulations that are recognized and saddled by the government toward effective implementation of laws, respect for rule of law and safeguard the environment for benefit of it citizens. This is a critical issue: because fragility can stem both from lack of financial, political will and government capacity and from lack of respect for law and protective environment both preventing the making of the country as a robust protection of the political, social and economic rights of her citizens with the context of law as well as the environment for development.

Ineffective or poor constructive respect for law and consequent environmental degradation are thus part of defining features of states in fragile situations. The government exists for the purposes of creating enabling environment for people to develop and application of laws to achieve peaceful, orderly and secured society which are captured by the country's processes of governance. This essentially is a function of priniciples, processes and procedures. Athough government's responsibilities are connected in sphere of enforcement of the law as well as protection of the environment one way or the other, they follow rules and principles that do not conform to country's rules which in turn threaten fragility. In order to make possible the establishment of efficient governance, it is necessary to break out of the vicious cycle in which socio-economic and political survival depend on patronage particularly in realm of law and environment. One major factor responsible for fragility in the context of law is lack of adherence to the pristine concept of separation of powers.

Contemporary states are faced by demands for equality, protection of their fundamental right and conducive environment and development. Consequently, government is expected to act in ways that correspond to the wishes and priorities of their own population. The dilemma of Nigeria in fragile situations is that the expectations of the citizens do not correspond to those of government thus culminating in the absence of synergy in ensuring good government, political stability, making it impossible to satisfy the expectations of the teeming populace. In summary, it is posited that strategies and policies applicable to addressing situations of fragility within the context of law and environment must be tailored specifically to solving specific challenges. It cannot be one size fits all. This paper is meant as a contribution to the ongoing debate about the character of law and environment in situations of fragility. The overall objective is to provide a better understanding of how laws and environment relates to and shapes Nigeria in fragile situations, and on this basis provide some recommendations on its impacts or implications on fragility. In this perspective, it illuminates how effective laws can be put in place, how respect for rule of law can be better implemented and how the environment is more adequately protected through legitimate processes and how government, can appropriate and use its powers to bolster the country's fragility.

In agreement with Oputa JSC (as he then was) on the significance rule of law and access to justice for all citizens, that:

In theory, our constitution in its preamble talks notably of promoting the good government and welfare of all persons in our country on the principles of freedom, equality and justice. But in actual practice, one sees that it is the powerful, the rich and the dominant class that seem to have all the rights, while the only rights left to the poor, the weak and the down trodden seem to be the right to suffer in silence, to be patient and to wait for their reward in heaven (if they are believers).

The significance of the law and environment cannot be understated, particularly rule of law as one of the core principles of United Nations mission to provide security forster development and protect human rights. Therefore the primary responsibility to respect the rule of law, protect human rights ensure peaceful environment at the domestic/national level lies with member states.

Basic Concepts

Concept of Fragility

The conception of fragility here concerns principles of good government guided by the rule of law in fragile country and situations like Nigeria. Instructively, a country can be said to be fragile 'when government and its institutions or agencies lack political will and/or capacity to provide the basic functions needed for addressing unemployment, ensure adequate security of life, property and environment, reduce poverty, development and to safeguard/protect the fundamental human rights of their subjects.'

According to OECD-DAC paper 'Concepts and dilemmas of state building in fragile situations' (2008:16) defines fragility as the state's inability to 'meet its population's expectations or manage changes in expectations and capacity through the political process'. This definition can tie law to fragility, since government constitutional responsibilities are questioned as to the extent to which the government is able to drive development and meet citizens' expectations within the context of law. It is thus instructive that government functionality in situations of fragility must seek to balance the inadequacy or absence of capacity and/or will to perform government functions for the benefit of all.

Here it is argued that lack of government capacity or power either deliberate or otherwise in the implementation of laws, respect for rule of laws and citizens' fundamental human rights are defining feature of fragile situations. Contextually, a country like Nigeria, in situation of fragility is a country with limited synergy to govern or rule itself and to develop enabling environment for welfare and benefit of society.

This definition will allow us to analyze how articulations and uses of various sources of legitimacy by a range of actors (state, non-state, local and external) may both strengthen and weaken a state.

In this perspective fragility refers to lack of capacity - defined as not only organizational, institutional and financial capacity, but also the capacity to produce or favour the existence of common norms, rules and regulations that are recognized and shared by both the state and the general population. This is a critical issue: state fragility can stem both from lack of financial, technical and human capacity and from lack of legitimacy - and both can hinder the making of the state as a robust institution. From the conceptual level, the question is whether improper implementation of laws, adherence to due process, respect for the rule of law and human rights be considered as defining features of fragility or as a causal factor that produces fragility. It is argued that country with deficit in law and its application is a fragile country especially where the government is unable to meet citizens' expectations for good governance.

Concept of Law-fragility

There are two traditions of understanding law as element of fragility. One is normative and is concerned with the standards of implementation of laws by the government, its agencies, institutions or conformity with political order for such government to be considered respecter of the rule of law and its enforcement. Such values may include the explicit submission of the citizens to the processes of applying the laws or claims to justice, equity or fairness. Here the standards of implementing the laws are typically derived from moral and normative considerations, often based on considerations of rule of law and basic human rights.

Another paradigm of approaching law and its nexus with fragility may not be that concerned with normative standards, but rather with whether, how and why citizens' accept (or reject) government and its agencies or institutions' sincerity and commitment to the implementation of the laws, respect the rule of law and human rights. In this perspective, the focus is directed towards citizens' perceptions or beliefs in the government's disposition to enforcement of law equally without discrimination, observe the principles of rule of law as well as their enforcement. Where laws and enforcement are seen as only applicable to the poor or weak but not to the powerful, influential people in society or political allies by those subject to the laws, presupposes that government falls short of certain normative standards in a fragile society. Adopting a pragmatic approach, laws must be conceived in such a manner that the citizens regard enforcement and respect as satisfactory and believe that no individual weak or strong, rich or poor, able or disabled or political office holder is superior to the law. In contrast, lack of or poor enforcement of laws, respect for individual rights or rule of law would thus be a major contributor to country fragility. The consequence of this is that citizens are indirectly deprived of their fundamental rights, their rights to socio- economic and political development; failed/denied the people of enabling environment for individual and collective development, and undermines the government acting efficiently for the benefit of already fragile society.

Fragility thus arises from substantial disequilibrium in state-society relations. It has multiple underlying causes, both chronic and acute, and it can produce multiple consequences, most worryingly vulnerability to internal conflict, inability to cope with humanitarian disaster and high risk of state collapse. There are extreme events or shocks that might produce fragility in even apparently resilient states; our greater concern is with chronic fragility, which renders states less resilient to shocks.

Concept of fragility-environment

Environmental issue is already adding to the burdens that developing countries like Nigeria have to face. Its impact is hardest on the poorest and most vulnerable members of society. Many of the worst affected live in fragile states. Their vulnerability is shaped not only by the persistence of poverty, the lack of good infrastructure, the difficulty of getting a foothold in the world market, and thus the intractability of underdevelopment, but also by the fragility of state institutions, the instability of political arrangements, and the effects of recent armed conflict or threat of looming violence. In many, as climate change interacts with other features of their social, economic and political landscape, there is a high risk of political instability and violent conflict.

To develop a response to fragility-environment challenge means focusing on the social, economic and political consequences of climate change and recognizing, equally, that social, economic and political issues influence the impact of climate change on people's lives. This is relevant to but wider than the discussions on the post-Kyoto deal. It is relevant for all engagements in states vulnerable to climate change. It means going beyond questions about how to raise funds for climate adaptation and mitigation, to thinking about how the money should be used and what governance and institutional changes must be made. It means considering the role in these issues of a wide range of actors from the development and peace building communities and the private sector.

The impact of environmental degradation and climate change will exacerbate the vulnerability of people and communities to varying degrees. In some situations it will cause extreme disruption with which people simply cannot cope as it overwhelms them and renders their homes and livelihoods unviable. If the governance structures that the community looks to as safeguards are not up to the task, environmental issues and climate change will weaken the people's confidence in the social order and its institutions and damage the bond that holds societies together. This is a particular problem in fragile states (areas where herdsmen have chased farmer from their farm lands, and people displaced from their homes by insurgents) where governance structures, agencies and institutions are often weak, regardless of devastating effect of climate change.

It is impossible and unhelpful to offer generic scenarios of how lack of conducive environment and climate change will interact with other variables (i.e. poverty,) to increase the risk of fragility, since impacts will always depend on context. For instance in Africa's Sahel region, desertification is reducing the availability of cultivatable land, leading to clashes between herders and farmers. In Northern Nigeria, Sudan and Kenya, the state is unable or unwilling to contain and manage the conflicts and these clashes have become violent.

Linking fragility with Law and Environment and its impact

Fragility-Environment

Nigeria faces among the highest compound fragility-environment risks globally. It suffers from ongoing fragility and conflict that severely limits the state's ability to respond to the country's considerable environment degradation, climate challenges and mirage of security challenges threatening the country's peaceful environment. At the same time, environmental stress may be increasing the severity of land conflicts and food shortages in Nigeria. Given the gravity of the challenges facing Nigeria, understanding the complex relationship between fragility and environmental risks is essential to development.

What are the links between environment and fragility? How could climate change affect conflict-prone fragile states? It is submitted that inequitable or unfair levels of access to natural resources (such as land and water) can contribute to poverty, marginalization, and violent conflict. Linking adaptation and conflict-sensitive and peace building agendas in conflict-prone fragile states can help to ensure that the rights of those most adversely affected by climate change and other environmental challenges (flood, displacement, oil spillage etc i.e. Niger Delta, North-Easter) are protected.

The quest for environmental justice is an integral part of social justice, human rights, and the promotion of peace. Climate change and its adverse consequences add a new dimension to links between violent conflict and the environment. Distribution-based conflicts arise, in part, from poor state policies to ensure equitable access to resources. Grievances over unfair access to resources combined with other social, cultural, economic or political factors can lead to violent conflict. The equitable management of natural resources and the prevention of environmental degradation, resource exploitation, and resource competition, is particularly challenging in fragile states with weak institutional capacity. The effects of global warming such as increased drought and unpredictable precipitation, in addition to existing environmental degradation, is expected to increase the pressure on fragile state systems and on local communities' resilience.

In conflict-prone fragile states, adaptation strategies themselves can inadvertently contribute to social tensions. For example, outbreaks of violent conflict in northern Kenya show that simply increasing agricultural production in arid and semi-arid regions to increase food security could cause tensions if pastoralists' needs for grazing land and access to water are not considered. A conflict-sensitive perspective is therefore important.

Nigeria is laying face down to a variety of environmental self-induced hazards, such as bush burning (wildfires), cutting down of trees without replacement, oil spillage, including floods, storms, ocean surges, droughts etc. The situation is compounded with series of security challenges and violence making the environment fragile. Such security challenge include Boko Haram insurgency, herdsmen killing, communal and ethnic clashes, banditry, kidnapping, pipeline vandalism and changes in climate have cocontinuously increased the frequency and intensity of extreme events in Nigeria.

Nigeria's ability to address the widespread but diverse environmental risks factor of fragility depends to a great extent on the absence of government's capacity, political will and societal resilience. Therefore, fragility becomes rooted in the country due to the inability of government to confront environmental risks and maintain good government-citizens relationships, both of which can contribute to instability.

Nigeria's fragile situation stem from its worsening political legitimacy, flowing from faulty transition processes. The Nigerian election has always contended with challenge of transparency or accountability due to manipulations, thuggery and violence. This has reflected low citizens' participation in the selection of the political office holders. Kogi, Bayelsea and Osun elections are good example of people are denied rights to franchise through the use of force to scare prospective voters away and manipulation of government apparatus to subdue opposition.

It is however instructive to note that environmental degradation, exacerbated by climate change, does not automatically lead to conflict, but can affect such drivers of conflict as low rural incomes or food insecurity, poverty, unemployment, health related issues. The consequences fragility-environment on the citizens is enormous, economically, socially health wise and psychologically. People in their thousands from conflict zone in the North-east were forced to leave or displaced from their homes, farm lands, businesses are abandoned due to Boko Haram related violence so also are the activities of herdsmen-farmer clashes and cattle rustlers. Where society, institutions and governments are unable to manage the challenges related to these drivers, the risk of conflict increases.

Where environ-mental factors are root causes or underlying reasons leading to the outbreak of an armed conflict, these factors need to be adequately, efficiently and promptly addressed in conflict resolution and in respective peace agreements.

In summary, the nexus between fragility and environment can be underscored from the fact that for instance destruction and over-exploitation of natural resources and ecosystems can increase the risk of violent conflict. Competition over declining natural resources, such as fresh water, fertile soils, fisheries or forests may affect livelihoods and indirectly increase the risk for conflict. In the same vein, insecurity due to challenges of insurgency, banditry, herdsmen, kidnappings can increase the risk of fragility because people can be denied the access to explore the environment for their socio-economic development. Generally, the risk of conflict is higher in fragile-environmental contexts than where governments or society have the capacity to cope with the challenges.

Fragility and Law

The rule of law was conceived as something that should map out the way and means of peaceful coexistence, progress and development of the society under a uniform rule-guided system. All sectors composed in the society are to be governed and subjected to the law. It has been argued that there are common assumptions that underline linkage of rule of law with fragility particularly in post-conflict states such as:

1. There is a relationship between law, peace and development;
2. Institutions and legal systems can be reformed; and
3. Specific types of laws, such as secure property rights, will promote peace and development.

Notwithstanding any argument to the contrary, there are truths that the above assumptions are influential metrics in many rule of law. The first common assumption is that there is a relationship between law, peace and development, and that good laws can assist in securing peace and promote economic growth. When laws are clear, equally applied, and well enforced, the argument is that parties can plan for the future and that disputes will be peacefully channeled into established judicial institutions (rather than settled by force). Statistically this is not the case in most developing democratic states. This is due to challenges emanating from government disposition toward respecting the rule of law. For instance National Security Adviser (NSA) to President Jonathan has been in prison since 2015 despite several court orders granting him bail, government deliberately refused to respect court order, the same applies to AlZaky Zaky leader of Islamic Movement of Nigeria, and the most recent was the invasion of Federal High Court by DSS to arrest Omoyele Sowore after being granted bail.

In fragile situations where institutional capacity or legitimacy of rule of law institution is undermined, the risk of lapsing into conflict or high level of violence is often severe. This is evident from the security challenge Nigeria is currently facing following the extral judicial killings of the Boko Haram leader Yusuf. This accounted for the escalation of the sect insurgency the country is contending with up till today. Similarly, the series of violent protests that followed the arrest, detention of the leader of Islamic Movement of Nigeria (Shiite) cannot also be over-emphasied. Instructively, uneven distribution of resources, political and economic marginalization, discriminatory policies, systematic human rights violation and wide spread criminal violence are clear indication of a breakdown in the rule of law. Understandably, experience has shown that fragility can come in a number of forms, in addition to political instability and institutional weakness, high level of criminal violence may be perceived as an aspect of fragility. It is not an exaggeration that travelling along Nigeria roads now is highly risky with the daily incidences of kidnapping and demand for ransom, when even government officials, high ranking police officers, and judges are not immuned from the menace of kidnapping.

It is pertinent to note that building the developmental capacity of governments goes along with a need to change established habits of thinking in government circles especially with regards to rule of law and fundamental rights of Nigerians.

Across the context of fragility, the gap between the institutions of rule of law is vast encompassing a number of areas ranging form law enforcement, corrections and judiciary to the protection of communities and displaced as well as highly disputed issues such as compensation. Arguably, political leaders and governments which lack authority or threatened or have limited legitimacy are likely to be afraid of change and or reforms, which threaten to dilute their powers.

Efforts to strengthen rule of law are particularly relevant where in re-affirming the trust of people in government where such is lacking. Progress in this sphere will give an assurance to citizens that there are institutions and processes which will offer greater personal security, enable them to defend themselves against threats, and enforce their rights.
More significant to achieve eradicating or at least reducing the threat of crime and insecurity, there must be effort in strengthening rule of law, as a fundamental element in the process of reviving a sense of optimism and trust and risk of fragility in society.

Law is a normative system, and, as such, is supported by a political culture, thus in many countries, including most fragile states - for example, Nigeria courts play only a marginal role in the lives of most citizens, and there is a reliance on other forms of dispute settlement, and often alternative mechanisms for dealing with all but the most serious crimes.

Conclusion

In conclusion, taken together, the interaction between fragility, law and environment; form a dynamic agreement between government and citizens on their mutual roles and responsibilities - a social contract. Instructively, in a stable, contemporary society, citizens need and expect certain goods from the government, such as protection of their fundamental rights, security, enabling environment and conditions for the pursuit of economic livelihoods and public services such as education and healthcare. In return, they have obligations to the government to pay taxes and to accept the government's monopoly on coercive force and other curtailments of their freedom within the confine of rule of law. Arguably though, in stable government, some groups may be under-satisfied with specific outcomes, this exchange is generally perceived as legitimate.

The process of establishing and maintaining a mutual agreement between the expectations of society and government capacity to meet these expectations is intrinsic to the process of formation of government. It is also a core component of legality. Given the significance of the consequences of poor implementation of law and management of the environment in terms of sustainability, of security, distributed economic progress, protect the rights of citizens, the ability of a government to control its territory, citizens' belief in the legitimacy of their government or their willingness to keep submitting to it; must be central to policy development, engaging every aspect of fragile situations.