

Assessing the principle of the rule of law in democratic Nigeria (1999-2016)

Olanrewaju Oluwaseun

Academics Stand Against Poverty, West Africa Chapter, Lagos, Nigeria

Abstract

Nigeria returned to democratic rule after long years of military incursion in governance. However, the nation remains politically troubled as the impact of democracy has yet to meet the expectations of the citizens at the inauguration of democracy in 1999. Basic tenets of democracy such as free and fair election, human rights, efficient judicial system, as well as rule of law remain anonymous to the nation. It is often said that the rule of law is the bedrock on which democracy thrives and no democracy can grow without strict observance of the rule of law. In view of the above, this paper examines the concept of the rule of law in Nigeria's nascent democracy.

Keywords: rule of law, democracy, Nigeria

Introduction

In recent years, the principle of the rule of law has become widely acknowledged as an essential element of democratic states the world over. As stated by (Nwekeaku, 2014, p.26) ^[12] "Democracy provides a conducive and stimulating environment for the rule of law to thrive, while the rule of law sustains democracy". Consequently, where there is no rule of law, the full dividends of democracy can never be achieved. Conversely, a country that abides by the rule of law as a guiding principle creates the enabling environment for its citizens to enjoy the benefits of democracy. This paper seeks to assess the principle of the rule of law in a democratic dispensation in Nigeria. The purpose of engaging in this research becomes necessary when one considers the importance of the rule of law in creating an egalitarian society, where regard for the law is absolute. In order to critically engage the topic, this paper will attempt to give an in-depth definition of the terms that underline the topic of this paper: the rule of law and democracy. Equally, it will create the nexus between democracy and the rule of law. In doing this, it aims to examine the importance of the rule of law in a democratic state. Lastly, this paper will assess the implementation of the rule of law under Nigeria's nascent democracy with the view to proffering possible recommendations on how the principle of the rule of law can be entrenched in Nigeria to strengthen the nation's nascent democracy.

The Rule of Law

The term rule of law dates back to the 17th century, but was made popular in the 19th century by the English legal jurist A.V Dicey in his book the spirit of laws. There is no one particular definition of the term, rule of law. It's significance as an element of good governance has been interpreted from different dimensions by researchers and scholars. Various scholars have emerged with diverse definitions of the term rule of law, yet such definitions remain closely related. According to (Bingham, 2007, p.82) ^[6] the "broadest understanding of the rule of law is that the sovereign, the state and its officials, are limited by the law". A modest definition of the rule of law would mean that government functionaries

and citizens should respect and be bound by the law (Sheehy, 2006, p.226; Tamanaha, 2012, p.223) ^[20, 21]. In essence, the law is seen as the supreme instrument that governs activities and interactions within the state. Similarly, the United Nations (2011) ^[22] refers to the rule of law as "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". From the above definitions, it is apparent that the rule of law is the predominance of law above everybody within a geographical boundary irrespective of status or positions. Belton (2005) outlined five characteristics of the rule of law to include: a government bound by law, equality before the law, law and order, predictable and efficient rulings and human rights. Given these characteristics, the practicality of the rule of law creates an equilibrium in the society where the rulers and ruled are subjected to the whims and caprices of the law.

Democracy

The term democracy is derived from two Greek words: Demos, which means people and Kratos which is the Greek word for rule. From this perspective, Democracy can be described as a system of government that empowers the citizens to actively participate in the affairs of governance. In Robert Dahl's definition (1956) ^[18] democracy is a society in which ordinary citizens exert a relatively high degree of control over leaders. However, (Becker and Raveloson, 2008) ^[5] argue that Democracy may be a word familiar to most, but it is a concept still misunderstood. As such, the concept of democracy means different things to different people (Ober, 2007, p.2), and it carries with it the unprecedented problem of a universally acceptable definition (Ardo, 2000; Olatunji, 2014, p.18) ^[4, 16]. To be specific, democracy is commonly defined as "the government of the people, for the people, and by the people". Whatever definition of democracy adopted, it is incontestable that democracy as a political ideology is consistently gaining acceptance across the globe. As emphasized by (Jamo, 2013, p.85) ^[11] the spread of democracy has brought an end to the struggle for supremacy as to which

system of government is best. Jamo's assertion is hinged on the participatory opportunity democracy affords the citizenry as opposed to authoritarian rule. As Oke (2010, p.34) ^[15] describes it "Democracy involves the opportunity to participate in decision making in the political process". Relatedly, to be "prevented from participation in the political life of the community is a major deprivation" (Sen, 1999, p.10) ^[19]. Apart from political participation, other features of a democratic state include constitution, parliament, respect for inalienable rights, separation of powers, multi-party system, elections, freedom of the press and the rule of law. This paper will examine the link between democracy and the rule of law in the following section.

The Nexus between Democracy and the Rule of Law

It has become an accepted fact that democracy and the rule of law are intertwined. Where true democracy is practiced, the rule of law becomes a necessity. Therefore, the rule of law is an essential feature in a democratic state. As emphasized by (Olatunji, 2014, p.18) ^[16] "the practice of democracy as a political ideology stands and rest on the rule of law". Democracy thrives on civility, justice, equality and respect for the freedom of every citizen. Whilst a democratic state creates strong institutions, it equally allows for the powers of such institutions to be placed under check. Hence, in a democratic state even though there is separation of powers between the three arms of government, there are always checks and balances. Checks and balances enable the arms of governments to check the excesses of one another. This foundation of democracy seeks to negate the repression that affects the freedom and liberty of citizens under authoritarian forms of government. Therefore, democracy respects and takes into consideration, as much as possible, the interests of the minorities in the framework of the adoption of majority decisions (Becker and Raveloson, 2008, p.18) ^[5]. What is apparent is that the interest of the minorities cannot be protected without adequate respect for the rule of law by constituted authorities. From the foregoing, the supremacy of the rule of law in a democracy protects individual liberties and freedom.

Democracy and the Rule of Law in Nigeria (1999-2016)

After long years of military rule, Nigeria returned to democratic rule on 29 May 1999. The expectation of Nigerians and the International community was that democracy with its tenets such as freedom of the press, human rights principles, electioneering and the rule of law will create the enabling political atmosphere that will set the pace for Nigeria's development. Contrarily, the euphoria that greeted the nation's transition from military rule to democracy has been silenced by the intricacies and intrigues that permeate the nature of democracy as practiced in Nigeria. As observed by (Oke, 2010, p.31) ^[15] military incursion into politics has had a negative effect on Nigeria's nascent democracy "to the effect that observance of basic democratic tenets seems difficult for those saddled with the political power and responsibilities". In Nigeria, rather than rule of law, what obtains is rule of 'lords', where the political class and their powerful cronies display huge disrespect for the law which ought to be an instrument that aggregate citizens irrespective of class or societal status. If one should agree with Sen that "[A] country does not have to be deemed fit for democracy; rather, it has to become fit

through democracy (Sen, 1999, p.3-4) ^[19]. Then, the question is not whether Nigeria is ripe for democracy or not, because irrespective of the shortcomings of democracy as a system of government, it has been widely accepted as the best form of government due to its underlining principles of liberalism and pluralism that give majority of citizens the opportunity to have a say in the manner their country is being governed. Although, Nigeria transcended from military to civilian rule, the leadership orientation and attitude in dispensing power has not changed. There remains a flagrant disregard for the law from members of the political class and they do so with impunity. As (Akanbi and Shehu, 2012, p.6) ^[1] stated "certain ugly development experienced during the short periods of civil rule have shown that the disregard for the rule of law is not the exclusive characteristic of the military government". The implication of this is that even in the present democratic dispensation there is a high level of class distinction in terms of interpretation and applicability of the law. It is expected that the dictates of the law should not only guide the activities of every citizen but should also call them to order through punitive measures when necessary irrespective of their status. The negation of the rule of law by powerful politicians has affected the maturation of our democracy as citizens lose confidence in the ability of the political class to deliver the dividends of democracy. As opined by (Ome, 2011, p.103) ^[17] the political class have a military mentality as dictators; and (Oni, 2014, p.9) ^[18] stated that "Nigerians have not been rewarded with the dividends of democracy as a result of some identifiable challenges that have made democratic consolidation a daunting and herculean task to achieve in Nigeria". One of such challenges is the suppression of the rule of law in democratic Nigeria. This does not only mock democracy as practiced in Nigeria, but also reminiscent of the draconian years of military rule. Nigeria has had change of government four times since the inception of democracy. The Obasanjo/Atiku administration, the Yaradua/Jonathan administration, the Jonathan/Sambo Administration as well as the present administration of Buhari/Osinbanjo.

However, an x-ray of the past administrations in the civilian era reveals that there has not been any improvement in the exercise of the rule of law as a principle of democratic governance. Rather, the nation drowned deep into the abyss of lawlessness and oligarchy. The rule of law under the Obasanjo/Atiku administration was dismal as there was high-level handedness on the part of political leaders within the corridors of power without little or no penchant for the supremacy of the law. The cases of Zaki Biam and Odi massacres in Benue and Bayelsa states, as well as the failure of the administration to remit N10.8 billion to the Lagos State Government in spite of a Supreme Court judgment signified the abuse of the rule of law and disrespect to the independence of the Judiciary under the Obasanjo/Atiku administration (Daily Post, 2013). Governors' Joshua Dariye of Plateau State, Rashidi Ladoja of Oyo State, as well as Ayo Fayose of Ekiti State were impeached from office without due observance of the rule of law. Although, two of these former Governors Ladoja and Dariye were later reinstated by the courts (Odaudu, 2007) ^[14].

There was also an attempt to remove the then Governor of Anambra state, Chris Ngige from office. As captured by (Akomoledede, 2012, p.84) ^[3], "An Assistant Inspector General of police, stormed the Anambra State Government House with

a force of policemen and attempted to forcefully remove the Governor, Chris Ngige from office.” Apart from the above stated disrespect for the rule of law, the administration was severally accused of witch-hunting political opponents through anti-corruption agencies. Overall, the administration did not leave up to the expected standard of the rule of law many had hoped for at its inauguration, considering that it was the first post-military administration after long years of military dictatorship.

The Yaradua/Jonathan administration obtained power through an election that was froth with several irregularities and performed below expectation in its observance of the rule of law. According to (Efebeh, 2015, p.76) ^[10] The 2007 general elections saw the imposition of candidates on political parties, and there was rigging and manipulation of election results to the extent that the court of Appeal had to upturn election results in more than five states of the Federation- Ondo, Osun, Oyo, Edo, Ekiti and Anambra states.

Although, the Yaradua administration pledged respect to the principle of the rule of law, yet his absence from the country for over three months did not comply with the requirement of the constitution (Akomoledede, 2012, p.80) ^[3]. Following the above, the political leadership of the country was hijacked and controlled by certain political cabal to the detriment of the nation due to the ill-health of late president Yaradua which left the country bereft of political leadership. The aftermath of the above was a brazen lawlessness among political leaders who cared little to nurture the nation’s nascent democracy. The attempt by a cabal of political opportunist to prevent then vice president Goodluck Jonathan to act as president in the absence of late president Yaradua was the height of lawless witnessed during the administration. The Judiciary under the Yaradua/Jonathan administration was constrained and as such could not dispense justice as it ought to. An example was the trial of former Delta State governor, James Ibori who was acquitted by a court in Nigeria, but extradited and convicted by a court in the United Kingdom for money laundering and corruption related charges.

The Jonathan/Sambo administration was replete with unprecedented corruption and mismanagement of the nation’s resources. Consequently, strengthening the gap between the wealthy and the poor. The administration was characterized by political favouritism, nepotism as well as mediocrity as it lacked strong political leadership. The above made the various arms of government and their agencies to act with unbridled callousness. During a Presidential media chat on national television, President Jonathan struggled to differentiate stealing from corruption, in his bid to justify that corruption has not had a negative impact on Nigeria’s economy and development.

Furthermore, President Johnathan disobeyed the court order to reinstate the President of the Appeal Court, Hon. Justice Ayo Salami whom he earlier suspended, rather he appointed an acting president for the above court until the expiration of Justice Salami’s tenure. The Jonathan administration ignored public outcry to prosecute government officials following the death of applicants during the sham recruitment exercise conducted by the Nigeria Immigration Service. In 2014, the former Central Bank Governor, Sanusi Lamido Sanusi now the Emir of Kano, was unlawfully arrested, detained and his international passport seized on the orders of the Federal Government.

The administration failed to sanction the activities of then commissioner of Police in Rivers State, Joseph Mbu, that were inimical to public interest, such as the arrest and detention of journalists for describing him as “controversial”. Rather, he was promoted to the post of Assistant Inspector General. Apparently, Mr. Mbu was a stooge in the hands of the Johnathan administration assigned to clampdown on innocent citizens that demanded for rule of law and justice to prevail.

At the pinnacle of lawlessness and corruption that characterized the Jonathan/Sambo administration, Nigerians called for a change of government and the 2015 General Elections availed them the opportunity to vote out Goodluck Jonathan, ending the leadership of the Peoples Democratic Party (PDP) that had governed the nation for 16 years.

Under the present administration of Buhari/Osinbanjo with the ‘change mantra’, there is a slight advancement in the entrenchment of the rule of law in the nation. Political observers and commentators have credited the stance of the regime on its fight against corruption by exposing the wrath of corruption within the political class as well as the judiciary. The Senate President faced a trial at the code of conduct tribunal for allegedly declaring false assets during his tenure as Kwara State Governor. Similarly, Judges perceived to be corrupt were charged to court under this administration, a task that preceding administrations found challenging and daunting to accomplish. It will be appropriate to state that the Buhari/Osinbanjo administration as laid the foundation for the rule of law to thrive through its fight against corruption as anti-corruption agencies that were dormant under past administrations have become active and result oriented. However, not a few political commentators have condemned the approach adopted by this administration in tackling the menace of corruption as same is perceived as selective justice and trials of political enemies.

The government therefore needs to do more in propagating the principles of the rule of law by making sure all corrupt officials are not only tried in the court of law but also find it difficult to circumvent justice by facing the full wrath of the law just as any ordinary citizen would be subjected.

The Way Forward

The absence of the rule of law in a democratic state cannot be underestimated, as same can undermine the growth of democracy and deny the citizens the dividends of democracy. The present administration as well as subsequent administrations should formulate and embrace popular policies that are beneficial to the citizens. In addition, government should strive to eradicate corruption and engage in social welfare schemes to ameliorate the sufferings of the poor. Similarly, poor citizens should be given a voice through access to justice in order to protect their fundamental human rights. Lastly, to entrench the rule of law in Nigeria, the Judiciary as the final arbiter to dispute settlement and conflict resolution must be impartial and be committed to the course of justice.

References

1. Akanbi MM, Shehu AT, *Rule of law in Nigeria*. Journal of Law, Policy and Globalization. 2012; 3:1-8.
2. Ake C. *For Africa, the way forward*. The Guardian, Lagos, 1996.

3. Akomolede IT, Akomolede OB. *Good Governance. Rule of Law and Constitutionalism in Nigeria*. European Journal of Business and Social Sciences. 2012; 1(6):69-85
4. Ardo U. *Democracy and Africa: A Historical overview*. In the Journal of Human Rights, Democracy and Good Governance. Ahmadu Bello University Zaria, 2000.
5. Becker P, Raveloson JA. *What is Democracy?* KMF-CNOE & NOVA STELLA, Antananarivo, 2008.
6. Bingham L. *The Rule of Law*. The Cambridge Law Journal. 2007; 66(1):67-85
7. Chesterman S. *An International Rule of Law?* American Journal of Comparative Law. 2008. 56(2):331-361.
8. Daily Post. Obasanjo's administration did not obey the rule of law – Tambuwal, 2013. <http://dailypost.ng/2013/04/19/obasanjos-administration-did-not-obey-the-rule-of-law-tambuwal/>
9. Ariye EC. *How President Obasanjo Undermined Democracy and Good Governance in Nigeria*. Current Research Journal of Social Sciences. 2012; 4(3):222-227.
10. Efebeh EV. *Democracy and the Rule of Law in Nigeria 1999-2015*. Research on Humanities and Social Sciences. 2015; 5(20):72-81.
11. Idris Ahmed Jamo. *Democracy and Development In Nigeria: Is There A Link?* Arabian Journal of Business and Management Review. 2013; 3(3):85-93.
12. Nwekeaku C. *The Rule of Law, Democracy And Good Governance In Nigeria*. Global Journal of Political Science and Administration. 2014; 2(1):26-35.
13. Ober J. *The original meaning of democracy: Capacity to do things, not majority rule*. Paper delivered at the American Political Science Association meetings, Philadelphia, 2006.
14. Odaudu S. *2007 and the Looming Anarchy*, Leadership, January. 2007; 25:2.
15. Oke L. *Democracy and Governance in Nigeria's Fourth Republic*. An International Multi-Disciplinary Journal, Ethiopia. 2010; 4(3):31-40.
16. Olatunji FO. *Democracy and the Challenge of the Rule of Law In Developing Democratic Society*. Journal of Integrative Humanism. 2014, 18-26.
17. Ome EM. *Evaluating Democracy and Rule of Law in Contemporary Nigerian Society*. Bassey Andah Journal. 2011; 4:95-107.
18. Oni EO. *The Challenges of Democratic Consolidation in R. Dahl, A Preface to Democratic Theory*, Chicago. 1956, 2014, 3.
19. Sen A. *Democracy as a Universal Value*. Journal of Democracy. 1999; 10(3):3-17.
20. Sheehy B. *Fundamentally Conflicting Views of the Rule of Law in China and the West & (and) Implications for Commercial Disputes*. Northwestern Journal of International Law & Business. 2006; 26(2):225-266.
21. Tamanaha BZ. *The History and Elements of the Rule of Law*. Singapore Journal of Legal Studies. 2012, 232-247.
22. United Nations. *What is the Rule of Law*, 2015. www.un.org/ruleoflaw/what-is-the-rule-of-law/