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Stay of proceedings – A progressive Impetus to an Organic Growth of the Dynamics of Customary Arbitration in Nigeria **C.A Obiozor**

Right to Freedom from Discrimination and the Indigeneship Factor in Public Sector Employment in Nigeria **O.N Ogbu**

Interdisciplinary Approach to Legal Scholarship, Lawyering and Adjudication: Prospects and Challenges **E. Amaoji/ J.O Ezeanokwasi**

Appraisal of the Development of a Legal Framework for the Elimination of Gas Flaring in Nigeria **T.C Eze**

The Travails and Challenges of Democracy in Nigeria: A Study of Impunity and Ignominy **K.C Uwadineke / I.K.E.Oraegbunam**

Mediation as a Virile Alternative Dispute Resolution Mechanism in Nigeria **S. A Bello and Abifarin Olufemi**

An Indepth Analysis of JC E and Superior Responsibility as Basis for Individual Responsibility under International Law **B.O Abegunde**

Admissibility of Electronic Evidence under Section 84 of Evidence Act 2011: Examining the Unresolved Authentication Problem **I.K.E. Oraegbunam**

Presumption of Customary Law and Islamic Marriages Based on Cohabitation: Need for Guidelines in Interpreting Section 166 of the Evidence Act 2011 **M. Attah**

Examination of the Claw-Back Clauses in the African Charter on Human and Peoples' Rights **N. Oluchukwu Odiaka**

Section 12 of the Legal Practitioners Act Examined **O. B. Akinola**

Nigeria's Response to Quist Close as a Security Interest: The Need for Public Acceptance **E. E Ekanem and E.E Ntekim**

Fourth Tier of Government: District Council in Selected Jurisdictions a *Sine quo non* for a Sustainable Federalism in Nigeria **D.U: Ibe and Edeko Maria Omozele**

The Impact of Counter – Terrorism Laws on the Protection of Human Rights and Fundamental Freedoms **O.A. Arebamen & P.E. Oamen**

THE TRAVAILS AND CHALLENGES OF DEMOCRACY IN NIGERIA: A STUDY OF IMPUNITY AND IGNOMINY*

Abstract

There is today in Nigeria a state of crises and challenges which plague Nigeria's democracy and observance of the Rule of Law in the country. As the 2015 General Elections have come and gone, we are all witnesses to our leader's faithlessness in the implementation of laws and structural policies. Political assassinations have intensified, religious and ethno-cultural tensions and nationalism continues to rock the body politic, Political intolerance, violence and muzzling of opposition voices, terrorism and politico-economic militancy in the Niger Delta Region, lack of infrastructural facilities, absence or poor political culture or orientation all bedevil us today. There is a concomitant fall in the standard of education together with a serious problem of corruption and aberrant or stale bureaucracy. There is a rape of Democracy and the Rule of Law in present day Nigeria. The prospect of leaving a nation where the due enforcement or observance of Democracy, the Rule of Law and Human Rights reigns supreme beckons as we pledge to make remedial projections, proffer solutions to identified challenges and start the reawakening or re-orientation of our collective/national psyche for the sustenance and sustainable development of our people and future generations.

Introduction

In this paper, we shall adopted a near pessimistic attitude and see our current democratic credentials as fluid and foundationless. It does not rest on a sure palladium or footing. We sincerely lack the necessary democratic culture and sensitivity. Our prospects in the democratic journey appear bright but bleak. It is plagued by many challenges and travails. The first section looks at the evolutionary sojourn of the concept with the section looking at the concept of democracy and the imports, signposts and ideals of democratization. We thereafter shall attempt to sift out or identify by way of analytical enumeration, the myriad of travails or challenges that continue to bedevil our quest for true democracy and good governance under the rule of law in Nigeria. There is an investigative foray into some foreign jurisdictions especially in the context of the

* **Uwadineke C. Kalu. (Ph.D)** is a Senior Lecturer and Head, Commercial and Property Law Department, Faculty of Law, Nnamdi Azikiwe University, Awka
* **Ikenga K.E.Oraegbunam. PhD (Law). PhD (Phil.). PhD (Rel. & Soc.), MEd, BL.** Senior Lecturer, Department of International Law & Jurisprudence. Faculty of Law, Nnamdi Azikiwe University, P.M.B. 5025, Awka, Anambra State, Nigeria. Email: ikengaken@gmail.com; ik.oraegbunam@unizik.edu.ng. Phone Number: +2348034711211

Arabic and North African revolts against bad governance, absence of democrac and the rule of law. In the last segment of this paper, remedial projection highlighting our prospects and potentials for true greatness in the democrati sphere/arena would be made[1].

Democracy and the Signposts of Democratic Governance or Participation

Prof. Mowoe had opined that it is obvious that before the Rule of Law (and I ad democracy) can exist in a society the following must be in place:

a. Supremacy of written regular laws made by the lawmakers.
b. Certainty and regularity of laws.
c. Absence of arbitrary or wide discretionary powers of government or its agencies
d. Equality before the law.
e. Administration of the Law by ordinary law courts.
f. Enforcement of some minimum rights[2].

A critical appraisal or scrutiny of the above factors leads us to one word 'Democracy' Democracy, a derivative of two Greek words – "demos' meaning "people" and "kratia" meaning "rule" or "government" or "males of the People", Democracy is a form of government centred on the people whose interests are paramount manned by participants of the people, directly empowered through representation as opposed to a collective or generalized decisional process or approach. It thus denotes a representative government. In the hallowed words of President Abraham Lincoln, former President of the United States of America, it is: "a government of the people by the people and for the people"[3]

Due to the fact that "democracy' is not easy a word to define, Justice Niki Tobi opines that it is a word of very large purport and signification. He says it belongs to the political scientist and is not only large but generic; at times it is vague and nebulous.[4]

[2] K. M. Mowoe: *Constitutional Law in Nigeria*, (Lagos: Malthouse Press Ltd, 2008) p. 17.
[3] See World Almanco and Book of Facts, 1979. 477. See the Speech of President Lincon (Funeral Oration) at the dedication of the Fallen Soldiers Cenotaph or Cemetery on the Gettysburg Battlefield (during the American Civil War) on 19th November, 1863.
[4] Niki Tobi, "Law, Judiciary and Nigerian Democracy" in *Law, Justice and Nigerian Society* (Lagos: Nigerian Institute of Advanced Legal Studies, 1995)p.23.

Anyogu opines that:

> Democracy conveys a collective connotation of content in the sense of a republican participation in the affairs of the government..... Democracy must .... be looked at, not only in terms of participation in decision making but from the fundamentals of choice of representatives. A democratic government is one in which both the government and the governed exercise freedom in adult suffrage. Democracy is antithesis to despotism, tyranny and totalitarianism. Democracy can be direct or representative. The Greeks and the Romans practiced direct democracy with the conduct of plebiscites. Representative democracy.... is where the citizens have the freedom and choice to determine the people whom they will instruct to manage their affairs at the government level and for the betterment, welfare and development of society.[5]

David[6] conceives "democracy" as

> A mode of decision making about collectively binding rules and policies over which the people exercise control, and the most democratic arrangement is that where all members of the collectivity enjoy effective equal rights to take part in such decision-making directly on that is to say which realizes to the greatest conceivable degree the principles of popular control and equality in its exercise.

In the words of David :

> Democracy is a political method, that is to say, a certain type of institutional arrangement for arriving at political, legislative and administrative decisions, it is a method by which the individual acquire the power to participate in decisions by means of competitive struggle for the peoples vote.... It is the competition for votes that is the distinguishing character of the democratic method.[7]

The objection to this view point is that a government can still acquire the label of being democratic once the people have the 'opportunity' of accepting or refusing the men who are to rule them even if it did not grant its citizen a universal right to

[5] O. Ogene: *Fashioning the Constitution of a Federal Democratic System-Comparative Analysis of Nigeria, Australia, Canada and USA Representative Systems* (Enugu, CIDJAP Press, 2002). Z.C. Anyogu, "*Obi vs. INEC*: Implications on Nigeria Democracy: a Legal Implication" in Ekwegbalu and Amaechina. *Triumph of the Rule of Law in Nigeria: Historical Judgment: Anambra State* (Lagos: U.E. Communications, 2009) pp 531-541.

[6] C.J. Ubanyionwu", Voter Apathy and the Future of Nigerian Democracy" in the *Premier Bar Journal*, Vol.1. No. 1, 2013 p. 88 at 89-90.

[7] David Schumpter, *Capitalism, Socialism and Democracy* (London:Geo and Lrwin, 2000)p13.

vote. According to Mc Cormick, as stated in, Prof. Israel Okoye's paper, "democracy" is:

> ... a system of government in which ultimate authority resides in the whole people to whom the government is accountable and by whom it is removable, in which state officials and powerful groups in society are subject to same law that applies to everyone else, in which all resident adults are citizens with the right of access to political process in which power is exercised according to stipulated rules and procedures laid down by the government, and in which there are protections for the citizens against abuse of power by the government.[8]

Okoye had stated that Nigeria is still confronted with the problem of democratization He quotes Prof. Nwabueze as saying that:

> The real issue raised by democratization is that participation by means of referenda and elections would not have been really and meaningfully democratized unless referenda and elections are free and fair so as to enable the people to effectively exercise their political rights, the right to decide questions that may be referred to them, to choose the rulers, to control their actions and, above all, to dismiss government of which they disapprove.

Moreso, writing on the features of democracy, a learned author, Ese Malemi, asserts and we beg to quote in extensor, that:

> Some of the attributes of democracy or some of the necessary conditions for the existence and growth of democracy includes the for flowing:- Democracy means the existence of a constitution usually a written constitution which is based on the rule of law and is the foundation of the rule of civil law.

Democracy means the observance of the rule of law by all persons and authorities in a country. It involves the holding of regular and periodic free and fair elections and the existence of a party system in the country, usually in the form of a two party system, or a multi-party system. The existence of organized opposition to

[8] I. Okoye "June 14 2007 Supreme Court Judgment and Electoral Democracy in Nigeria" In Ekwegbalu & Amaechin.. *The Triumph of Rule of Law in Nigeria: Historic Judgments, Anambra State* (Lagos: UE Communications, 2009) p.543. According to I. J. Essien, ".... Democracy is a universal aspiration. This is so because government is and will remain central to our society.... And effective democratic government are (or at least they should be) participatory, transparent and accountable. They respect plural and diverse perspectives. They promote gender and social equity and they allow freedom of choice, expression and belief" in "Democracy, Good Governance and Sustainable Development: The Imperative for Attainment of the Millennium Development Goals", *Nassarawa State University Law Journal*, Vol. 3, December, 2010 P. 31 at 33.

the government mainly in the form of opposition political parties, civil right groups, nongovernmental organizations, labour unions, students union groups and pressure groups.

The equal right of all eligible persons to vote and be voted for, rule or formation of Government by the political party that scores the relevant majority votes in the elections, or by a coalition of parties, where the leading party does not record a clear majority vote in the election. It posits equality of all persons before the law; the guarantee and respect for fundamental human rights as entrenched in the constitution and the existence and application of the doctrine of separation of powers and checks and balances in the government. It presupposes the existence of an outright, active and independent judiciary. The existence of a free press and the right to freedom of expression, the existence of a responsible, open and transparent government that is accountable to the people. It is also the existence of the right of the people to know about the public affairs of state, for instance by erecting an access to information law, the robust flow of information from the government to the people and vice versa, the openness of government to the criticism, praise, encouragement and other comments of the people and the limitation of the tenure of office of elected officials. The existence of a smooth, effective and constitutional process of handing over power and changing Government by means of elections at regular intervals as stipulated in the constitution. It is also the existence of an independent electoral body which is not appointed by the government of the day, but is, constituted by persons elected by civil society groups.

In conclusion, democracy is a representative government that gives the people a sense of identity and pride as citizens of a given country. Democracy gives the people opportunity to participate in the government by voting the people who will constitute the government to represent and act on their behalf, to manage the affairs of the country for the welfare of the people. And because the people have a stake in the government and are satisfied with it, the government tends to be stable.[9]

It is thus discernible from the above that the essence of any true democracy is the upliftment of the people's welfare. Hence, section 14(1) & (2) of 1999 Nigerian Constitution (amended) states:

1. The Federal Republic of Nigeria shall be a state based on the principles of democracy and social justice.
2. It is hereby accordingly declared that:

[9] E. Malemi. *The Nigerian Constitutional Law* (Lagos: Princeton Publishing Co., 2006) p. 32. see A.B.C. Chiegboka (et al) (edited), *The Humanities and Nigeria's Democratic Experience* (Nimo: Rex Charles and Patrick Ltd, 2009).

(a) Sovereignty belongs to the people of Nigeria from whom government through this constitution derives its powers and authority.

(b) The security and welfare of the people shall be the primary purpose of government.

(c) The participation by the people in their government shall be ensured in accordance with the provision of this Constitution.

Be that as it may, some of the salient signposts or ingredients/elements, of democracy and the rule of law in the society were raptly captured or alluded to in Malemi's opinion above.

Some Salient Travails and Challenges Plaguing Nigeria's Democracy

A. Absence of a Free, Fair and Credible Electoral Process

A very free, fair and credible electoral process have remained one of the salient signposts of a democratic polity. The absence of such a credible process of elections have bedeviled and consistently ridiculed Nigeria's past or previous attempts at conducting internationally acceptable credible elections. All elections in Nigerian prior to this 2015 General Election have been dubbed disasters in fairness and credibility. Its root has been traced to colonialism. Okoye asserts that:

> Not all social contents are conductive for democracy. the colonial background of Nigeria did not lay a good foundation for democracy in the post colonial state. ..... the political culture bequeathed by colonialism contained the notion that authoritarianism was an appropriate mode of rule and that political activity was merely a disguised form of self – interest subversive of the public welfare.[10]

It goes without saying that the colonial government established a state that served principally as an instrument of exploitation. The situation was exacerbated by the deliberate neglect and under-development of the domestic economy thereby making the state the regulator of economic activities and the fastest means of acquiring wealth. Thus, people participate in politics as a business venture. For elections to fit into the democratic framework, it must be free and fair. Harnet have distilled certain factors that differentiate free, fair election from unfair controlled ones as follows:

[10] I. Okoye *op.cit* at p. 547. See O.A. Osunbor, *Deepening Democracy in Nigeria through Law: An Analysis of Some Contemporary Issues in National Transformation* (Lagos, NIALS, 2010).p.15.

Does the voter have the opportunity:

a. To have his franchise recognized through registration
b. To use his right to vote without being segregated into categories dividing the electorate and revoking the idea of popular sovereignty.
c. To cast his ballot free from external hindrance.
d. To decide how to vote, even to spoil his ballot, without external pressure and;
e. To expect his ballot to be counted and reported accurately even of it goes against the wishes of those in power.[11]

Lamenting the absences of electoral freedom, continence, certainty, fairness and civility in Nigeria, Okoye reiterates that:

> Violations of these fundamental democratic principles is not done by corrupt politicians alone highly respected members of society, including religious leaders, are also involved. A disturbing paradox prevailing in Nigeria's political culture is post election aggressive criticism of electoral fraud by religious leaders who had used their revered positions before the election day to compel their adherents to vote for candidates imposed on them on chauvinistic grounds. The fact that the manipulation is masterminded by individuals looked upon as custodians of morality often makes of difficult for inceutical minds to realize that the act breaches democratic electoral process and therefore accentuates, the hydra headed negation of efforts at electoral democracy in countries like Nigeria.....

The more people clamour for electoral democracy, the more the windows of electoral fraud are widening .... Rigging has for a long time been as Nigerian as pounded yam or millet".[12]

[11] Quoted in I. Okoye (*supra*) p.547 I. J. Essien maintains that "Elections is an important pillar on which democracy rest and has been so recognized right from the evolution of the concept of democracy. All international, regional and sub-regional declarations on democracy entrench principles of fair elections as the elements of representative democracy .... Election is a key component for facilitating democracy because it enhances the participation of citizens in governance and facilitate political competition. Elections .... are vital for democracy to exist, to operate and to be further strengthened and deepened". See his Democracy, Good Governance..." (*supra*) pp. 33-34.

[12] *Ibid*. See Revealed! How Governors Rig. Elections. Donald Duke/Guardian Newspapers – A booklet written by Alafa Daniel, Assistant, Political Editor, Guardian, Abuja, Monday, 19th July, 2010.

In Ivory Coast, former President Laurent Gbagbo conducted a UN supervised election in November, 2010 and lost to President Alassane Quattara in a runoff. The UN certified result showed that Dr. Quattara got 54% of the votes of all Ivorians. President Gbagbo refused to step down leading to a 6 months crises in that country which only ended with the arrest of President Gbabo by forces loyal to Qattara assisted by French and UN soldiers in Abidjan. Thousands lost their lives and properties worth millions of dollars were destroyed. This lends credence to Tom Kamara's statement that in almost all conflict countries, "the doctrine of one man, one vote, seen as the prime guarantor of stability and therefore the pursuit of development, has crumbled, as both winners and losers embark upon grueling life and death scrambles over the state and its resources". This is also true of the Nigerian experience presently and before now. Nwabueze had lamented that "by the closing year of the Nigerian First Republic, the institutions of free elections, that cornerstone of democracy had ceased to have any meaning in Nigeria as blatantly had it been perverted".[13]

In *Dr. Chris N. Ngige v.. Peter Obi* and 449 others, (a number of 5 appeals was before the Court of Appeal, Enugu in CA/E/EPT/5A/2005; - CA/E/EPT/2005) and the Court, inter alia, held that:

> INEC can not violate its pleadings and derogate from performing its duty .... INEC is an independent body, with constitutional powers to conduct elections in Nigeria. The function of the Commission by statutory provision is one of an umpire .... It should never place itself in a position where imputations may be made that it supports one party or the other in an election. No matter the allegations made against it, the Submission should remain fair and focused. More importantly, INEC is not expected to appeal from fair decision of Election Tribunals but should leave candidates for fight their own battle. It is in the interest of the electoral process that INEC and its officials should remain as neutral as possible in election cases as its primary responsibility is to conduct free and fair elections regardless of who wins. INEC should remain as an unbiased and impartial umpire: That is its constitutional role.

[13] *Ibid* p.549. This is certainly contrary to the African Union (AU) Declaration on Election, Democracy and Governance in Africa which in Section, 1 (4) stipulates inter-alia – the essential elements of representative democracy include inter alia respect for human rights and fundamental freedoms, access to and the exercise of power in accordance with the rule of law, the holding of periodic, free and fair election based on secret balloting and universal suffrage as an expression of the sovereignty of the people, the pluralistic system of political parties and organizations and separation of powers and independence of the branches o government. See C.J Ubanyionwu "Voter Apathy and the Future of Nigerian Democracy" (*op.cit*) 88 at 96-100 for a chronicle of instances of lack of transparent elections.

INEC is the body authorized by law to conduct elections in the country. Can the same body which by law is supposed to conduct elections and defend it, now make a somersault and claim that the same election which it conducted was voided by malpractices, irregularities and non compliance with the law. That is a clear and unequivocal admission that it deliberately failed to conduct the election properly. This is a real case of loss of credibility, integrity and confidence. By the INEC Act, and the Electoral Act, 2002, it is the Appellants' duty to defend the election which it conducted. This is a constitutional duty, therefore it cannot deviate or depart from it and press for the nullification of the same election it conducted and defended vigorously, vehemently and tenaciously at the tribunal below. The combined effect of paragraph 47(1) and (2) of the 1st Schedule to the Electoral Act 2002 clearly indicate that INEC and its officials and adhoc staff cannot decline from defending a petition against the election it conducted. In the case of INEC it's position under Para 47(1) aforesaid is not negotiable. It must oppose the petition. In the case of its officials and adhoc staff they shall not be at liberty to decline from opposing the petition except with the written consent of the Attorney General of the Federation. INEC's appeal is therefore, a violation of the mandatory provisions of Para 47(1) aforesaid of the 1st Schedule to the Electoral Act[14].

B. Absence or Lack of an Independent Judiciary

Prof. Agbede had asserted that without a courageous judiciary, operating under a free environment devoid of threats or inducement, the notion of supremacy of law or the idea of governance by rule of law will be meaningless. In order to be able to perform it's role as an unbiased umpire in cases involving the interest of the government, the judiciary should in no way be subordinate to any of the other two organs. It is therefore necessary that the judiciary should be made financially independent of the executive.[15]

In a recent work, Prof. Kenn Nwogu opines that:

> Funding has been identified as one of the most intractable problems militating against the independence of the judiciary. Financial autonomy or at least adequate funding is a pre-requisite for an independent judiciary.[16]

[14] *Ngige v. Obi* (2006) 14 NWLR (Pt. 999) p.180 at pp. 203-204.
[15] I.O. Agbede, "The Rule of Law: Fact or Fiction" in J.A. Yakubu, *Administration of Justice in Nigeria, Essays in Honour of Hon. Justice M L. Uwais* (Lagos: Malthouse Press Ltd. 2000) P. 143.
[16] K.C Nwogu "Constitutions and Constitutionalism in Nigeria, Imperatives for a Sustained Democracy" in *Unizik Law Journal*, Vol. 7 No. 1 2010 p. 19 at 31-32. See also K.E Oraegbunam, "The Judiciary and Constitutional Democracy in Nigeria" in Chiegboka A.B.C. (et al) (ed). *The*

It has, also been noted that: poor condition of salary will not attract honest and decent men to the bench and it will be a sad day for us all when those who aspire to judicial offices are all crooks and cranks. For when crooks completely take over, we are doomed.[17]

Another problem that rubbished the cherished independence of the judiciary is the absolute lack of character and integrity in the men that service or occupy the judicial office. The quarrel between the former Chief Justice of Nigeria, Justice Katsina Alu and Justice Ayo Isa Salami, the President of the Court of Appeal is a case in point. Unprintable things were said of those occupying the highest judicial offices in the land. We condemn their respective outbursts. No wonder that Yakubu lamented that the caliber of men and women appointed to the bench is very paramount. They should be men of unimpeachable antecedents, men of unassailable intellect, men who could not balk under pressure.[18]

Dr. Izunwa opines that the paradigm shift in the budgeting procedure whereby the Federal Government budgets for the Judiciary's personnel and overhead costs leaving the issue of capital budgeting to the states is inimical to both federalism and independence of the judiciary.[19] To him,

> The effect is that the Federal Government impliedly has to control employment, appointment and promotion of judicial personnel. Also the expansion of the infrastructure of the state judiciary including the creation of judicial divisions, are necessarily influenced by the Federal Government as these affect the budgeting in terms of overheads. ... How can funds be allocated to meet the peculiar circumstance of each state? .... It is clear that the provision of sections 81 (3) and 162(9) of the 1999 (Nigerian) Constitution have not responded to the problem of financial independence of the judiciary. What is needed is a provision that will clearly enable the judiciary to prepare and operate its own budget according to its contingencies. There is also the need to resolve the apparent conflict of S. 162 (3) and S. 162 (9) so as to give effect to the intendment of S. 81 (3) and S. 162 (9).[20]

Humanities and Nigeria's Democratic Experience (Nimo, Rex Charles and Patrick Ltd. (2009) Pp 65-77.
[17] K.C Nwogu *ibid* at pp31-32. see also K.E. Oraegbunam *ibid* at pp 65-77.
[18] See Awa Kalu & Yemi Osibajo (eds), *Law Development and Administration of Justice in Nigeria* (Lagos: Federal Ministry of Justice) p. 550.
[19] M. O. Izunwa "Basic Proposals for the Judiciary's Effectiveness in a Democracy; Nigeria as a Case Study" in *Unizik Law Journal*. Vol. 7 No. 1,2010 P. 321 at 330.
[20] *ibid* at p.330.

We completely agree with Nwogu that:

> Good funding to provide among other necessities, decent halls, decent salaries and working conditions for judicial officers, and decent retirement benefits will undoubtedly strengthen and fortify the will of the judiciary to be independent and attract good and high caliber personnel to the judiciary. Certainly, too integrity, honesty and incorruptibility are virtues which are highly desirous in the judiciary.[21]

Besides, another aspect of judicial independence worth noting is executive and legislative disobedience of court orders or lack of respect therefore. The rule of law abhors such behaviours as undemocratic and retrogressive. The admonition of Justice Mohammed here comes to mind. According to him:

> In a democratic polity where principles of the rule of law are firmly entrenched in the system it will be working in an anticlockwise direction, an affront, and indeed an onslaught to democracy if a person or body of persons however highly placed shall decide to brush aside, downgrade and ridicule a court's order. The court on the other hand is not a toothless bulldog. It can bark, bite, brake and may as circumstance may warrant eat up the bones[22].

C. Poverty and Social Inequality

Justice C.A. Oputa once lamented:

> The grinding poverty in which the majority of our people and the whole of mankind below the 30th parallel live – this brings with it sickness, ignorance, in human conditions of work, hopelessness, democratization.[23]

In 2005, the National Planning Commission Abuja in its publication on the National Economic Empowerment and Development Strategy (NEEDS) stated that:

> About two-thirds of the Nigerian people are poor, despite living in a country with vast potential wealth. Although revenues from crude oil have been increasing over the past decades, our people have been falling deeper into poverty. In 1980 an estimated 27 percent of Nigerians lived in poverty. By 1999, about 70 percent of the population had income of less than $1(one dollar) a day... Poverty has many causes, all of which

[21] *Ibid*

[22] See *Oshiomwhole v.F.G.N.* (2009) 4 NWLR (Pt. 1132) p. 607 quoted in Z.C. Anyogu (*op.cit.*) p. 538.

[23] C.A. Oputa, "The Legal Profession, The Proud Baston of Justice and the Dynamic Agency of the Rule of Law", a Lecture to the Warri Branch of the NBA on 3rd March, 1980.

> reinforce one another. One source of poverty is the lack of basic services, such as clean water, education and health care. Another is lack of assets such as land, tools, credit and supportive networks of friends and family. A third is lack of income including food, shelter, clothing and empowerment (political power, confidence, dignity).[24]

The NEEDS booklet further stated that:

> some of these factors (enumerated above) directly affect poverty. Others contribute indirectly, by producing inequality – by stifling the political power of certain sectors of the population, for example, or denying them their dignity or human rights. All of these factors are affected by the environment in which people live. Discrimination on the grounds of gender, race, disability, age or ill health increase vulnerability to poverty. So do natural or human-caused shocks, market collapses, conflicts, droughts, or floods. The many strands of poverty intertwine and can pull people into a downward spiral.[25]

According to Okoye:

> The World Bank classifies Nigeria as a low income country in spite of its enormous oil wealth. A report on the economic well-being of the people (http.//www.fcogov.uk) highlights that in 2001, it ranked 157 out of 177 in the Human Development Index and dropped to 158 in 2005. It is among the 20 percent countries in the world in terms of per capita income. In 1985, 43% of the population lived below poverty line i.e. one dollar per day. The figure rose to 70% in 2004.[26]

Good governance issues, the rule of law, democracy and other edifying virtues might not have any meaning to a hungry man, after all, a hungry man, is an angry man. Poverty and societal inequality or stratifications must be eradicated from our landscape if democracy must thrive and be extended in our clime.

D. Public sector Corruption

This is presently the worst tsunami or hurricane that have continued to devastate our country, Nigeria" The NEEDS booklet caught it thus:

> Nigeria's legacy of mismanagement and corrupt governance has encouraged many people to seek ways of sharing the national cake

[24] See the National Economic, Empowerment and Development Strategy booklet, (Abuja: National Planning Commission, (2005) Popular Version (Abridged) as reproduced by the Central Bank of Nigeria p.19.

[25] *Ibid.*

[26] Canon Prof. Israel Okoye *op. cit* p. 545.

> instead of helping bake it. By 1999 corruption was practically institutionalized. Government was widely regarded as a provider of large contracts, distributed by officers in power to people wealthy enough to buy their influence. This was particularly so in the case of the oil industry. Over time, the judiciary became intimidated, as the rich and powerful manipulated laws and regulations to their advantage .... The legitimacy and stability of the state suffered, as people began to devise ways to survive that lay outside the law.[27]

Justice Krishna Iyer was speaking of India but it could possibly had been Nigeria, when he wrote in 1981 that:

> The disease of corruption, in its widest connotation, has affected all parties, and even militant organizations, although substantial differences in degrees and opportunity may exist. The purity and neutrality by the judiciary itself is in jeopardy. A broad consensus on vital values enshrined in constitutions and a basic integrity in the instrumentalities and the actors who operate it baffles our grasp.[28]

Justice Aguda's statement made in 1981 appears truer today than when it was made given the penchant of our political elites to amass stupendous wealth at the expense of the governed. For him, recent disclosures show how the differences in the levels of corruption among the ruling classes in each successive government has been due only to the opportunities available to the persons running the governments and the government institutions at any point of time. The tragedy of course is that many of those who have run the governments have become multi-millionaires at the expense of the masses.[29]

It will thus be difficult for democracy and the rule of law to thrive in a situation where the National Assembly appropriates about 25 percent of the national budget for its recurrent expenditure. This rather translates into a very wasteful political system. The army of Special Assistants, Senior Special Assistants and Personal Assistants in our nation/states by the Executive and Legislature are causes of worry to our democratic credentials. It portrays democratic governance as a wasteful enterprise. The chauvinistic, parochial, myopic and nepotic or favouristic disbursement of political offices and largesse in Nigeria constitutes another formidable challenge to the sustenance of the rule of law and democracy. The brazen display of ill-gotten wealth by political office holders and hangers-on remain one of the formidable challenges of the present

[27] *Ibid* at p. 20.
[28] Justice Krishna Iyer, Law versus Justice p. 13 quoted in Akinola Aguda; *The Crises of Justice* (Akure: Eresu Hills Publishers, 1986) p. Vill.
[29] T.A. Aguda *op. cit* at ;p. Viii.

democratic reality. Stemming this drift towards wastefulness and over-bloatedness or replication of political offices will surely turn around our fortune in the improvement of the rule of law and democratic practice in Nigeria.

E. The Problem of Constitutional Enactment and Alteration

In 2010, the 1999 Constitution was twice amended or altered. The Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010[30] altered Sections 66, 69, 75, 76, 81, 107, 110, 116, 132, 135, 137, 145, 156, 160, 178, 180, 182, 190, 200, 228(a) & (b), 229, 233, 239, 246, 251, 272, 285, preamble and schedule to the constitution including the citation. The Amended Constitution of the Federal Republic of Nigeria (Second Alteration) Act affected the 1999 Constitution and the Constitution (First Alteration) Act No. 5 of 2010 and the Citation. Specifically it affected the following sections 5, 10, 11, 17. 24, 25, 26, 29 and the sixth schedule of the Alteration Act No. 5, 2010. These amendments affected sections 76(2), 16, 132 (2), 233, 139, 246, 285 and the Schedule of the Constitution. Our grouse here is to question the authority or power that has the right to alter or amend the constitution or most importantly to enact the same. We posit that the National Assembly cannot and did not do this in the two Alteration Acts referred to above. Where lies the locus of authority in a democracy concerning the enactment or alteration of a constitution?

"Authority" asserts Elaigwu "emanates from the people. Any authority that does not emanate or emerge from the consent of the people is not democratic. How consent is operationalized may vary from are system to the other"[31]. Sovereignty or power or authority definitely reside in the people. The constitution even as recently altered still purports in its preambular specifics to be enacted vide a decree of the departing military junta in 1999. This does not recognize the rights of the Nigerian people to enact or alter the constitution. This validates Elaigwu's further assertion that "Nigeria's problem is not constitution making; her problem lies in constitutionalism (ie constitution in practice)".[32] In Chief Bola Ige's opinion:

> Since the existence and power of a government derives from a Constitution, the government cannot, logically and should not make it. Logically, government should not create itself. .. a Constitution must proceed from the exercise of sovereignty by the people. The reason is that .... Sovereignty or if you like, Power- belongs to the people.... The people were (are) repository of sovereignty which included constituent

[30] Act No. 5, 2010.
[31] J. Isawa Elaigwy, *Transition to Transition. Prospects of an Enduring Polity in Nigeria* (Lagos, Nigerian Institute of Advanced Legal Studies, 199) p.5.
[32] *Ibid.*

> power and that the people were the only entity which could exercise constituent power....

It is clear from those preambles that the so called constitutions were merely the results of the deliberations of the Constituent Assemblies, that the result of the deliberations were still subjected to modifications as the military thought fit, that without the military's approval the so called constitutions will not have the force of law and that the military decreed the so called constitutions....

No amount of consultations with Obas, Emirs, Obis, Obongs and Chiefs, no amount of seminars, and workshops with professionals and other groups, no amount of public discussions on radio, television, newspapers and other fora can be a substitute for popular election or referendum. That is the only way the peoples democratic will and power can be demonstrated and gauged. All other methods are merely bamboozlement. One thing stands clear; all of the constitutions we have had in Nigeria, has one common feature, imposed and colonial.[33]

F. Ethno – Religious Crises or Upheavals

The nation suffers from the twin bedfellows of ethnicity/tribalism and deep religious cleavages or polarizations. This, in turn, affects and seriously undermines our democratic credentials and rubbishes our nation's claim to be under the rule of law. Democracy and good governance has eternally suffered at the hands of ethnic rivalry and chauvinistic tendencies. The problem is captured succinctly by Adebayo thus:

> ...the large size of the country and the pluralism of the ethnic groups of the socio-geographical area, called Nigeria. .. of almost four hundred ethnic groups, each having its distinct history, language, culture, and political systems before colonial rule, all preserved in mitigated forms with the British system of governance super-imposed and named Nigeria. Paradoxically, the colonial administration, for administrative convenience, compressed and merged the various minority groups and reinforced the three political administrative divisions – the north, the east and the west – under appropriate constitutional arrangement. At independence and post independence era, the status quo of the colonial era was retained as every group retained its traditions, languages and cultures....[34]

[33] Chief Bola Ige *Constitutions and the Problem of Nigeria* (Lagos: Nigerian Institute of Advanced Legal Studies, 1995) series No 13. See A. Augie, *Rethinking the Nigerian Constitution* (Lagos: NIALS, 2008) pp 32-34).

Adebayo opines further that

> ... The Odua Peoples Congress (OPC) was put in place by the Yoruba in the south-western part of the country to fight for protection and defence of the Yoruba in Nigeria. In the eastern part was the Movement for the Actualization of the Sovereign State of Biafra (MASSOB) fighting for the excision of the Igbo ethnic tribe from Nigeria.[35]

Elaigwu J. Isawa was quoted as saying in 2005 that:

> The violent protests in the Niger-Delta over perceived injustice in resources distribution; the Itsekiri Ijaw violence in the Delta; the resumption of the Ife-Modakeke communal violence; the menace of the Odua Peoples Congress (OPC) and the accompanying violence in Lagos and Shagamu areas; the formation of the Arewa Peoples Congress (APC) and the Igbo Peoples Congress (IPC); the MASSOB feeble attempt to resuscitate Biafra., the Sharia Crisis and the demand for a confederation, the South-Suoth demand for the control of its resources and all the recent inter-ethnic religious conflicts in various states across the country are all part of the bubbles of the Nigerian Federation.

They are based on the historical structures of mutual fears and suspicions among Nigerian groups in a competitive process. They reflect dissatisfaction of Nigerian groups with the state of the federation.[36]

Presently, the Boko Haram group in Bauchi[37] and other Northern States has unleased a war-like situation in the area targeting among other things the total eradication of institutions of Government. They have claimed responsibility for many drive-by shootings and many political killings. For example the ANPP gubernatorial candidate in Bauchi State for the 2011 General Elections, Gubiyo, was assassinated in cold blood by the sect. In the last year or two, the City of Jos have been embroiled in an ethnic skirmish or war – like state laced with religious undertones. Many lives have been lost and properties worth millions of naira destroyed. The Maitatsine Riots in Kano Metropolis in 1980, an intra-religious

[34] R. Ibrahim Adebayo, "Ethno-Religious Crises and the Challenges of Sustainable Development in Nigeria", *Journal of Sustainable Development in Africa* (Volume 12, No. 4 2010) p. 214 (A *Publication of Clarion University of Pennsylvania*, Clarion, Pennsylvania).
[35] *Ibid* p. 214.
[36] *Ibid.*
[37] In February 2009 Bauchi Religious Crisis resulted in causalities. In the July, 26, 2009 Boko Haram onslaught which emanated from Dutsen Tenshin in Bauchi State before it later spread to Kano, Yobe, and Borno State. More than 1000 lives were lost.

disturbance, claimed 4, 177 lives. The Maitatsine Riot of Bullum – Kutu in Borno State of 26th – 29th October 1982 led to lost of 400 lives; the Jimeta Maitatsine Riot of 1984 claimed 1004 lives and displaced 5,913 families, the Gombe Maitatsine Riot of 1985 claimed 100 lives. The Kafanchan Riot of March, 1987 left mosques, churches, about 25 lives killed, many properties burnt and looted. Properties running into Millions of naira were also lost. In 1990, the city of Kano went up in flames when Reinhard Bornke, a German Christian Preacher was invited to Kano. Between 11-14 October, 1990 more than 500 lives and billions worth of assets had been destroyed. In 1991, the Tiv-Jukun ethnic conflict over land ownership and political domination claimed more than 5,000 lives with villages burnt and pillaged. The Taraba State religious crisis of 1992 and the Potiskum disturbances of December 4 1994 all claimed lives. In April, 1996, a Majirai demonstration in Maidugiri, Dikwa, Biu, Ngala and Munguno brought destruction and mayhem to these parts.

The Shariah Crisis in 2000 in Kaduna State turned into an ethnic crisis as many Igbos were killed. In retaliation many northerners in the East were again killed. In 2001 (September 10) the city of Jos was razed with people killed when Muslim worshippers blocking a public road were challenged by a woman. The result was that "Jos .... became a mass of decaying corpses, nose wrenching odours and paratrooping vultures as arrows, machetes, swords and guns of varying sophistication were employed. Human bodies were strewn on virtually every street in Jos. On 18th February, 2006, in Maidugiri, an ethnic crisis led to the killing of Igbos. This resulted in reprisal attacks on the Hausas in Abia, Enugu, Anambra and Delta States.

Between 2008 and 2010, the Jos crisis has claimed more than 700 lives". The Jos religious Crisis of 2008 was both ethnically and politically motivated as it was as a result of local government elections in Jos North, which Hausa/Fulani Muslim settlers claim to be their own as against the claim of ownership by indigenous people of the area who are mostly Christians. The headquarters of Jos North was shortly before the election of November 27, 2008 relocated from its location of the Nigerian Police to the premises of the Jos Metropolitan Development Board. The relocation did not go down well with the Jassawa (Hausa/Fulani in Jos) who saw the relocation as an attempt to shortchange them politically.[38] The present system where lives are lost and properties destroyed at the flimsiest of excuses is wrong and should be regretted."[39] Our democracy and

[38] For more detailed chronicle of ethno-religious crises or violence in Nigeria see R. Ibrahim Adebayo, "Ethno-Religious Crisis and the Challenges of Sustainable Development in Nigeria" *op. cit* p. 213-225.

[39] See Kalu Uwadineke ," Reformation of the High Court's System in Nigeria; An Imperative for Federalism", a Ph.D Dissertation Defended at the Faculty of Law, NAU, Awka on 28/4/2009 chapter 2. J.A Adeyemi., "Ethnic Terrorism in Nigeria: A New Dimension to Socio-Political

rule of law needs to be rejuvenated not by the blood of innocent martyrs but by the sustained obeisance of all to democratic norms and values, due observances of human rights and fundamental rights, the rule of law, good governance and ultimately the enforcement and administration of Justices at all times.

G. Absence of Truly Integrative National Political Parties and Problems of Federalism.

There is presently in Nigeria a near total lack or absence of truly integrative national political parties. Our political landscape is clustered with about 63 political parties most of which do not even have offices in all states of the federation, let alone having offices in all the 774 local government areas or the about 8,000 wards across the nation. This is so as most of these parties find it difficult shopping for candidates for elective public offices. They end up adopting the candidates of other political parties for support in certain elections. This rubbishes the rule of law, democracy, good governance and even our claim to federalism. As stated elsewhere by Nwabueze;

> Perhaps the biggest obstacle to federalism as an active force in forging national unity in Nigeria is ..... the absence of truly integrative national parties. It is part of the complex of factors responsible for the confrontational attitude that has characterized federal/state relations in Nigeria. Without truly national parties, cutting across tribal, cultural and linguistic divisions, federalism will continue to be viewed largely as "a bargaining arrangement for interest groups.[40]

Other problems bedeviling the rule of law, our nascent democracy and our federal credentials include Regional/Religious chauvinism, bigotry and differentiation, the problem of socio-cultural and linguistic diversities as well as ethnic polarization or differences problem associated with the local government areas in terms of structure and sharing of allocation or revenue. Here Prof. Okafor Opines that;

> The National Assembly has no business with creation of Local Government Councils. The states however have been unable to assert

Stagnation" in *Journal of Human Studies*. 2005. Vol. 4 No. 1. F.O Ibrahim "Ethno – Religious Conflicts in Kano State; Poverty as a Major Explanatory Factor" in C.Mustapha Duze et al (eds) *Poverty in Nigeria: Causes, Manifestations and Alleration Strategies* (London: Adonis & Abbey Publishers, 2009) p.12.

[40] B.O Nwabueze, Federalism in Nigeria under the Presidential Constitution (London: Sweet & Maxwell, 1983) p. 379 U.C Kalu *op. cit* p. 126. See also Paul Obo Idomigie. "Division of Legislative Powers under the Constitution: Lessons from Recent Development" *Nigerian Bar Journal*, Vol. 1 No. 3 July 2003 Pp. 305-344.

> their constitutional rights because the federal government has said it does not recognize the new councils and would not release funds to them.... The basis of the conflict is the sharing of revenue which makes provision for the number of local governments .... The states want to eat their cakes and still keep it. Of course, they can create more local governments but they cannot compel the National Assembly to recognize the additions for purposes of sharing common revenue.[41]

There is also the problem of ever-increasing homogenization among states, the component units of our federalism. Problems are also associated with the federal character and quota system. According to Okoye:

> ... the principle of federal character ..... rings aloud continually the bell of ethnic and sectional differences ... it evokes in people such selfish questions as " have we got our own share of this or that". Generally, Nigerians talk of federal character only when it comes to questions of appointment of political and high bureaucratic offices and in the sharing of what has been commonly baptized 'the National Cake'. With this attitude the principle of federal character is turned into an instrument of ethnic and sectional aggrandizement.[42].

In Nigeria too, there is the problem of dual law enforcement organs or the agitation for state police forces. Again, the Federal High Court has today encroached into purely state matters which should not be so in a truly federal democracy where the rule of law and good governance are exalted. It is no longer clear, as between the federal high court and the state high court, which one can be labeled a court of unlimited jurisdiction. This problem[43] affront our federal democracy and is amplified by S. 272 of the 1999 constitution deleting the word "unlimited" when juxtaposed with S. 236 of the erstwhile 1979 Constitution. The rule of law, good governance and democracy in Nigeria face the problem of inequitable sharing or allocation of revenue among the states or constituent units in Nigeria – the imbalances in this respect is damaging.

According to Kwanashie:

[41] I.A Okafor "The Concept of True Federalism", being paper delivered at the First Eze Patrick Acholonu Memorial Lecture held at the FSP Centre Park, Mbari Street, Owerri in April, 2004 p. 24. Sections 7 (1) and 8 (6) of the Constitution of Nigeria should be contrasted with a view to altering or amending them.

[42] Israel Okoye *National Consciousness in Nigeria* (Onitsha: Etukewu Publishers Ltd., 1991)p. 138.

[43] Today, S. 251 (4) of the 1999 Constitution (as altered in 2010) has now invaded the realm of the powers of State High Courts further as the Federal High Court now handles cases on whether the tenure of office of a member of the House of Assembly, Governor or Deputy Governor of A State has ceased or become vacant. This is aberrant to our federalism.

> the various complaints arising from the vertical fiscal imbalance have continued to put pressures on the federal government to redress what is considered an unjust situation where states go begging to the federal government for funds... As to complaints in horizontal allocation, the most disturbing stems from the conception from areas of rich natural resources that those controlling the federal government have persistently mismanaged wealth accruing from their area leaving them in very poor condition. The fact remains that the fiscal impact of federal government has not been uniform. Federal presence in some areas has been minimal while these areas continue to suffer neglect. The gross mismanagement of the Nigerian fiscal system justifies these complaints which are now seriously undermining the very basis of Nigerian federalism.[44]

Moreover, the over dependence of the states or Federal Government financing for its revenue rubbishes the issue of fiscal federalism which ought to be holistically addressed along with the agitation for resource control. Another issue of note here is the gross inequality in the devolution of power between the centre and the constituent units. It is correct that Nigeria is an amalgam of 36 states and 744 local government councils with an over-concentration of power in the Federal Government. The exclusive legislative list testifies to this. It can also legislate on matters in the concurrent list. The residual list preserved for the states, is not even known or enumerated. We call for legislative certitude here through a timeous constitutional alteration after a discussion among the different tiers or levels of governance in Nigeria.

In 1999, the Constitutional Debate Co-ordinating Committee (CDCC) set up by the Military Government of General Abubakar reported or stated on devolution of powers' in its recommendations and we beg to quote in extensor, that:

> Majority of Nigerians called for a meaningful devolution of powers among the three tiers of government. It was their contention that although the country is federalism. Nigeria was, and is being administered as a unitary state in total disregard of the principles of true federalism. thereby resulting in vast powers and resources being vested at the centre. States and Local Governments, it was observed have been starved of functions and resources and are no more than mere appendages of the Federal Government Thus, the neglect of the principles of true federalism was held responsible for the fierce struggle of the political class to secure political power at the centre and the main attraction for persistent military intervention in government. The over-

[44] Prof. Mike Kwanashie, "Revenue Allocation Formula and the Political Economy of Nigerian Federalism" in Elemika & Okoye (ed.) *Constitutional Federalism and Democracy in Nigeria* (Kaduna: Human Right Monitor, 2001).p.23

> concentration of resources in the centre is the root cause of lack of appreciable development of the country resulting in political instability, communal violence and a host of societal problems which endanger national unity. The solution proffered by Nigerians is that functions and funds be re-distributed in favour of States and Local Governments in line with the practice of true federalism.

In the judicial sphere, there is a failure of federalism as we rather operate a unitarist judicial structure without pretensions. According to Mahmoud:

> The 1999 constitution professes federalism. The federal principle is not a consistent principle throughout the document. One academic commentator captioned the constitution a "unitary constitution for a federal system of government". In the case of the judiciary, it has come up with a model, which is in conflict with the notion of Nigeria as a federal state. It is indeed closer to a unitary judiciary for a federal state.[45]

There is presently a lack of a sense of shared ideology and democratic values. Federalism was foisted on Nigerians by a departing British bureaucracy as the viable option in the search for a workable political arrangement given the nations' peculiar problems. There is today lack of a sense of purpose in the 1999 Constitution.[46]Further, let us juxtapose Para. 22 part 1 of the 2nd Schedule to the 1999 Constitution with Item E. Para. 11 of the same Constitution.

Para 22-"Election to the offices of President, Vice President or Governor and Deputy Governor and any other office to which a person may be elected under this Constitution, excluding election to a local government or an office in such council. Para. 11- "The National Assembly may make laws for the Federation with respect to the registration of voters and the procedure regulating elections to a local government council".

What a faulty foundation for our rule of law, democracy and our much valued federalism.

H. Partial or Selected Implementation of the Millennium Development Goals and the Failure of Public Infrastructure and Utilities.

In September, 2000, World Leaders adopted the MDGs which seeks by 2015 to reduce poverty by halfing the proportion of people whose income is less than a

[45] A.B. Mahmoud, "Fundamental Human Rights Monitor and the 1999 Constitution of the Federal Republic of Nigeria" in E.E.O. Elemika & Festus O. Okoye, *Constitutional Federalism and Democracy in Nigeria* (Kaduna:Human Right Monitor, 2001) pp. 98-99.

[46] One is tempted to agree with John A. Wiseman that democracy "has become polemical and value-ridden"- See *Democracy in Black Africa: Survival and Renewal* (New York: Paragon House, 1990).p34.

dollar a day, achieving universal primary education, reducing maternal mortality by three quarters and child (under five) mortality by two-thirds. It is an MDG goal to halt and reverse the spread of HIV/AIDS, malaria and other major diseases and assist those who became orphans due to death caused by HIV/AIDS.

There is also the challenge of improving the lives of 100 million slum dwellers by 2020. Going through the target year of 2015, Nigeria appears not ready to achieve these targets. In some areas, only selected compliance or attempt at compliance is the order of the day. In others, nothing seems to have been done. In public infrastructure or utilities, the hospitals in Nigeria have continued to be mere consulting clinics despite the huge expenditure on them over the years. In some areas particularly the South-east states, federal and state roads are so dilapidated that many have lost their lives on them due to accidents and other mishaps. In the area of industrialization and employment generation, the privatization of corporations has continued to ensure the death of employment and a disservice to industrialization.

In the power sector, after billions of naira have been spent, electricity remains a scarce commodity. There is hardly any average person in Nigeria that does not own a generator. Companies as a must use plants for power generation. There are no incentives for agriculture, small and medium scale industries or enterprises, oil and gas concerns are no longer flourishing. Education all over appears on the brink of collapse. Strikes and industrial actions have almost ruined our public universities and tertiary institutions. Students are no longer properly guided. There is capital flight in the economy. Investment, especially foreign ones, is not even at an optimal level. Our growth and efficient exploitation of resources appear stalled. These inadequacies and challenges continue to undermine the rule of law and ultimately democracy in Nigeria vis-à-vis the need for sustainable development. The National Planning Commission in the NEEDS booklet or document put it this way:

> Businesses wishing to operate in Nigeria face many constraints, including poor infrastructure particularly road networks and electricity supply, inadequate physical security, corruption, weak enforcement of contracts and the high cost of finance. These factors have deterred foreign entrepreneurs from investing in Nigeria and induced many Nigerians to take their money and skills abroad.[47]

I. Inefficient Economic Planning and Mismanagement

The National Planning Commission lamented that:

> Perhaps the greatest hindrance to progress has been the boom and bust mode of economic management, encouraged by the dominance of oil in the economy. Past

[47] *Ibid.*

> governments allowed oil income to influence spending, when income was high spending was high, while dips in oil prices were treated as temporary. Together with poor coordination between federal and state governments in budgeting and expenditure, this practice led to spiraling debt. Today all tiers of government spend far more than they earn; the deficit for the past five years alone amounts to more than 1 trillion naira. With external and domestic debt of 70 percent of GDP, current revenue is largely eaten up just by debt service. Nigeria has one of the weakest economic growths.... Despite the mounting debt burden, past governments did not control public expenditure. Policies were not coordinated within federal departments or between federal and state governments. As a result, the national plan and budget have little relevance today as a guide to funding and implementing development programmes.[48]

We wholeheartedly agree with J. Isawa Elaigwu[49] that:

> Democracy provides a more conductive medium than a military regime for enshrining political stability, and therefore a grid for economic development. Democratic institutions are expensive to sustain. Our economy must be able to support our democracy. Currently the economy is in a mess.... We have since 1967 moved from oil boom, oil gloom to oil doom. We have become victims of a monoculture economy we created through our complacency, visionlessness, and selfishness.... A poor economy is a perennial threat to democracy. It is therefore, important that our political class notes the importance of a buoyant economy to their survival as a class, and to democracy. Thus, it is important for them to be prudent in their expenditure and demonstrate, through their actions and by their management of the economy, their concern for the average man.

J. Niger –Delta Militancy, Terrorism and Insecurity

It cannot be gainsaid that in recent times the militancy in Nigeria's Niger-Delta region sought to undermine our democracy and ultimately our economy. As part of his commitment to the rule of law, former President Yar'Adua in 2008 – 2009 announced the amnesty programme for the militants. Despite this, there are still some militants operating in Nigeria. The Movement for the Emancipation of the Niger Delta (MEND) claimed responsibility for the October 1st, 2010 50th Independence Anniversary bomb blasts. The increasing level of bombings speak volume of terrorism within our shores. The Mogadishu Barrack bombing and the bomb blasts in Suleja, Jos, Maidugiri Abuja etc attests to a heightened state of terrorism and insecurity. The Boko Haram upheaval in the North, the Jos Crisis

[48] *Ibid.*

[49] J. Isawa Elaigwu, *Transition to Transition: Prospects of an Enduring Democratic Polity in Nigeria* (Lagos: NIALS, 1999) pp. 31-32.

and the usual political riots in most Northern States notably Kaduna and Bauchi States has ensured that a sense of insecurity pervade these areas.

There was even a homegrown attempt to export terrorism through the Abdul Muttalab attempted bombing of a US bound airliner. Militancy, terrorism and insecurity, in so far as they infuse fear into our political actors or participants in the political arena, are attempts to undermine the rule of law and ultimately our democracy. That members of the National Youth Service Corp (NYSC) left their duty posts as electoral officials in some Northern States for the last election during the 2011 General Elections in April, 2011 shows how insecurity adversely affects our nation's democratic credentials and institutions.

K. Other Challenges

Other problems that today plague Nigeria's democratic credentials and undermine the rule of law include – the half-hearted implementation of the war on corruption (the anti-corruption crusade), the over-hearing influence on the polity of political contractors and political touts, the tension – charged and near acrimonious relationship of the executive and the legislatures in the federal level and in the states, intra-legislative crisis and impeachments, (or threats or attempts of it) insufficient funding for the judiciary, absence of improved library facilities and provision of computer services, the continuance of a second term election (we believe that a single term of 6 years is better), the crises of citizen – indigene residence, education and means of livelihood in states not their own, marginalization and threats of secession *vis-à-vis* ethnicization of statuses and governmental resources, political flattery, sycophancy and the absence of a democratic political culture. Tackling these problems holistically and courageously surely beams the light to sustainable development in Nigeria's democratic march.

Precepts and Projections for Democratic Sustenance and Development in Nigeria

For the most part, the beauty of the rule of law cannot be over- emphasized. It is an ideal which achieves its purposes in several ways. Judge Wiley Y. Daniel opines that:

> First, the rule of law serves as a theoretical blueprint for designing legal systems. It represents a synthesis of normative values and processes that is grounded in precepts of natural justice, that promotes and legitimizes the mechanisms of formal justice and that is perceived by those subject to its restraints as producing actual justice....
>
> Second, the rule of law serves to protect the shared liberty interests of all members of society. It does this by establishing a dynamic equilibrium

> between power and law. Pure power is arbitrary might: law is a system by which institutions channel power so that it conforms with a people's values and established patterns of expectation. Neither power or law alone will lead to a stable society. As ends in themselves, power is coercive and unpredictable; and law can become inflexible and hence potentially oppressive. Without rule of law values to regulate the tensions between these antagonistic forces, the dominance of one over the other likely leads to serious infringement and curtailment of individual liberty.
>
> Finally, the rule of law is part of and offers support for a larger network of systems that comprise the social order. Social order is a complex of inter related normative and descriptive systems that reflects – through social custom and politically determined rules – shared notions of justice, governance, politics, economics, and group and interpersonal relationships.

The primary function of social order is to accommodate the tension, inherent in all human activity, between the common good by promoting certainly, fairness, and equality in social arrangements. At the same time it will protect individual autonomy by determining behaviour that impinges on a person's liberty interest.[50]

As Ola Aluko opined:

> Nigeria is presently grappling with the challenges of building a sustainable democracy and consolidating it as a means of governance. It must build credible political institutions worthy of sustaining and allowing democratic values to depend in such a way that the rule of law and due process will replace the arbitrariness and rule of force, which have taken deep roots in the country over decades of misrule. There is no doubt that the future of the country's fledging democracy and governance will depend largely on the extent to which both the leaders and the people are able to place themselves under a regime of human rights and disciplined governance, as opposed to the regime of lawlessness and graft.[51]

Casting our anchor in the above, we make bold to state that the following measures should be tried out or implemented to bolster the rule of law, good governance and democracy in Nigeria. In the legislative arena: the legislature in a free society under the rule of law must create and maintain the conditions which

[50] *Ibid* at p. 114-115.

[51] Ola Aluko, "The Rule of Law, Planning and Sustainable Development in Nigeria", in *Journal of Sustainable Development in Africa*, Volume 12 No. 7, 2010 P. 88. (A Publication of the Clarion University of Pennsylvania. Clarion, Pennsylvania).

uphold the dignity of man. It must recognize man's civil and political rights and ensure the establishment of social, economic, educational and cultural condition essential for full personal development. It must not

- discriminate in its laws *vis-a-vis* individual classes or persons either on grounds of race, religion or sex.
- interfere with freedom of religion, religious beliefs or observances.

In the immortal words of Black J.:

> Neither a state nor the Federal Government can set up a church (or mosque). Neither can make laws, which aid one religion, and all religions or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church or mosque against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs[52].

It must abstain from enacting retroactive legislations. It must provide the machinery or safeguards whereby the individual's freedom under the law are given effect to and protected. Above all human rights cannot be enjoyed on empty stomachs as the individual living below the subsistence level cannot do much. The legislature in a free society under a democracy and the rule of law, must fulfill its obligation of providing a suitable, social, economic, educational and cultural climate for the full development of the personality of the individual.

In the executive sphere or influence of governance:

- there must be a machinery whereby delegated legislation should be subject to independent judicial control and ultimate review.
- there must be adequate safeguards against the abuse of power.
- that any citizen who should have a remedy against the state or government gets it.
- that on no account should fundamental human rights be abridged or abrogated by means of delegated legislation.
- that all delegated powers should be within the narrowest possible limits and should be carefully defined both in extent and purpose.

It requires the executive to provide an effective government, capable of maintaining law and order, ensuring adequate social and economic conditions of life for the society. In the judicial arena, Justice Oputa asserts that:

[52] Per Black J. in *Everson v. Board of Education* 330 US 167 S. Ct. 564 91 LED 711.

> An independent judiciary is an indispensable pre-requisite of a free society under the rule of law. The rule of law implies and requires the existence of courts where the Judges are completely insulated from pressure from the legislative or executive arm of government, where the judges secure from any fear of interference or removal do their duty fearlessly, holding the balance and the scales evenly, not only between man and man but also between man and the state.... the rule of law also implies the irremovability of the judiciary as their security of tenure until death or until a retiring age fixed by statue is reached, is an important safeguard of the rule of law.[53]

In the criminal trial arena, a fair trial must involve elements of certainty in the criminal or penal laws, observance of the presumption of innocence, there must be very reasonable rules relating to arrest, accusation and detention pending trials, the giving/issuance of notices and provision of legal advice, public trial, right of appeal and the absence or cruel of unusual punishment.[54] We sincerely believe that our democracy, to be successful, must shed all pretensions at replicating what obtains in any other place. According to Wiseman, "To be successful, an African democracy must be sensitive to local conditions. The simple adoption of an institutional framework elsewhere is unlikely to be successful.[55] Elaigwu had warned that "Nigerian elites seem not to be adequately concerned about the problems of institutional adaptation and domestication of democratic institutions and values. Unless we do so, we shall continue to relive our past.[56]

We further recommend that "only the people (of Nigeria) by means of popular and free election can confer constituent power because it is only to them that the exercise of power belongs.[57] There exists 2 ways in which the Nigerian people can exercise their power of adopting a constitution either directly through a referendum of indirectly through a Constituent Assembly which Prof. Nwabueze would rather describe as "an assembly specially elected and specifically mandated by the people to adopt a constitution and constitute a frame of government on their behalf.[58] We need a "constitution that is not only conceived by WE THE PEOPLE of ..... Nigeria; but a constitution enacted by them. It must be thoroughly debated and discussed by representatives of WE THE PEOPLE through a Constituent Assembly of representative popularly and democratically

[53] C. A. Oputa *op cit* p. 87.
[54] Nowoe, *op. cit* p. 18.
[55] Adolin Wiseman; *Democracy in Black Africa, Survival and Renewal* (New York:Paragon House, 1990) p.6.
[56] J. Isawa Elaigwu; *Transition to Transition; Prospects of an Enduring Democratic Polity in Nigeria* (Lagos: NIALS, 1999) p.8.
[57] B.O. Nwabueze in Elaigwu *op.cit* p.8.
[58] B.O. Nwabueze in Elaigwu *ibid.*

elected by universal suffrage and secret ballot, taken back to WE THE PEOPLE at all levels..... and subjected to debate on radio, television and newspapers, and finally if a referendum cannot be organized to decide on sensitive issues, the Constituent Assembly, acting on behalf of WE THE PEOPLE should pass and give unto themselves and all of us the Constitution of the Federal Republic of Nigeria.[59]

Again, Prof. Ameze Goubadia had stated and we agree that:

> On the issue of popular participation in governance, is it now time to go beyond the referendum to include popular initiative in legislation which according to C.F. Strong "places in the hands of people a direct power of initiating or proposing legislation'. This in his view goes beyond the referendum for – "while the referendum protects the people against the legislature's sin of commission, the initiative offers them a remedy for its sins of omission". The people consequently have a residual power to act where the legislature fails to or will not act.[60]

On the issue of political parties, we recommend the immediate consolidation of the number from 63 to about 3 or 4 so that this problem of political parties existing as doting stars in our horizon will be a thing of the past. On the problems associated with federalism, we propose as did Olisa Agbakoba, SAN, former President of the NBA, that in ordering a new constitutional structure consideration be given to the idea of territorial regionalism under which small states are regrouped into bigger and more viable regions according to their geo-political locations. We may end up with about six or seven large regions... the regions should have their constitutions which will define the association by recognizing plurality and decentralizing power down to the autonomous communities or villages. All will have a sense of belonging without the suppression of any ethnic, lingual, cultural or religious minority.

The regional constitution will spell out principles of rotation of power or sharing of power. The central constitution will provide for greater devolution of power to the regions. There is no reason why the regions should not have their own police.... the Supreme Court of Nigeria should remain the highest court in the country, only that not all matters can go to that court. Its appellate jurisdiction should be streamlined. The issue of fiscal federalism will be taken seriously as the fund raising and spending power of the regions will be enhanced more than what

[59] See Chief Bola Ige *op.cit* p. 32
[60] See Ameze Goubadia, *Nigeria: the Legal Dynamics of Her Constitutional Development – An Appraisal* (Lagos: NIALS, 1994) p. 25.

obtains in the present system of 36 states which has only spread under-development and gloom across the country.

A new constitutional structure will naturally fundamentally alter the present electoral system.... A central electoral commission will necessarily share power with regional electoral commissions. There may not be any good reason why a central electoral body would supervise over elections into state or regional assemblies. The same reason given about how states may hold the state electoral commissions captive to their will can also be true of an imperial President and a central electoral commission under the present 1999 constitution where the President appoints the personnel who preside over his own election. What is needed is a good system matched with good practice which will bring about internalization of federal principles. The judiciary has a pivotal role to play in the enthronement of democracy and good governance through the rule of law.[61]

INEC should be alive to its neutral role and shun the tendency to be partial, parochial and partisan. As an umpire, it must remain unbiased, fair and accessible to all. The Constitution, the Electoral Act and only democratic norms and values built on the Rule of Law and due process should regulate its functions. The Executive should not appoint its members. On the issue of over-concentration of power at the Federal/National level through the Exclusive Legislative List, we call for the immediate unburdening of that list to reduce it from the present 45 items to about 30 items. The Residual List should be made certain through legislative stipulations. It must be enumerated and clearly too to demarcate the interlock of powers between the federation and the constituents units. There is a need to revisit and settle once and for all, may be through a Sovereign National Conference, the issue of rotational presidency which has elicited much quarrels in the Nigerian political scenario with the attendant cries of marginalization. There must be sustained push or attempt to reduce poverty and inequality through the creation of jobs, affordable housing, improving health –care, ultimately promoting peace and security. Our infrastructural base must be improved through aggressive road construction and maintenance, providing more reliable power in rural and urban areas, promoting industries, science and technology especially an aggressive promotion of ICT. There must be an improvement in agriculture. For our National sustenance, government should strengthen and modernize the anti-corruption campaigns and agencies to expose unethical and illegal practices as well as punish culprits. There must be ethical re-orientation in Nigeria as desired values and beliefs especially those that glorify democratic institutions, culture and

[61] F.C. Nwoke et al *op.cit* 100 – 101 See Itse Sagay. The Judiciary in a Modern Democracy "in T.A. Aguda et al (ed). *Nigeria, Issues in the 1999 Constitution* (Lagos:NIALS. 2000) p. 9; S.O. Uwaifo, "The Court as an Instrument of Justice and Democracy". All Nigeria Judges Conference Papers, 1995 pp. 152 – 154; B.O. Nwabueze, *Ideas and Facts in Constitution Making* (Enugu: Spectrum Books Ltd; 1993).p14.

governance must be taught our people. All governments in Nigeria should adopt annual budget frameworks and guidelines which promote budget discipline, balanced budgets, cost effectiveness, implementation of prioritized projects. Nigerians must nurture and sustain a common culture of excellence, hardwork, patriotism and sacrifice. Tolerance and accommodation must be our watchwords.

Conclusion

Our vision and dream for Nigeria is as stated in the 2001 Kuru Declaration thus:

A truly great African democratic country, politically united, integrated and stable, economically prosperous, socially organized, with equal opportunity for all, and responsibility from all, to become the catalyst of (African) renaissance, and making adequate all-embracing contributions, sub-regionally and globally.[62]

Sustaining the rule of law and democracy in Nigeria's development in the future requires the eradication of poverty in Nigeria. We must create a new Nigeria where Nigerians can be proud to belong to and grateful to inhabit; a Nigeria that promotes self reliance, entrepreneurship, innovation, rewards hard work, protects its people and their property and offers its children better prospects than those they may be tempted to seek in Europe or the United States. All citizens, regardless of gender, race, religion, or political affiliation or opinion, should feel that they have a stake in Nigeria's future and that their loyalty and diligence will be rewarded. Our INEC and the judiciary must constantly remind itself that as the third arm of government it owes this nation a responsibility of ensuring elections (the very heart of democracy) is conducted according to the rules. Cases must be fairly, judiciously and judicially decided in ways that sustain democratic confidence.

The challenge for Nigeria is to devise innovative, ingenious, and autochthonous institutional and structural means predicated on the rule of law, to contain the economic, social, cultural and political pressures that perennially militate against the delivery and consummation of dividends of democracy and good governance ideals. Only this will transform our present democracy into the cherished, sustainable and immortal project for Nigeria's future greatness.

"WE THE NIGERIAN PEOPLE" MUST RISE ABOVE OUR ENCLAVE MENTALITY. We must forgive and accept the fact that although the British Government yoked us together in Nigeria for their own selfish interest (the economic benefit they derived from it.) the Nation is better for it; divided we may

[62] See the NEEDS Handbook (*supra*).

fall, but united we will stand. We must therefore learn to see ourselves as Nigerians pure and simple. We do not need to rethink the Constitution; we need to rethink Nigeria.[63]

[63] A. Augie. *Rethinking the Nigerian Constitution* (Lagos: NIALS, 2008) p.33.