The African Charter on Democracy, Election and Governance and Constitutionalism in Nigeria

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Abstract

The practice of democracy in Nigeria has been rippled with many challenges especially, the lack of democratic culture largely due to long military rule before the year 1999. It is against this background, that this article discusses the African Charter on Democracy, Election and Governance (ACDEG) and Constitutionalism in Nigeria by examining the practice of democracy in Nigeria vis-à-vis the electoral processes and governance in Nigeria. Historical methodology was adopted in this study relying on primary and secondary sources of data. From the study, there is need for the establishment of viable democratic structures in Nigeria anchored on constitutionalism in line with the provisions of the ACDEG. The article therefore, submits that the ACDEG should not only be made justifiable but a mechanism for monitoring

compliance among African nations be put in place like the case of African Peer Review Mechanism (APRM) in the implementation of the New Partnership for Africa's Development (NEPAD) initiative. There should be a mechanism for monitoring, evaluation and enforcement of the ACDEG in Nigeria in order to realize the objectives of the ACDEG.

Key-Words: Democracy, Election, Governance, Constitutionalism, Nigeria

Introduction

It is uncertain whether the African Charter on democracy, election and governance (ACDEG) engenders constitutionalism in Nigeria or constitutionalism occupies a utopia position in the political system. As part of the move for global best practices in governance, democracy is being clamoured for as the alternative to any form of government. Otoide and Akinbi, in this light, observed that, 'if military rule is evil, democracy is better evil'. Accordingly, military rule has in its all benevolence been seen as misnomer and incongruous to any people. In this regard, the term democracy has become so popular that names of more than 20 percent of the world political parties contain some variation of the word *democracy.*This underscores the relevance and how pervasive the word has increasingly become as a political system of governance and/or theory. The quest to establish democracy in Africa has been faced with different challenges and limitations. Nevertheless, the campaign for democracy in the international system has made many African leaders to desire to enthrone democratic system of governance in African states Colonialism and military rule in most African states mitigated a case against democratic norms and values.

Just like Nigeria, most African countries have experienced unconstitutional takeover of government, lack of democracy and governance was at its low ebb. Countries like

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Ghana, Sierra Leone, Cote d' Ivoire, D.R. Congo, Libya, Central African Republic, Liberia, Zimbabwe, Uganda, Sao Tome and Principe, etc, have all experienced unconstitutional takeover of power. The absence of democracy and governance has resulted in the manifestations of different forms of crises in different parts of Africa. Sierra Leone, Liberia, Sudan, Somalia, Rwanda, South Africa, Nigeria, Libya, Egypt, Tunisia, Cote d'Ivoire, Mali, and some others have even experienced civil wars. All of these and many more have given serious concern to African leaders who are committed to ensuring global best practices in the area of government, governance, economy, social development among others, to come together at a roundtable discussion at various fora to discuss the challenges facing Africa and the way forward, so that Africa can be among the First World and industrialized economies.

By way of conceptualization, governance means different thing to different people. Governance is a concept that is assuming an air of importance in the international development vocabulary. Simply put, governance is the act of governing. A glance through political science literature and archival materials shown that Governance is an important signal of a new shift in thinking. The world Book Encyclopedia Dictionary sees governance as “government; rule; control”. The New Webster's Comprehensive Dictionary of the English Language, Encyclopedic Edition, defines governance as

"exercise of authority; direction; control". It also sees governance as a "manner or system of government or regulation."

In the views of Hyden and Braton, governance is seen as "the conscious management of regime structure with a view to enlarging the legitimacy of the public realm." The legitimacy talked about in this definition is the acceptability of the people who puts such government in place to govern them. This presupposes that government derives its legitimacy only from the people, which is one of the core values of democracy (election of representatives by the people). This emphasizes the fact that the leaders are trustees of the peoples' mandate. Sovereignty, indeed, belongs to the people from where government derives its powers and authority. It is the exercise of authority through formal and informal traditions and institutions for the common good. Governance includes the process of selecting, monitoring, and replacing governments. It includes the capacity to formulate and implement sound policies, and it assumes respect for citizens. From this framework, according to Jain, governance can be explained as consisting of six different elements:

(i) voice and accountability, which include civil liberties and freedom of the press,

(ii) political stability,

(iii) government effectiveness, which includes the quality of policy making and public service delivery,

(iv) quality of regulations,

(v) rule of law, which includes protection of property rights and

an independent judiciary, and

(vi) control of corruption.

The above conceptualization implies that any system of government that has the above mentioned attributes qualifies to be termed good governance. Nevertheless, Egwemi is of the view that to prefix governance with either good or bad is superfluous, in that, governance is self-explanatory, given its meaning. And coming to the *third World*, governance is most time prefixed with 'democratic'. This notion entails that there is a nexus between democratic values such as constitutionalism and the development of a political system; be it political, economic or otherwise. It against this background that African Union promulgated the African Charter on Democracy, Election and Governance (ACDEG) to guide the practice of democracy, election and governance in Africa. The African Charter on Democracy, Election and Governance (ACDEG) is a very important document on democracy, election and governance in Africa because it is a conglomeration of several previous Declarations and was intended to affirm, strengthen and enhance such Declarations as The 1990 Declaration on the Political and Socio-Economic Situation in Africa.

In their views, Micha Wiebusch, Aniekwe and Oette, traces a genealogy of the African Charter on Democracy, Elections and Governance (ACDEG) and examines the charter's overall implementation. They espouses that, While there has always been a struggle between competing views of how to ensure more or less continental accountability for norms related to democratic governance in Africa,

enforcement by the African Union (AU) has definitively become more robust since the ACDEG's adoption. They argue that this development is observable in three trends: continental legalization, technocratization and judicialization of politics. The Micha Wiebusch, Aniekwe and Oette's study evaluates the growth of normative commitments in the field of democracy, elections and governance and their increasing consolidation into binding legal treaties; explores the increasing reliance on AU technical assistance in the implementation and interpretation of these instruments; and assesses the expanding role of continental and regional judicial bodies in enforcing commitments to democracy. Thus, their study was not designed to interrogate if the Nigerian State has adhered to the tenets of the ACDEG and at the same time endegers constitutionalism in Nigerian political system. This is the gap and problematic that this seeks to interrogate and make a case therein.

AU Charter on Democracy, Election and Governance: A Discourse Analysis

The objectives of the ACDEG as contained in Chapter 2 Objectives Article 2 are to:

1. Promote adherence, by each State Party, to the universal values and principles of democracy and respect for human rights;
2. Promote and enhance adherence to the principle of the rule of law premised upon the respect for, and the supremacy of, the Constitution and constitutional order in the political

arrangements of the State Parties;
3. Promote the holding of regular free and fair elections to institutionalize legitimate authority of representative government as well as democratic change of governments;
4. Prohibit, reject and condemn unconstitutional change of government in any Member State as a serious threat to stability, peace, security and development;
5. Promote and protect the independence of the judiciary;
6. Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance;
7. Encourage effective coordination and harmonization of governance policies amongst State Parties with the aim of promoting regional and continental integration;
8. Promote State Parties' sustainable development and human security;
9. Promote the fight against corruption in conformity with the provisions of the AU Convention on Preventing and Combating Corruption adopted in Maputo, Mozambique in July 2003;
10. Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;
11. Promote gender balance and equality in the governance and development processes;
12. Enhance cooperation between the Union, Regional

Economic Communities and the International Community on democracy, elections and governance; and

13. Promote best practices in the management of elections for purposes of political stability and good governance.

A critical look at the provisions of the Charter and political developments in Africa and Nigeria in particular, suggest that the people do not actually desire democracy for what it is but for them to have an alternative form of government in the wave of the campaign for global democracy: "if military rule is evil, democracy is better evil" and therefore, military rule has in its all benevolence been seen as misnomer and incongruous to the people. According to Agenyi, "Nigerians want democracy but they don't to abide by its tenets and that accounts for there is nothing democratic about the system of governance in Nigeria."

This study is of the view that there is a gross misunderstanding about democracy and democrisation among many Nigerians as they think that it is an opportunity or freedom of choice in association and the process of government.Democratisation on its own differs from democracy, but more or less could be said to be Siamese twin and are sometimes used to mean or explain the same thing. Democracy according to Appadorai"may be described as a system of government under which the people exercise the governing power either directly or through representatives periodically elected by themselves." From this notion, governing power lies with the people but this power of course, is either directly or through representatives who are elected by

the people. This underscore the fact that all the citizens cannot be in government or exercise governmental powers at the same time, but the citizens must also realize their rights to recall erring representatives rather waiting for the next election to vote them out.

On the other hand, democratization is a process and transcends the change from one-party, military or communist rule to multi-partyism in Eastern Europe, the former Soviet Union and Africa, and Nigeria in particular. To liken democracy to this is to suggest that …multi-partyism is synonymous with democracy. Democratisation, in the fullest sense of the term, has a much wider meaning and compass than multi-partism. It must seek, in addition, to democratise the society, the economy, politics, the constitution of state, the electoral system and process, and the practice of government. He continued further that, not only does the society need to be democratised, it must be a society founded upon freedom, justice and the equal treatment of all citizens by the state; it must be an ordered, stable society, one infused with the spirit of liberty, justice, equality, the Rule of Law and order.

The foregoing are preconditions for a stable society that is conducive for development as every citizen of such society will believe in the government and the spirit of patriotism and nationalism will be the guiding principles of actions in any matter. The agitation from various groups for recognition or secession in Nigeria will sink into oblivion if the people have a sense of belonging and their rights protected. It should be noted, however, that the conditions described above is

achievable or feasible in a democracy. Hence, the desire of African leaders to achieve these through democracy; which was evident in the various Declarations under the auspices of OAU/AU and the ultimate one, was the ACDEG.

The above narrative suggests that democracy is for the 'common good'; but suffice to say that election is the life wire of democracy as it is the gateway to choosing the best of leaders that would galvanize the state resources and realize this common good. Democracy, election and governance are in the best interest of the people-the ruler and the ruled. Anything short of the 'common good', where the ruler is a profiteer and the people disenchanted, is a recipe for chaos and disintegration as the people will want to survive. The enthronement of democracy and democratisation is undoubtedly desirable by any people and Nigerians in particular. This view has been corroborated when Olorutimehin, opines that democracy is about the establishment of good government. A government does not exist for its own purpose but for the purposes of serving the needs, protecting the interest of the citizens of that community. He described such community as a political community. Nigerians desire and deserve democracy in its purest form and in line with the ACDEG objectives and various provisions.

However, it should be noted that the enthronement of democracy is not like a volcanic eruption and therefore, not abrupt. In which case, it is a process that needs to grow and develop over time. In this light, Nwabueze stated that, constitutional democracy, like other form of government, is an

art which has to be learnt and developed, and the learning involves of process of experimentation over time, of trial and error. He concluded that, it is wrong therefore to think that the experiment should not begin unless and until all the factors necessary for its success are present. These factors can be created or developed in the course of the experimentation. While certainly, it functions better under conditions of modernity and development, constitutional democracy is not a form of government for civilized or developed societies only.In this regard, Nigerians must rise to the occasion to demand for justice for violators of electoral laws, demand governance and the judicial system must live up to its constitutional responsibilities without prejudices.

The ACDEG and Constitutionalism

The practice of democracy is only made possible through constitutionalism. The activities in the electoral processes and the delivery of governance are germane to the thriving of democracy, thus, to enforce the ACDEG in Nigeria, we must embrace constitutionalism as it is one the basic principles that guarantees stability, security and development of any society. The absence of constitutionalism in any society threatens the continuous existence of such society. This is true because, lawlessness and anarchy would reign. Constitutionalism as a principle states that the government itself is subordinate to the law.

The practice of democracy in Nigeria has fallen below global best practices given the apparent violation of the

constitution by the people in positions of authority as they choose which part of the constitution they want to obey and the one not to obey. This undermines the essence of and the Principles of the Rule of Law which stipulates that the Law is supreme, superior and generally acceptable as the mode of determining and dispensing justice in a given state, like Nigeria.

The Rule of Law can be expressed as constitutionalism which opines the subordination of government and the people to the law. The law is above all and no respecter of persons. The Rule of Law can be summarily said to be anti-despotism, anti-authoritarianism, anti-totalitarianism and anti-dictatorialism or anti-dictatorship. This is what democracy represents. The ACDEG seeks to enthrone democracy and all its values in Africa so as to end despotism; to end authoritarianism, to end totalitarian and dictatorial regimes. ACDEG seeks to put in place a government that is for the people and who will deliver on governance so as to pull Africa out from the shackles of poverty, underdevelopment, and industrial backwardness. This study unlike Wiebusch, Aniekwe andOette, in their work "The African Charter on Democracy, Elections and Governance: Past, Present and Future", submits that the ACDEG should not only be made justiciable but a mechanism for monitoring compliance among African nations be put in place like the case of African Peer Review Mechanism (APRM) in the implementation of the New Partnership for Africa's Development (NEPAD) initiative.

There should be a mechanism for monitoring and

enforcement of the ACDEG in Nigeria is there must be realization of the objectives of the ACDEG given the political culture in Nigeria where political participation is still lukewarm on the part of most citizens who are not interested in the process given the many unconstitutional practices, such as money-bag politic, votes buying and the huge financial demands involved in running for any political office. In the view of Isa, the idea of politicians to pauperize the people through non-payment of salaries and wages and turning around to bring emergency succour to the people during the time of elections has made most Nigerians susceptible to the vote buying antics of Nigerian politicians and therefore not good for Nigeria's democracy. This can be aptly described as the politics of poverty; as a consequence, the conscience of the electorate is regrettably sold to the highest bidder in an election which is against the spirit and letters of the Charter.

In the views of Ikpelemoh, the absence of punitive action for violators of electoral offences and the constitution has made it difficult to contain or nip in the bud the ugly incidences of election rigging, ballot box snatching and thuggery during elections. Worse still, he added, there seems to be a collaborative system between the powerful politicians and the security agencies in some cases where thugs indulge in electoral malpractice without any attempt to curtail them by the security officers on duty. This is rather sad and unacceptable. He concluded that for democracy to thrive well in Nigeria, all hands must be on deck and respect for the rule of law must take its prime position.

Conclusion

The article discusses the African Charter on Democracy, Election and Governance (ACDEG) and Constitutionalism in Nigeria by examining the practice of democracy in Nigeria vis-à-vis the electoral processes and governance in Nigeria. From the study, the democratic system in Nigeria has not come near global best practices, as they are good number of flaws here and there, and agitation from various groups for change and improvement. There is need for the establishment of viable democratic structures in Nigeria to make the country a global power in international politics in terms of economic viability, infrastructural development, governance, human rights, security. The article, therefore, submits that the ACDEG should not only be made justifiable but a mechanism for monitoring compliance among African nations be put in place like the case of African Peer Review Mechanism (APRM) in the implementation of the New Partnership for Africa's Development (NEPAD) initiative. Thus is the angle that the submission of this paper is different from the study of Wiebusch, Aniekwe and Oette. There should be a mechanism for monitoring, evaluation and enforcement of the ACDEG in Nigeria in order to realize the objectives of the ACDEG. Constitutional democracy can be realized, if only the rule of law takes its pride of place. Until Nigeria resorts to constitutionalism, the legal framework for the realization of the objectives of the ACDEG will still dangle in the pendulum.

The followings recommendations would help in enforcing the culture of democracy in Nigeria and the

realization of the African Charter on Democracy, Elections and Governance in Nigeria:

i. The Constitution must be reinforced through the Judiciary by trying and punishing offenders before, during and after elections and delivering justice according to the law.
ii. The Principle of Separation of Powers must be reinforced to guarantee the independence of the various Arms of Government, particularly to the judiciary.
iii. The Rule of Law must be allowed to operate freely. The Rule of Law is what democracy represents. The ongoing amendment of the 1999 constitution must continue to reflect the realities of the current state of affairs in Nigeria and ensuring global best practices.
iv. The conduct of credible elections has no alternative in a democracy. Election is the life wire of democracy. Nigerians must strive to ensure the conduct of free, fair and credible elections. Accordingly, electoral laws must be made enforceable without compromise to serve as punitive measures for intending law breakers.
v. The government must respect the social contract between her and the people to deliver the dividends of democracy for the common good of all Nigerians. Governance is must be taken seriously.
vi. There is need for socio-cultural reengineering of the political class in their attitudes and the operations of

the current political system in Nigeria where might is right. They must respect the law and democratic institutions; they must give up on the "do or die" approach to elections (seeking to win by all means).

vii. Political parties must imbibe the culture of internal democracy within the parties and avoid imposition of candidates and other anti-democratic principles.

viii. The place of opposition political parties in a democracy is paramount; therefore opposition parties must be allowed to thrive. The proliferation of political parties will rather weaken opposition and Nigeria may slip into a one party state, if not checked.

ix. Aggressive political socialization should be embarked upon to broaden Nigerians' political culture and ensure re-orientation of the citizens for better political participation and to accept the need for a tolerant political culture in Nigeria, given the divergence of ideologies and the multicultural nature of the Nigerian State.

x. The government, citizens, political parties, the media, civil society groups, pressure groups, and the electoral commission, must work in collaboration with one another to ensure credible elections so as to strengthen Nigeria's democracy and deliver on governance.

xi. The law enforcement agencies must be enlightened to

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respect the rights of law abiding citizens, electoral observers and their roles in an election. They should be re-oriented to understand democratic and civil policing and security as against military policing. The military must continue to be professionalized and be taught the rudiments of helping political office holders to deliver good governance. This will reduce cases of avoidable clashes with men of the force and civilians

xii. Election is a civilian and/or civic engagement and as such, should be treated accordingly. Thus, the Nigerian Police and other Security Agencies must approach elections as a civic engagement as against the manner that can be likened to a war situation by reducing the number of security or armed personnel deployed for election duties. The act of "over-policing" in elections often times create fears in the electorates as they anticipates violence and therefore could lead to voters apathy or low voters turnout in elections.

xiii. Building of institutions that guarantee the realization of the ideals of democracy, equity and justice must be given concerted efforts. Individuals would come and go but institutions would remain. It is therefore germane that Nigerians must make the various institutions of government work effectively without emotions and prejudice.

Endnotes

Otoide, L.E. and Akinbi, J.O., "Democracy: A Sine Qua Non to National Development in Nigeria". *International Journal of Social and Policy Issues, Vol. 2, No. 1&2, 2004*. p.32

See Kenneth Janda, et al, *The Challenge of Democracy*…cited in pp.32-33

LayiEgunjobi, "Urban Governance and Quality of Urban Physical Environment in Nigeria", in AdepojuOnibokun and AdetoyeFaniran (eds.) *Governance and Urban Poverty in Anglophone West Africa,* monograph series 4. Ibadan: Centre for African Settlement Studies and Development (CASSAD), 1995, pp. 127-143

The World Book Encyclopedia Dictionary, Vol. 1, USA: Doubleday & Company, Inc. 1963.

The New International Webster's Comprehensive Dictionary of the English Language, Encyclopedic Edition, Florida: Typhoon International Corporation, 2003.

LayiEgunjobi, "Urban Governance and Quality of Urban Physical Environment in Nigeria", in AdepojuOnibokun and AdetoyeFaniran (eds.) *Governance and Urban Poverty in Anglophone West Africa,* Monograph Series 4. Ibadan: Centre for African Settlement Studies and Development (CASSAD), 1995, pp. 127-143

R.B. Jain, "Good Governance, Bureaucracy and Development" in Ahmed ShafiqulHuque and Habib Zafarullah (eds.) *International Development Governance,*(Boca Raton: Taylor & Francis Group, 2006). pp.529-543

Victor Egwemi, "Democratic Governance and the 'Common Good': Some Thoughts on the Obasanjo Years 1999-2007", in *Anyigba Journal of Arts and Humanities, Vol. 4*, *December 2005-2007*. pp.104-119.

African Charter on Democracy, Elections and Governance (ACDEG)

See Otoide, L.E. and Akinbi, J.O., Democracy: A Sine Qua Non to National Development in Nigeria. *International Journal of Social and Policy Issues, Vol. 2, No. 1&2, 2004.* p.32

Arome Agenyi, Historian and Public Affairs Analist, c.38, Abuja, 3/21/2022

The author's engagements with artisans, market women and some youths in Kogi State reveals that democracy only gives them opportunity to choose their leaders and the elected leaders did not perform in office, they will wait till the next election to send him out of office. They do not believe they can do anything otherwise because, this is Nigeria and when one gets into office it is difficult to send him out before the next election.

A. Appadorai, *The Substance of Politics,* New Delhi: Oxford University Press, (Oxford India paperback), 2000, p.137

B.O. Nwabueze, Democratisation, Ibadan: Spectrum Law Publishing, 1993, p.1

B.O. Nwabueze, Democratisation, Ibadan: Spectrum Law Publishing, 1993, p.1

B.O. Nwabueze, Democratisation, Ibadan: Spectrum Law Publishing, 1993, p.2

Professor, Olorutimehin's comment was cited in M. Ayo Ajomo, *et al*, *Nigeria: Democracy and the Rule of Law*, The Fourth Obafemi Awolowo Foundation Dialogue. Ibadan and Lagos: Spectrum Books Limited and Obafemi Awolowo Foundation, 1996, p.59.

B.O. Nwabueze, *Democratisation*, Ibadan: Spectrum Law Publishing, 1993, p.2

B.O. Nwabueze, *Democratisation*, Ibadan: Spectrum Law Publishing, 1993, p.54

B.C. Nwankwo, *Authority in Government: Nigeria and World Politics, Revise Edition*, Onitsha: Abbot Books Limited, 2002. p.48

Interview with Mr. Aminu Isa, c.44, Political Scientist and Public Affairs Analyst, Lokoja, 18/7/2018

Interview with Mr. Emmanuel Ikpelemoh, c.49, Politician and Former Vice Chairman, Ogori/Magongo LGA of Kogi State, Lokoja, 18/7/2018

Interview with Mr. Emmanuel Ikpelemoh, c.49, Politician and Former Vice Chairman, Ogori/Magongo LGA of Kogi State, Lokoja, 18/7/2018

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