

**NIGERIA AT 50: AN X-RAY
OF THE RULE OF LAW**

A PAPER PRESENTED

BY

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1. INTRODUCTION

I regard it as an honour and a privilege to have been invited to participate in the Law Week program of the Benin Branch of the Nigerian Bar Association. In the letter dated 7th June, 2010 jointly signed by the Chairman and the Secretary of the 2010 Law Week Committee, I was invited to discuss a paper on the topic: Nigeria At 50 - An X-Ray Of The Rule Of Law.

The letter did not indicate the name of the lead presenter. That notwithstanding, I readily obliged the committee and expressed my willingness to discuss the topic.

When I accepted the invitation, I assumed that a copy of the lead paper would be forwarded to me to enable me peruse the contents for a proper discussion of the subject. Unfortunately, I did not have the benefit of seeing the paper before the commencement of the Law Week. In the absence of a preview of the lead paper, I have put together my own position on the subject.

I must commend the members of the organising committee for including this topic which is quite appropriate for our consideration at this time of the nation's political history. Coming at the heels of the celebration of our golden jubilee, this forum presents a veritable opportunity for members of the legal profession to take stock of our journey so far and to articulate our views on the way forward.

2. POLITICAL HISTORY OF NIGERIA

Nigeria became independent on the 1st of October, 1960. At independence, the country emerged as a Federation of three regions corresponding to the major ethnic groups to wit; the Northern Region, the Western Region and the Eastern Region.

The country operated a parliamentary system of government with Sir Abubakar Tafawa Balewa as the Prime Minister.

Shortly after independence, ethnic tensions were generated across the country. The tensions were fueled by the results of the population censuses conducted in 1962 and 1963 together with the trial of some leading opposition politicians for alleged treason. In 1963 an eastern section of the Western Region

was carved out to form a new region, the Midwestern Region. Matters deteriorated during the violence-marred elections of 1964 and on January 15, 1966, some junior army officers revolted and killed Prime Minister Balewa and several other politicians. Major General Johnson Aguiyi-Ironsi, the then commander of the army and of Igbo extraction, emerged as the country's new head of state.

Immediately he assumed office, Ironsi suspended the constitution and brought the bulk of the public service under the control of the federal government. On July 29, northern backed army officers staged a countercoup, assassinating Ironsi and replacing him with Lieutenant Colonel Yakubu Gowon. The coup was followed by the massacre of thousands of Igbo indigenes in the northern parts of the country.

In May 1967, General Gowon announced the creation of a new 12-state structure. The creation of more states did not solve the problems of inter-ethnic conflicts. The leaders of the Igbo in the Eastern Region took a drastic step in the month of May, 1967. They declared their independence as the Republic of Biafra, with Col. Ojukwu as the head of state.

The federal government rolled out their troops to quell the Biafran rebellion and the civil war commenced in July, 1967. A bitter war of attrition continued until January 1970 when the better equipped federal forces overcame the rebels and the country was re-united. Thereafter, Gowon announced that he would remain in power for six years to ensure a smooth transition to civil rule.

In 1974, Gowon announced that the return to civilian rule would be postponed indefinitely. This provoked a bloodless coup which ushered in the regime of Brigadier Murtala Ramat Muhammed on July, 29, 1975. Muhammed moved quickly to address some key issues. He replaced corrupt state governors. He purged the incompetent and corrupt members of the public service and took a decision to return the country to civil rule in 1979.

The political reforms of Muhammed were quite popular with many Nigerians. However, on February 13, 1976, he was assassinated in a coup attempt. His administration continued in power under the leadership of Lieutenant General Olusegun Obasanjo, who continued the reforms of Muhammed and created seven new states. He commenced a constitution reform, culminating in the promulgation of the 1979 Constitution which adopted

the American-style presidential system of government. The new constitution ushered in Nigeria's Second Republic on the 1st of October, 1979.

The second republic commenced on a controversial note. The 1979 presidential elections were most controversial. In the said elections, the candidate of the National Party of Nigeria (NPN), Alhaji Shehu Shagari won the largest number of overall votes, plus 25 percent of the votes in 12 of 19 states and 20 percent of the votes in a 13th state. The results provoked a major constitutional crisis. The constitutional requirement was for the winning candidate to score at least 25 percent of the votes in two-thirds of the states of the Federation.¹ The question which arose was: Did the constitution require Shagari to win 25 percent in 13 whole states (which he had not done)? Or did it require him to win 25 percent in 12 and two-thirds states (which he had done)?

The matter was the subject of intense litigation in court. The Supreme Court ruled in favour of the latter proposition and gave the election to Shagari.² The verdict of the apex court has been the subject of debates ever since.

Upon assumption in office, the new federal, state and local governments embarked on ambitious programs and projects to develop the country. In 1982, the world oil market collapsed, leaving the country with huge debt burdens. The country was riddled with corruption and other social vices.

In the midst of this crisis, another general election was conducted in 1983. The NPN claimed a landslide victory over several opposition parties amidst widespread protests.

On New Year's Eve of 1983, some army officers led by Major General Muhammadu Buhari overthrew the Shagari government in a bloodless coup. Initially, the Buhari regime enjoyed widespread support but they soon became rigid and repressive. They prohibited public discussions on critical national issues culminating in the detention of journalists and perceived government critics.

The intolerance of the Buhari regime provoked a palace coup which ushered in the regime of General Ibrahim Babangida. Babangida maintained a firm grip on power and soon became a maximum ruler. In May 1989, he lifted the ban on political activities, created two political parties, the Social Democratic Party (SDP), and the National Republican Convention (NRC). Federal legislative elections were held, together with elections into the

1. See section 126(2) of the 1979 Constitution of the Federal Republic of Nigeria.

2. *Awolowo v Shagari & Ors* 1979 All NLR 120 at 123.

legislatures and executives of the states, while the presidential elections were delayed.

Meanwhile, there was a curious political contraption with a military president at the federal level while at the states, there were civilian governors working under a democratic system with Houses of Assemblies in place.

Subsequently, on June 12 1993, the presidential elections were held and when the initial results showed that a southerner, Alhaji Moshood Abiola was clearly in the lead, the federal government annulled the elections, much to the chagrin of the populace.

There followed, widespread protests against the Babangida regime which forced him to step aside and hand over to an interim government. The new interim government headed by Chief Ernest Shonekan only lasted for three months before they were ousted by General Sani Abacha. The Abacha regime which was quite unpopular came to an abrupt end in June, 1998 when he died suddenly of a cardiac arrest.

Major General Abdusalam Abubakar succeeded Abacha and executed a most expeditious transition program culminating in the election of Chief Olusegun Obasanjo as Head of State. Obasanjo was at the helm of affairs for two terms from 1999 to 2007.

In May, 2007, Alhaji Umaru Yar'Adua took over as President of the Federal Republic of Nigeria. On the 5th of May 2010, President Yar'Adua passed on after a protracted ailment and Dr. Goodluck Jonathan was sworn in as the executive President of the Federal Republic of Nigeria. That has been the journey so far in the nation's political history.

3. THE RULE OF LAW IN NIGERIA

The concept of the rule of law finds its origins in the theories of some of the early philosophers and scholars. According to **Aristotle**, *"the rule of law is preferable to that of an individual."*³ Similarly, **Henry Bracton**, writing in the thirteenth century, maintained that *"the king himself, ought not to be subject to any man, but to God and to the law, because it is the law that makes him king"*

The modern phase of the concept was propagated by **A.V. Dicey**. In his lectures delivered at the University of Oxford as a Vinerian Professor of English Law. Dicey identified three aspects of the concept of the rule of law.⁴ According to him; first, the concept means the absolute supremacy or predominance of the regular law as opposed to the influence of arbitrariness. He maintained that

3. See Politics 111, 16 (trans Jowett Ed. Davis)

4. A. V. Dicey: Introduction to the Study of the Law of the Constitution.

powers, whatever their extent, must be exercised in accordance with the ordinary laws of the land. Dicey's second aspect emphasized the principle of equality before the law. He said that every citizen including the officials of government must be amenable to the jurisdiction of the ordinary courts of the land.

Thirdly, according to Dicey, the rule of law may be used as a formula for expressing the fact that in England, the law of the constitution is not the source but the consequence of the rights of individuals as defined and enforced by the courts.

There is a consensus among legal scholars that the exposition of Dicey on the concept cannot fit into every legal system. Some aspects of his theories have been faulted by scholars over the decades.

Speaking on the views of Dicey, a prominent and prolific Nigerian jurist, **Hon. Justice Niki Tobi JSC**, maintained that in Nigeria, the position is not as simple as Dicey put it.⁵

According to him, the expression "arbitrary power" is quite subjective and therefore gives a nebulous concept of the doctrine. It is known that the idea of arbitrariness arises when an exercise of executive power is not authorised by law. The learned jurist maintained that in Nigeria, under the era of the military, there were certain executive actions which were prohibited by the constitution but authorised by the regular law of the state. Decrees were promulgated to suspend the operation of some constitutional provisions.

Furthermore, Hon. Justice Niki Tobi faulted the principle of equality before the law on the ground that it is common in most legal systems to confer special immunities and privileges on certain category of persons.⁶ Similarly, Dicey's theory of subjecting every citizen to the ordinary courts of the land is not always correct. There exist some special commissions, tribunals or quasi-judicial bodies which are not regular courts and yet are involved in the enforcement of the law.⁷

Finally, Dicey's third postulation may be true of the United Kingdom where they operate an unwritten constitution, but in Nigeria, the fundamental rights of the individual are entrenched in the constitution and not merely derived from the pronouncements of the courts. In its more extensive sense as described by Professor John Rawls, it is "a complex of rights and duties defined by institution"⁸

5. Tobi: The Rule of Law And Anti-Corruption Crusade in Nigeria, 9th Justice Idigbe Memorial Lecture, 2008

6. For example see the Diplomatic Immunities and Privileges Act, 2004; Legislative Houses (Powers and Privileges) Act 2004.

7. See for example the various Election Petition Tribunals established under the Constitution.

8. John Rawls: A Theory of Justice, p. 210

The system of public rules that comprise that legal order defines the limits of that liberty. Where the rule of law operates, no limitation of liberty is recognized except as imposed by the law. Thus, in the old case of Eleko v Government of Nigeria,⁹ it was decided that all government powers to interfere with individual rights must be justified by public rules conferring that power.

An X-Ray of the application of the concept of the rule of law in the course of the nation's political history will reveal a chequered approach depending upon whether it is a civilian or a military dispensation. During the periods of military rule, the ordinary laws were in abeyance. The military ruled through decrees and edicts, they introduced clauses to place these draconian legislations above the Constitution and the ordinary laws of the land. In some instances, they introduced ouster clauses to exclude the intervention of the courts. The military rulers were above civil laws. The rights of the citizens were violated with impunity.

In the classical case of Lakanmi v Attorney – General,¹⁰ which some scholars have described as a challenging piece of “legislative judgment”, the Federal Military Government, in a swift and decisive reaction to the decision of the Supreme Court, promulgated a decree,¹¹ to quash and nullify the judgment of the Court. In another case which came up, during the regime of the Buhari/Idiagbon junta, Ademola J.C.A. was quite blunt when he stated that “*In matters of civil liberties in Nigeria, the courts must now blow muted trumpets*”¹²

Again in the celebrated case of Nwosu v Imo State Environmental Sanitation Authority and Ors,¹³ Alfa Belgore J.S.C. conceded the point as follows: “*We have lived with their Decrees (whether by the Supreme Military Council or the Armed Forces Council, in fact nomenclature is not relevant) for long now that there should be no doubt as to the meaning of their ouster provisions. Their Decrees, they always emphasise for the avoidance of doubt, are supreme even to the constitution. It is for that purpose that legal practice will attract more confidence if administrative avenues are pursued rather than the journey of discovery inherent in court action in such matters.*”

In their verdict in the case involving the arbitrary proscription of the Guardian Press, delivered on the 28th of May, 1999 (the last day of military rule in Nigeria), the Supreme Court still upheld the validity of the ouster clause

9 (1931) A.C. 662

10. (1970) Vol. 6 NSCC 143 at 164

11. Supremacy and Enforcement of Powers Decree No. 28 of 1970.

12. *Wa Ching Yao v Chief of Staff* Suit No. M/106/84 delivered on 28/05/84

13. (1990) 2 NWLR (Pt. 135) 688 at 727.

excluding the jurisdiction of the Court. In their view *“the exercise of jurisdiction by the courts is founded on the provisions of the constitution and any other jurisdiction that may be vested in them by any other law. Courts are bound to observe the provisions of the constitution and other enabling laws in the exercise of their jurisdiction. No court has jurisdiction where a Decree has ousted its exercise of jurisdiction. No court has jurisdiction to consider the validity of such Decree or the scope of the Decree so made. Any decision made on the exercise of such jurisdiction shall be null and void.”*¹⁴

Under the civilian dispensation, the concept of the rule of law has been tested and tried in some matters. Since Nigeria returned to democracy in May, 1999, the citizenry have become more conscious of their constitutional rights and obligations. They have constantly approached the courts to assert their rights against persons and institutions. We will refer to some landmark decisions by the courts in recent times and assess the level of compliance to such decisions. This in essence is the litmus test for determining our level of commitment to the concept of the rule of law.

It must be asserted that it is to the eternal credit of the late Head of State, Alhaji Umaru Yar’Adua, that the nation can confidently be identified as a country where our courts have the final word in the resolution of all disputes. The decision of the Supreme on any matter is final and binding on all persons and authorities

In the celebrated case of Attorney-General of Lagos State v Attorney General of the Federation,¹⁵ the Lagos State Government purportedly created some new local government council areas within the state. The Federal Government took objection to the exercise and directed the Lagos state government to dissolve the new councils. The Lagos state government called the bluff of the Federal government. In a swift reaction, the Federal government ordered the Minister of Finance to forthwith withhold all funds accruable to all the existing Local Government Councils in Lagos state until the creation of the new councils was reversed. The Lagos state government sued the Federal Government and sought *inter-alia* a declaration that the act of the Federal Government was **ultra vires**. In a landmark judgment, the Supreme Court declared the action of the Federal Government unlawful. They stated *inter-alia* as follows:

“If the Federal Government felt aggrieved by Lagos State creating more more Local Governments, the best solution is to seek redress in a court of

14. A.G. of Federation v Guardian Newspapers (1999) 5 All N.L.R. 1 at 3; 15. (2004) All NLR 90 at 133

*law, without resorting to self-help. In a society where the rule of law prevails, self help is not available to the Executive or any arm of government*¹⁶

It is worthy of note that after the verdict of the apex court the Federal government submitted to the directives of the court and started to disburse the allocations due to the existing council areas in Lagos state. This was in compliance with the doctrine of the rule of law.

Another landmark decision which projected the practice of the rule of law was the case of Governor Peter Obi v INEC.¹⁷ The appellant, Peter Obi was sworn in as the Governor of Anambra State on the 17th of March, 2006 upon his victory at the election tribunal which unseated Dr. Chris Nigige from office. The basis of the present case was that by the provisions of section 180(2) (a) of the Constitution of the Federal Republic of Nigeria, 1999, Obi contended that his four year tenure of office as Governor commenced from the date he was sworn in as Governor and that election into that office ought not to be held on 14th April, 2007 because that office will not be vacant on that date.

Despite the suit in court, the INEC went ahead to conduct fresh elections. One Dr. Andy Uba was declared the winner and he was sworn in as the newly elected Governor of Anambra State.

Meanwhile, Obi continued with his suit in the court. He lost at the trial court and at the court of appeal but at the Supreme Court, his mandate was restored. The apex court held that the tenure of office of Obi commenced from the date when he took the oath of office and would not expire until 17th of March, 2010.

Dr. Andy Uba was ordered to vacate the office of Governor of Anambra State with immediate effect to enable Peter Obi exhaust his term of office. Dr. Uba complied with the verdict of the apex court, the rule of law prevailed.

The other case that comprehensively pronounced the enforcement of the rule of law was the case of Rt. Hon. Rotimi Chibuike Amaechi v INEC.¹⁸ Amaechi contested and won primary elections for the PDP gubernatorial elections for Rivers State. His name was removed by the party and the name of one Celestine Omehia was substituted. Amaechi challenged his substitution but while the matter was pending in the court, elections were held and his substitute,

16. per Niki Tobi JSC at p. 133 (supra)

17. (2007) Vol. 13 All NLR 258 ; 18. (2007) 13 All NLR 354

Celestine Omehia, was elected governor and sworn in. Thereafter, the Supreme Court gave its verdict and ordered that he vacate the office, and Amaechi be sworn in as governor. The judgment is unprecedented in Nigerian jurisprudence. Like the Obi case, the Federal Government directed the law enforcement agents to give effect to the judgment. Amaechi was sworn-in and has remained as the governor of Rivers State ever since.

The list of such landmark judgments will not be complete without mentioning the case of Edo State, where INEC declared Professor Oseirhemen Osunbor as the governor after the 2007 gubernatorial election. The petitioner Comrade Adams Oshiomole challenged the result on the grounds of multiple electoral malpractices. The Elections Petition Tribunal invalidated the election of Osunbor and declared Comrade Oshiomole as the lawful governor of Edo State. The verdict was affirmed by the Election Appeal Tribunal.¹⁹ Once again, the Federal Government gave its nod to the enforcement of the judgment to uphold the rule of law and Comrade Oshiomole was sworn in as Governor.

From our judicial excursion through the cases, it is evident that in our present democratic dispensation, there is substantial compliance with the dictates of the law irrespective of the political affiliations of the parties.

Although some of these decisions may not be free from criticisms, the point which we are trying to make is that there is a growing tradition of adherence to the law. What is the law? According to Mr. Justice Holmes, *“The prophecies of what the courts will do in fact, and nothing more pretentious are what I mean by the law”*²⁰ Of course, it is the constitutional duty of the courts to determine the rights and obligations of citizens.²¹ It is heartwarming to note that in the current dispensation, this is precisely what the courts are doing.

4. CONCLUSION

We commenced this presentation by charting the course of the nation’s political history. Since Nigeria attained independence, the country has experienced almost three decades of military rule.

This period was characterized with the exercise of arbitrary power. The rights and the liberties of the citizens were subject to the whims and caprices of

19. INEC v Oshiomole (2009) 174 LRCN 178; 20. “The Path of The Law,” Collected Papers, at p.173

21 Section 6(6)(b) of the Constitution of the Federal Republic of Nigeria, 1999

the hegemony of military dictatorships. The courts were emasculated by obnoxious decrees and edicts. The rule of law was effectively in limbo.

The return to civilian rule signaled the resurrection and the restoration of the rule of law. In the current dispensation, the courts have been in the vanguard towards the enforcement of the rule of law.

On the balance there have been courageous decisions to demonstrate the fact that in Nigeria, the concept of the rule of law is very much alive and potent.

The Nigerian judiciary has lived up to the expectations of the populace by reinforcing its role as overseer of the rule of law and legality.

As the nation prepares to celebrate its golden jubilee, expectations are high that a democratic Nigeria would continue to uphold the tenets of the rule of law in order to maximise our immense potentials and to play a leadership role among the comity of nations.

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