

Democracy and the Rule of Law in Nigeria: 1999 - 2015

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Abstract

Democracy and the rule of law are inseparable concepts that make it possible for modern societies to function effectively and thus guarantee peace, harmony and egalitarianism in the society. This study examines how much of the rule of law have been adhered to since the emergence of the prevailing democratic dispensation in Nigeria. The paper relied on secondary mode of gauging information; and it found that, frequent disregard for the rule of law in the present democratic dispensation by the ruling elites and their cronies, is as a result of the fact that the institutions of governance are built around individual leaders (ruling elites) and this makes it impossible for such institutions to function appropriately and independently as political corruption, abuse of power, judicial ineptitude, poor leadership and absence of due process has further pauperize majority of the citizenry. It however suggested, amongst other things that, emphasis should be on how to empower institutions of government to the extent that individual leaders will find it rather too strong to manipulate for their selfish benefits.

Keywords: The rule of law, impunity, democracy, weak institutions, Nigeria.

Introduction

Democracy has become the most fashionable and enduring form of government in modern times. In modern societies the world over, the issue is not which political system is appropriate but rather when will society become democratized or fully democratic. The democratization project is therefore, regarded as the age of civilization that every society should strive to attain rather than a political option among many others (Bello, 2003). Democracy has thus become known to be the only moral and legitimate way by which a society can be ruled. In theory, some scholars and developmental institutions alike have established an inextricable connection between democracy and good governance; this is so because, it is believed that democracy provides the template for a 'free' and egalitarian society built around strong institutions rather than strong men or group of men. As Olatunji (2003) posits, democracy, adequately understood, is a theory that sets some basic principles/standards according to which a good government, whatever its form, should be operated. Such principles include those of justice, equity, freedom, liberty, accountability, openness and transparency in government. In most countries today, it is these principles that are used as criteria for distinguishing between good and bad governments. Thus, democracy not only prescribes how political power should be acquired but also what to do with it or how it should be exercised.

On the other hand, the rule of law is the legal principle that law should govern a nation, and not arbitrary decisions by individual government officials. It primarily refers to the influence and authority of law within society, particularly as a constraint upon behaviour, including behaviour of government officials. The concept was familiar to ancient philosophers such as Aristotle, who did a work titled "Law Should Govern" (Mason, 2005). The rule of law implies that every citizen is subject to the law of the land, including law makers themselves. In this sense, it stands in contrast to autocracy, dictatorship, or oligarchy where the rulers are held high and above the law. Lack of the rule of law can be found in democracies and dictatorships, this can be as a result of neglect or ignorance of the law, corruption, lack of strong institutions or lack of corrective mechanisms for administrative abuse, such as an independent judiciary with a culture of the rule of law, a practical right to petition for redress of grievances, or elections (Allan, 2001). A government's decision to obey preexisting legal rules can provide the key to gaining widespread supports and general acceptance. Such respect for laws of the land as recorded in a constitution and in laws adopted through a credible democratic process is the hallmark of the rule of law. The rule of law therefore, makes democracy to thrive because law is the collective will of society, making possible equal rights, social order and justice. Certain elements make up the rule of law; these are order and security, legitimacy, checks and balances, fairness, effective application, integrity and the supremacy of the rules.

It is therefore apt to state from the foregoing that, the rule of law is the bedrock of modern constitutional democracy. This was underscored by its role in bringing about transitions from authoritarian or totalitarian regimes to constitutional democracy in Eastern Europe, Africa and elsewhere in the world. However, there have been serious problem of adherence to the rule of law by various Nigerian governments since independence in October of 1960. In fact, part of the reason the January 15, 1966 coup planners gave for staging the coup was that "corrupt and undisciplined ruling class" has become the order of the day in governmental circle (Achebe, 2012). This identified nature of the Nigerian ruling class was in display all through subsequent regimes, military and civilian alike, that has govern the country before 1999. Thus, one would have thought that experiences that the politicians have gathered over time, particularly during the long spell the country had under military regimes,

would have transformed them to become apostles of the rule of law. It is against this backdrop, that this study will examine how well the rule of law has thrived in the democratic experiment in Nigeria since 1999 to date.

Concept clarification

The meaning and attributes of the rule of law, its possibility and conditions for its existence, and significance as a political value has a subject of scholarly investigation and debate. In recent years, it has emerged from the confines of academic and philosophical discourse onto the wider stage of contemporary political events, transcending national borders, political regimes, and legal systems. The doctrine of the rule of law is ultimately bound with the practice of democracy. As Sagay (2001) posits, there can be no democracy without the rule of law and by common agreement. Thus, the doctrine of the rule of law could be said to be intimately bound with the practice of democracy. Albert Venn Dicey in his *Law of the Constitution*, describe the concept of the rule of law as:

The absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, or prerogative or even of wide discretionary authority on the part of government. Englishmen (citizens) are ruled by the law and by the law alone. A man may with us be punished for a breach of the law, but can be punished for nothing else, (Dicey, 1950).

The summary of the concept of the rule of law as examined by Dicey is under three fundamental headings; firstly, no man could be punished or lawfully interfered with by the authorities except for breaches of the law. Secondly, equality of all classes of people before the law as administered by the ordinary court of law; and thirdly, the general principles of the constitution are the result of judicial decisions determining the rights of the private persons. Furthermore, the definition sees the rule of law as a principle that seeks to curb powers of governments by insisting that governance should be in accordance with the laws of the land rather than the arbitrary whims of political office holders. The rule of law realizes the constraint of reasonableness by treating all equally as full member of the community without discrimination. The order that the rule maintains is a greater value of interaction in community within which the communal good including the private good of the members are realizable, and without which none of these is realizable. However, the concept of the rule of law has been expanded beyond the classical formulation as provided by Dicey (1950). As Sagay (1996) posits, the doctrine (in contemporary times) now recognized to include the supremacy of the constitution; the supremacy of the law, including judicial decisions over all persons and authorities in a state; the independence of the judiciary; the right to personal liberty; observance of democratic practices- the freedom of the press, thought, association and regular free and fair elections as the bases for assuming power in government.

On the other hand, democracy can be seen not to have a universally acceptable definition. Statesmen, scholars and analysts alike have defined it from different purviews and therefore different aspects of the process. It is thus much easier to identify a democracy than to define it, (Enemuo, 1999). Democracy can be seen as a form of government, a way of life or an attitude of the mind. As Heater (1967) posits, democracy is essentially a method of organizing society politically. Besides, he notes the criteria for modern democracy, thus, "there are five basic elements without which no community can call itself truly democratic. These elements are equality, sovereignty of the people, respect for human life, the rule of law, and liberty of the individual". He explains further that, democratic equality implies 'one man one vote' irrespective of differences in wealth, religion, intelligence and ethnic background. It also connotes the equal right and opportunity of all citizens to hold political office. It follows therefore that, adherence to the principle of the rule of law in a democratic setting, allows for respect for the dignity and worth of the human body and mind. This is the very essence and basic ingredient and requirement for democracy to endure or thrive in a polity in our contemporary world.

Theoretical Framework

This study adopted the elite theory approach to the analysis of the workings of rule of law and democracy in Nigeria. The elite theory was propounded by such scholars as Vilfredo Pareto, Gaetano Mosca, and Robert Mitchell. Others among contemporary scholars of elite theory are Mills, (1956); Lerner, Nagai & Rothman, (1956); Burnham,(1960); Dohoff, (1967); Putnam,(1976); Schwartz, (1987); Bottomore, (1993); Dye, (2000). The concept of elitism was propounded as a counter to the revolutionary theories anchored on social class analysis in Europe in the years of fascism. It is one of the variants of the neo-classical school of thought about the state. Scholars of elitism believe that all societies are divided into two classes, - the governing few and the many who are governed. Thus, the elite class being the ruling class has certain basic interests to maintain. They exercise preponderant political influence in a society (Mazi 2006:284). Mitchels (1911) held that majority of human beings are apathetic, insolent and slavish. They are permanently incapable of self-government; that most of them are even happy to be led. Due to the fact that the elites perform all political functions and monopolize political power, they make public policies that tend to align with their common goals and interests.

It is therefore impossible to discuss the democratic project in Nigeria without considering the role of the Nigerian political elite. This is because, in the final analysis, it is from the political elites that political leaders will emerge. According to (Obi, 2004), the Nigerian political elites are products of Nigeria's tumultuous politics. It has its roots in the colonial socio-political system. As such, *it is a child of history. The elite have been described as hybrids of sorts reflecting western values against a Nigerian background. At independence, the elites mobilized ethnicity to canvass for support for its ascension to power.* This laid the foundation for the politicization of ethnicity, religion and party activities. Politically, it became expedient for the elite to have their ethnic groups as a base, and access to business and government as sources of material gain. This influenced the nature of the elite and its politics. Thus, the elite became an opportunist class which manipulated political structures and processes to promote selfish, narrow as well as parochial ends. By emphasizing the things that divide in its quest to organize the capture of power, the dominant factions of the elite from a heterogeneous and culturally diverse Nigeria have unwittingly fanned the ambers of division and conflict. The implication of this nature of the elite is that it sees democracy more as a means to an end, rather than an end itself, (Obi, 2004). This creates problems in relations to its capacity to truly represent the broad interest of the Nigeria people, or even play by the rule of the law. This situation more often than not results in the high level of desperation that give rise to cash and carry politics, violence, rigging and the manipulation of the electoral processes all of which undermines the rule of law and the ethics of democratic principles.

The interference of the central authority in the affairs of other organs of government

Constitutionalism and the rule of law are of different meanings. In the literary terms, the former refers to a complex of ideas, attitudes and patterns of behaviour elaborating the people that the authority of government derives from and is limited by a body of fundamental laws (the constitution). The later takes over from where constitutionalism stops. It is a legal term, which includes a number of interrelated principles - predominance of regular laws as opposed to arbitrary law, equality before the law and protection of human rights and individual liberties,(Sagay,1996). These two interrelated concepts have gained currency since Nigeria returned to democratic in 1999. Most of the arguments are centred on how to enforced and reinforce the laws so that due process mechanism became part and parcel of governance in the polity. The rule of law ensures that the political system operates smoothly without allowing arbitrary use of power by the rulers over the ruled and thus allows for mutually beneficial relationship in a manner that ensures peace and harmony in the polity; and it is when there is peace that there can be meaningful development of the society.

Since the present democratic dispensation in 1999, Nigerian leaders have always paid lip services to adherence to the rule of law and constitutional provisions. A good example is the government's inclination for disregarding and outright disobeying court orders and judgments. In other climes where democracy is strongly rooted, independent and incorruptible judiciary/court system, professional police and armed forces, cohesive and articulate civil society and vibrant private sector is what gives democracies the beauty that it has and which endures it to those other hitherto totalitarian or autocratic societies. In Nigeria, law enforcement agencies like the police are the arrowheads of the forces bent on humiliating and abusing human rights and civil liberties especially of innocent citizens, suspected offenders and political opponents of the ruling party, (Ali, 2007). There is no equality before the law in Nigeria. It appears that those who are accused of stealing billions of naira as governors or public office holders are more equal than any other person in the country. Bail is granted to them even when they are not supposed to be granted bail as a matter of course and upon the most liberal terms.

During the administration of Chief Olusegun Obasanjo from 1999-2007, there was flagrant disregards for the rule of law. A foremost instance was the regime's penchant for disregarding and outright disobeying court orders and judgments; this was exemplified in the judgement passed by the Supreme Court of Nigeria in favour of Lagos state government over the withheld council fund by the federal government. The Lagos state government had gone to the Supreme Court for the interpretation of the Constitution of the Federal Republic of Nigeria if the Federal Government has the legal right to withhold funds from the Federations Account meant for any of the three tiers of government for any reason. The court ruled, in its wisdom, in favour of the Lagos state government. As Nwankwere, (2007) notes, the federal government under Chief Obasanjo refused to release the accumulated fund, on the ground that the creation of the additional 37 Local Government Areas in the state by the state assembly was illegal even when the same Supreme Court had earlier ruled in favour of Lagos State. This was done with impunity setting very poor and dangerous examples for governance. The lower house was also not spared as Obasanjo maintained constant hostility to the then speaker of the House of Representatives, Alhaji Ghali Umar Na'Abba. Attempts to remove the speaker failed on many occasions but led to the near impeachment of Obasanjo on charges of constitutional violations, (Ali, 2007:21).

The President Obasanjo's administration so arrogate the apparatus of governance to itself that the former Governor of Anambra State, Dr. Chris Ngige had his security details withdrawn for not allowing the Ubah family, who allegedly sponsored him, to loot the state treasury through him (that is, the Governor). Andy Ubah was at the time one of the numerous aides of President Obasanjo in the presidency. Andy and his brother

Chris Ubah had allegedly sponsored Chris Ngige's election for a possible 'return on investment' on winning the election; but Ngige, on winning the election reneged on this arrangement and this got the Ubahs furious, (Ezebilo, 2005). The abeyance of the rule and due process also manifested when Governors Rashidi Ladoja, of Oyo State, Joshua C. Dariye, Plateau State and Ayo Fayose of Ekiti State were removed illegally through impeachment. Two of these former Governors Ladoja and Dariye were later reinstated by the Courts of law, (Odaudu, 2007).

The government was also highly autocratic and 'lawless' in terms of party administration. Due process was never followed in taking decisions for party administration. Ayodele (2007:22) opines that former PDP National Chairman and presidential candidate, Chief Barnabas Gemade, was constantly at loggerheads with President Obasanjo over party administration and discipline. The President had reinstated Chief Tony Anenih, erstwhile Minister of Works and former PDP Board of Trustee (BOT) Chairman after being suspended by Chief Gemade for indiscipline and insubordination. Chief Gemade was soon shoved aside and replaced by Chief Audu Ogbeh. President Obasanjo's intolerance of criticism and advice soon led to the forcing out of Chief Ogbeh as PDP Chairman at gun-point over a letter he wrote to President Obasanjo over Anambra crisis during the highly dangerous feud between the Ubahs and the then Governor Chris Ngige as analysed above. The president had kept criminal silence as the state of Anambra boiled, and this worries Audu Ogbeh, he now dared to write the President advising him on the need to take action to stop the crisis; the letter however got leaked to the press by some suspected fifth columnists in the presidency; this got President Obasanjo furious, (Ezebilo, 2005). The president's decision to replace Audu Ogbeh was a unilateral decision that has no democratic consensus by the hierarchy of the party. Colonel Ahmadu Ali (Rtd) was thus brought in to replace Chief Ogbeh. The lack of internal democracy did not exist in the PDP alone but in all facets cum tier of governance.

The President constantly used his office as Commander-in-Chief to prosecute real and perceived political opponents. Opposition mounted against President Obasanjo when he wanted to succeed himself in power through proposals for a highly controversial constitutional amendment that would permit him to contest in 2007 for a third term. In retaliation, Dr. Chimaroke Nnamani, former Governor of Enugu State, Dr. Orji Uzor Kalu, former Governor of Abia State, Mr. Boni Haruna, former Governor of Adamawa State, Senator Bola Ahmed Tinubu, former Governor of Lagos State and Dr. George Akume, former Governor of Benue State are some of the governors that were consistently harassed by the Economic and Financial Crimes Commission (EFCC) over the roles they played in the third term bid, (Ehirim, 2006). Oladeji (2006:1) alludes to Ehirim's observation, noting *that not only governors were harassed but other prominent citizens as well. Former Chief of Army Staff, General Victor Malu, former Senate President, Ken Nnamani and the Late Chief Sunday Awoniyi, former PDP Chieftain are glaring examples.* The peak of intolerance and lack of regards for due process and the rule of law were the eventual expulsion of the Vice-President, Alhaji Atiku Abubakar from the PDP and the declaration of the office of the Vice-President vacant. This was however reversed when the Supreme Court ruled that the President had no constitutional powers to remove the Vice-President, (Akhere, 2007:35). Besides, by the time he was leaving office in 2007, he made sure he influenced the changing of the party's constitution ceding the office of the chairman of Board of Trustee to himself. He only resigned from that office in 2012 and further quitting the party altogether by tearing his membership card in public in the wake of the April 2015 general elections.

The launching of the Presidential library on May 14, 2005, by President Obasanjo in Abeokuta, the Ogun state capital, has been described as an abuse of power. The President launched the presidential library project and in the process he received gifts of money for that purpose from Federal Government contractors, arm-twisted some state governors to make donations amounting to ten million naira each and other beneficiaries, Bank executives and others. In the process about N6 billion was realized from individuals and corporate bodies at the event. This triggered a wide range of condemnation from across the country, (Borodo, 2005). Nobel Laurent, Wole Soyinka described this act as "executive extortion" on the part of President Obasanjo's government. On the other hand, the late Gani Fawehinmi (SAN) sees the launching of the library as illegal and unconstitutional. The radical lawyer thereafter instituted legal action against the president at the Federal High Court, Abuja over the project; joined in the suit as defendants are the Economic and Financial Crimes Commission, EFCC, and Independent Corrupt Practices Commission, ICPC, and Code of Conduct Bureau. In the suit, Fawehinmi wants the court to determine whether it was an abuse of power for a serving President to launch a Presidential library. He alleged that this amounts to corrupt practices and abuse of power contrary to section 15 sub-sections 5 of the 1999 constitution. This section provides that: *The state shall abolish all corrupt practices and abuse of power.* According to him, it is also a flagrant disregard of the code of conduct for public officers contained in item I schedule 5, Part I of the 1999 Constitution. It provides that: "A public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities". Fawehinmi also seek for a declaration that the composition of the board of trustees of the library being a private project of a serving President is both a violation of sections 15 (5) and 23 of the 1999 constitution. He claimed that Christopher Kolade, then Nigeria's High Commission in Britain, Governor Gbenga Daniel of Ogun State and Iyabo Obasanjo-Bello, then Ogun State Commissioner for Health, who were all public officers are

incompetent to serve Obasanjo's private business. He claims that Karl Masters, Vernon Jordan both from the United States and Richard Branson, from the United Kingdom were incompetent to serve as Board members because they are foreigners, (Borodo, 2005).

The human right activist is equally asking for a declaration that the license which Obasanjo as Chairman of the Federal Executive Council approved for himself in 2003 for the establishment of the Bells University of Technology to which the presidential library is affiliated is an abuse of power. It is against this background that late Fawehinmi asked for the mandatory order directing the EFCC and ICPC to investigate all the contracts awarded by the federal government to all the donors at the launching since the inception of the Obasanjo's Presidency. He wants these agencies to be mandated to take appropriate actions against the president and the donors within the provisions of the EFCC Act No 1 of 2004 and the ICPC Act of 2000. This he said includes the forfeiture of the entire project and the Olusegun Obasanjo Presidential Library Fund. Other civil rights groups argued that there was a fundamental flaw in the president's anti-corruption crusade because it hypocritically defines corruption so narrowly, selectively and whimsical as to exclude whatever the president found it convenient to exclude, (Oborodo, 2005).

On the other hand, President Obasanjo constantly withdrew billions of naira and spent same from the consolidated revenue account without the written or verbal expressed consent of the National Assembly. The government also consistently disobeyed judgments of the Supreme Court especially the order of the court to release over 38 billion naira of local government funds owed Lagos State government. Petroleum pump prices were increased 6 times during the tenure of the administration without due process. All over the place it was one form of breach or another. The aftermath of these was a situation of insecurity, insensitivity, lack of transparency in public affairs, all, strong indicators of poor governance. Ayodele (2007:22) observes that the Obasanjo administration consistently interfered with the independence of the Independent National Electoral Commission (INEC). This clearly shows why INEC was not a neutral organizer of elections. Recent Supreme Court and Election Tribunal reversals of so-called electoral victories were nullified due to the failure of INEC to find the ANPP candidate and former governor, Prince Abubakar Audu on the ballot paper. This was brazenly done despite constitutional provisions that only the law courts can void an aspirant's candidacy. The manipulation of INEC during Obasanjo's administration was evident in the 2007 general elections, which has been described as the most flawed elections in the history of Nigeria.

The 2007 general elections saw the imposition of candidates on political parties, particularly the ruling People's Democratic Party (PDP). During the election proper, there was outright rigging and manipulation of election results to the extent that, at the end, the court of Appeal had to overturn election results in more than five states of the Federation – Ondo, Osun, Oyo, Edo, Ekiti and Anambra states. The Court also ordered a re-run election in Delta State. It was this same "bad" election that also brought in the government of the late President Shehu Musa Yar'Adua, who was 'forced' on the country through this highly, flawed elections by Obasanjo. Mr Yar'Adua could not really do much due to his state of health. Suffice it to say that, as a result of his ill health, his administration was barely hijacked by a cabal who acted with impunity, but all in his name. His administration was full of controversies as regards his state of health. He was on a medical trip to Saudi Arabia for more than 41 days without authorizing the Vice President (Goodluck Jonathan) to act as President on his behalf; and without Nigerians knowing his true state of health. Thus, the country was at a standstill in terms of the day to day administration of the country. This generated heated controversy across the country until he was smuggled into the country in a commando style, with all the lights at the Nnamdi Azikiwe airport switched off in the night, until he eventually died in 2009. In the case of theft against James Ibori, the court established that one James Onanefe Ibori was convicted for theft of building materials in 1995 but could not say whether the convict was James Onanefe Ibori, the then governor of Delta State. It was such a controversial and unconvincing judgment. Expectedly, it generated a lot of credibility problems for the judiciary.

The case of 170-count charges of corruption against Ibori during his eight-year tenure as governor has left a huge amount of controversy in its trail. First, Ibori objected to being tried by the Federal High Court in Kaduna. Rather he wanted the case transferred closer home in Benin. But the authorities in the Judiciary arm led by the then Attorney General of the Federation and Minister of Justice, Michael Aodoaka, did more than he asked for; by establishing a Federal High Court at his doorstep in Asaba, Delta State. At the end, Ibori got the judgment he wanted. He was acquitted of the 170-count charges. Many have criticized the judgment as the exact opposite of what the administration of justice is and public perception Ibori's material possession. Some have petitioned the appropriate authorities that the trial judge had compromised. The Goodluck Jonathan's administration is not free acting outside the realm of the rule of law as stipulated in the constitution of the land. In 2010, President Jonathan suspended the president of the Appeal Court, Justice Mustafa Salami from office and appointed an acting president for the Appeal Court until the expiration of his (Salami) tenure. His 'sins' may not be unconnected with the many 2007 election results that were overturned by the Appeal Court under leadership of Justice Mustafa Salami, a trend which the ruling People's Democratic Party (PDP) did not like. The President Jonathan's government grounded the chartered helicopter through the Nigeria Airspace Management Authority

which was to take the Governor, Adams Oshiomhole to Ekiti state, to join the campaign train of his party man, Kayode Fayemi, who was vying for re-election as governor of that state, (Azania & Nnodim, 2014).

Furthermore, The Nigeria Airspace Management Authority also grounded the private jet belonging to the Rivers state government, used by Governor Rotimi Amechi, withdrew his security details and planned to impeach him, for the misunderstanding the governor had with Mrs Patience Jonathan over the development of a slum in Port Harcourt called the “water front”. In 2014 the Speaker of the House of Representative, Alhaji Aminu Tambuwal of the ruling PDP defected to the major opposition party, the APC; the government responded by illegally withdrawing his security details and further locked him and his supporters out of their offices at the National Assembly Complex. This action drew public condemnation as the action was seen as an act of illegality and one of desperation on the part of government of President Goodluck Jonathan, as a build up to the 2015 general elections. The ineptitude and impunity of the President Jonathan’s administration was also laid bare when he tried to immortalise the presumed winner of June 12, 1993 presidential election M.K.O. Abiola, by re-naming the University of Lagos over the late politician without due process (That is, getting the approval of the National Assembly). It took the protests of present and past students of the institution before Mr President could send the proposal to the National Assembly for approval.

Furthermore, President Jonathan believes that stealing is not corruption and that corruption is not Nigeria’s greatest problem. He expressed this view in one of his presidential media chats. This view has increased the tempo and people’s perception of corruption in the polity; with its attendant negative impact on the nation’s economy and the overall image of the country in the comity of nations. Recently, the Thambo Mbaki report on illicit financial flows from Africa had it that Nigeria accounted for about 68.1 per cent of total revenue Africa lost between 2001 and 2010 through corruption and illegal transfers (The Guardian,2015:16). It is obvious that governance in Nigeria thrives on corruption, yet Mr. President sees nothing unusual about that. In another vein, in total violation of Section 162 of the 1999 Constitution of the Federal Republic of Nigeria, which allows for all monies accruable to the Government of Nigeria be paid into the Federations Account, but, in total violation of the constitution of the land, the government operates an illegal account known as Excess Crude account, (The Guardian,2015:16). This has turned out to be a true manifestation and source of leakage and corruption in the country.

The challenges of democracy and the rule of law in Nigeria

Democracy, the rule of law and good governance are the key elements that are imperative for the existence of what Plato, in his Republic, described as an “ideal state”. Although Plato later admitted in the *Statesman* the difficulty of having an ideal or a perfect state, it is generally believed today that every state, no matter how crude, primitive or authoritarian, is saddled with the problems of the rule of law and good governance. Democracy provides the enabling cum stimulating environment for the rule of law to prevail, thus, the rule of law helps to sustain democracy. Good governance, on the other hand, promotes and strengthens both democracy and the rule of law in every modern and civilized society. On attainment of independence on October 1, 1960, the government of post-independent Nigeria adopted a civil democratic system, which got interrupted by the military establishment from 1966 through 1979. However, the return to civil democratic rule in 1979 did not last beyond December 31, 1983, as yet another military expedition in politics began, dismantling all the existing democratic structures and institutions. Thus, the new democratic dispensation started on the 29th of May, 1999. Ogundiya (2010) argued that *the return of the country to electoral democracy in 1999 has not made any significant impact on the economy and general wellbeing of the people because of the manipulating nature and character of the ruling elite*. The rule of law presupposes the supremacy of law in the state. This means that law, and nothing else, counts in the society, as everything, everybody is subject to the same law. Both the ruler and the ruled, or the ruler and the subjects, are not only subject to the rule of law, but are also equal before the law. The rule of law promotes and protects the liberty, freedom and the fundamental human rights of the citizens. The rule of law thrives in a state when there is a separation of powers among the organs of government; namely, the legislature, the executives and the judiciary, so that the powers of law making, execution and adjudication are not concentrated in an individual or a group of individual. Absolute power, as Lord Acton posits, corrupts absolutely.

It follows therefore that, in order to avoid tyranny and oppression of the citizens, the rule of law should equally embody the separation of powers, so that each organ or arms of government shall be a check on the other arms. It is on this premise that democracy can thrive in a state. The rule of law within the ambit of a functional separation of powers will guarantee checks and balances among the executives, the legislature and the judiciary, making sure that none of the organs appropriates the powers of the other organs; this in turn allows for strong institutions of governance and discourages the tyranny of the ruler(s). In countries, such as, Nigeria where this functional separation of powers is lacking, checks and balances is difficult, hence authoritarianism is the order of the day,(Ogundiya (2010). Under this condition, promotion of rule of law and protection of the fundamental human rights of the citizens will be difficult just as it currently is. A functional separation of power among the organs of government in Nigeria that is premised on the dictate of the rule of law seems to be a mirage in Nigeria,

this is because there seems to be a strong rooted tradition/ norm of the executive arm trying to lord it over other organs and the entire citizens. Some observers have attributed this to the long era of military incursion in Nigerian politics, which does not observe the principles of the rule of law and regards to the laws of the land. This may have been responsible for the impunity-hardened proclivity for criminality and seeming barbarity of the average Nigerian leaders. To that extent therefore, the tradition of acting or governing within the ambit of the law is lacking; this therefore explains the reason for the high level of impunity of government officials that is prevalent in the polity.

Prospect for democracy and the rule of law in Nigeria

Nigeria is witnessing the longest period of civil democratic rule since independence in 1960. The first civilian republic ended in a military coup in January of 1966. During the 33-year period from 1966 to 1999, civilians only governed for only four years, (Achebe, 2012). Historically therefore, the dearth of democratic experience has created enormous challenges to institutionalizing democracy in Nigeria. Nonetheless, it is critical to recognize the fact that the trend over the past decade, and especially since 1999, is modestly positive. Despite a legacy of brutal authoritarianism under General Abacha's military misrule, the civilian government of President Olusegun Obasanjo recorded some modest improvements. Its economic reform program won the applause of the International Monetary Fund (IMF). The successful completion of the April 2007 election marked the first civilian-to-civilian handover of power in the nation's history, irrespective of its shortcomings and President Obasanjo peacefully handed over power to President Shehu Musa Yar'dua on May 29, 2007. The expiration of the tenure of Obasanjo also came on the heels of a breathtaking victory for Nigerian democracy on 16 May 2006, when the National Assembly — prompted by a massive public outcry — rejected constitutional amendments that would have allowed the President Obasanjo (and perhaps state governors) to run for a third term in office; a thing that would have made nonsense of the great expectations of the democratic experiment.

The sustainability of civil democratic rule since 1999 and the rejection of the third term bid represent an unprecedented achievements. The evaluation of Nigerian democracy is always premised on pessimism and cynicism. The cynics from the late 1990s would have never predicted that Nigeria would now be poised to hold its fifth civilian election cycle. Nor would they have predicted that the president would be blocked from assuming a third term by a national legislature bold enough to buck the Africa-wide trend of altering constitutions to allow extended executive tenure. The rejection of the third term, moreover, was driven by an alliance of grassroots activists, civil society organizations (CSOs), public outcry (opinion) and elected representatives. Civil society groups, the legislative and judicial arms of government are now asserting their constitutional powers more frequently in spite of having been silenced for decades of brutal military dictatorships. Again, all of these trends are very positive for the consolidation of democracy Nigerian. Given the structural barriers to democratization represented by the oligarchy, it is all the more remarkable that progress is nevertheless being made on a variety of fronts. The May 2006 defeat by the National Assembly of the third term initiative was the culmination of a number of positive trends in Nigerian democratic development.

The second is the evident consensus among elites and the general public on the principle of alternation of power, a key foundation of democratic governance. The civil society groups and the members of public had roles in defeating the president's third term bid, signifying their growing influence in national politics. These roles were facilitated by the revolution in communication technologies, such as the emergence of social media, cable TV, mobile telephoning and other internet services. For the first time since 1999, perhaps, legislators felt compelled to consult with their various constituencies and to vote as the public wished (84 percent were against the third term amendments), even though the presidency was reportedly offering \$1 million (One million United States' dollars) bribe to each member of the National Assembly who voted in favour of the amendment package, (Bakare, 2010). Private television stations provided live coverage of the debates in the Assembly, and newspapers published lists of legislators who were for or against the measures. Positive changes since 1999 include an improvement in the human rights records, affirmation of freedom of the press and other civil society organizations, and greater freedom for civil society advocates. Though, so much still needs to be done in order to build stronger institutions that will allow for a better society.

While the government of Nigeria has overcome the pariah status in the comity of nations resulting from temporary expulsion of Nigeria from the Commonwealth of Nations in the 1996, over the killing of the popular "Ogoni nine," much however remains to be done. Nigeria's international financial reputation has also significantly improved as a result of its agreement with the Paris Club to settle its external debt with the group. In exchange for a payment of \$12.4 billion, the Paris Club countries agreed to forgive the \$18 billion remainder of the \$30 billion debt held by Nigeria. Upon completion of its payment in April 2006, Nigeria became the first sub-Saharan African country to completely eliminate its Paris Club debt. The country still owes some \$5 billion to other lenders, including the World Bank and the private sector. Nigeria has now been taken off an international credit blacklist and is able to borrow on favorable terms again, (Bakare, 2010). The broader economic reform programme that conditioned the debt elimination deal is known as the National Economic

Empowerment Development Strategy (NEEDS). The reform package was approved by the International Monetary Fund, (IMF), as a condition of endorsing the debt deal, and the IMF enacted a two-year Policy Support Instrument (PSI) in October 2005 that includes ongoing IMF monitoring of progress made in the reforms,(Bakare, 2010). The IMF completed its first review of Nigeria's PSI in April 2006 in which it endorsed government policies to date. It should also be noted with a high sense of pride that the outcome of the April 2015 general elections in Nigeria marked the beginning of a new era in the history of democracy in the country. As it was the first time that sitting president and a ruling party would concede defeat to an opposition party even before the electoral body could formally announce the winner of the election. Thus, President Goodluck Jonathan made history in this regard by handing over power to the presidential candidate of the opposition party, President Mohamadu Buhari on May 29, 2015. This peaceful transition has made Nigeria to enjoy the good will of the international community with its positive ripple effect on the economy and prestige.

The achievements highlighted above have not erased the abysmal records and roles of the dominant ruling class in Nigeria. Given the scale of petro-revenues and the potential of Nigeria's natural resources, the oligarchy's failure to address the most minimal of the citizen's basic human needs can be construed as deliberate as well as criminal negligence. The World Bank ranks Nigeria as among the world's poorest countries, with the vast majority of the population living on less than \$2 per day. Only 40 percent of Nigerians have access to electricity. Most citizens suffer from grossly inadequate state services, such as the provision of public utilities (electricity, water, and sanitation), social services such as education and health, or the maintenance of public security. Most social indicators, such as life expectancy, health, and education, have actually declined despite windfalls of oil revenues. Furthermore, the activities of the Boko Haram sect continue to pose serious security threat to lives and properties of citizens in the country, particularly in the North – Eastern part of the country. The activities of the terrorist group is said to have claimed an estimated lives of over 13,000 between 2009 when the sect started to January of 2015.

In all, the beauty of the democratic system of government is that it is not only owned by the people, it is also run by the people in the interest of the people. In other words, a democracy is meant to serve the people. Unlike an aristocracy which is a government of the privileged few elites; or monarchy, the government of the bluebloods; or oligarchy, the government of a dominant cabal, class or clique. Democracy is meant to be an all-inclusive government where even though the wish of the majority will be done at the end of a keenly contested deliberation, the minority would have expressed their objection to the position of the majority (Ogundiya,2010). It also apt to posit that, the survival of democracy and the rule of law is the business of every one and as such, all Nigerians must ensure that democracy and rule of law subsists in the polity.

It is however worthy of note to state that, the Nigerian citizenry has, over time, not been able to rise in protest, against official corruption in high places and the impunity of government against the people and the rules of law, as may be readily found in the western societies. This could be as a result of the fact that there is no such culture of 'challenging' constituted authority, as leaders and or kings are believed to have been ordained by God; to that extent therefore, they can do no wrong and thus, protesting against them of their actions will amount to a challenge on the wish of God. Another reason that may be responsible could be adduced to the prevailing poverty in the land. When the majority of a people are poor, the people tend to want to withdraw unto themselves by way of minding their "businesses". This is because they may not be able to withstand the resultant impact of any protest as they may get killed by law enforcement agents in the process. It is also believed that the judiciary is part of the government and not as the last hope of the common man as we are being made to believe. Therefore, the sleeping dog is better left to lie.

Concluding remarks

The excess of 33 years of military rule in Nigeria has made the average Nigerian to be so used to the military style of leadership to the extent that, the set of civilian leaders that emerged from the system since the beginning of the current democratic dispensation in 1999, found it and are still finding it somewhat difficult to adapt to democratic/civil style of running the affairs of the state. This is partly responsible for the high level of impunity with which government officials acts. It is also responsible for the brazen manner at which the government itself disobeys court orders; just as the military had no regards for court orders and for laws of the land generally. Besides, there seems to be something fundamentally defective about the constitution that confers so much power on Mr. President that makes him to wield so much power. The Nigerian president is so powerful that he can flex his political muscle/power in any area of our national lives, even if such exercise of power is against the laws of the land. He can hire and fire at any time in both public and private sectors. He can even influence the administration of justice and indeed determine the leadership of other organs of government through executive fiat.

This is made possible by the weak nature of institutions of governance in the country. Institutions of governance are built around a few powerful people in the society; so much so that none functions without the 'approval' of these few powerful cabals. The cabal controls the institutions of governance to their advantage and

to the detriment of the interest of the larger society. They are also in control of the economy, the military and all other security agencies. As Acemoglu & Robinson (2012) posits, the lack of strong and 'independent' institutions of governance is largely responsible for the frequent disregard for the rule of law and what follows this closely, is the undermining of democracy and general discontent by the populace in the society. The Nigerian political leaders are not altruistic and have the strong proclivity of self-aggrandizement that run counter to the aspirations of the people. This is evident in the choice of policies and legislations they make. To every law that the Nigerian ruling elite makes, they have two approaches to it, they hold and implement such laws to the later when it concerns the poor; but when it concerns any member of the ruling elites or their cronies they give them 'soft landing'. This explains why billions of the nation's monies are lost daily but nobody is held accountable or brought to justice. Such controversial issues as the pension funds' fraud, the oil subsidy claim scam, the Halliburton case, graft charges against former and sitting governors and bank chiefs, the list is close to endless. This is however made worse by the failure of the nation's justice system to punish offender to serve as deterrent to others. Thus, it is of utmost importance to empower institutions of governance by making them financially independent, this will set the institutions free from the whims and caprices of the executive. One hopes that President Buhari's promise to empower institutions and fight corruption will not go the way of his predecessors.

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