

A History of Social Conflict and Conflict Management in Nigeria



A Festschrift for
Professor Biodun Adediran

Edited by
Isaac Olawale Albert

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CHAPTER SIXTEEN

Democratisation and Impeachments in Nigeria's Fourth Republic

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Introduction

... the fate of democracy will be determined not by its expansion, but rather by the performance of at-risk democracies. A list of such countries would encompass more than 50 states ... and virtually all the democracies in Africa. If democracies do not move effectively to ... secure freedom and the rule of law, people will eventually lose faith and turn to authoritarian alternatives ... democracy has been a superficial phenomenon, blighted by multiple forms of bad governance: abusive police and security forces, domineering local oligarchies, incompetent and indifferent state bureaucracies, corrupt and inaccessible judiciaries, and venal ruling elites who are contemptuous of the rule of law and accountable to no one but themselves.¹

The rule of law and its core elements are normatively expected to serve as insurance for the fallibilities of the practitioners of the system of democracy as a political system. Therefore, the presence of democracy devoid of the full complements of the rule of law, constitutes a major problem in many democratising states of the Third World. Since the democratisation processes of the post-Cold War era in many African countries, the failure to adhere to the ethos of democracy has reversed the democratisation processes in some post-conflict countries of the continent consequent upon the loss of confidence by rebels and the opposition in the electoral process besides other deep-seated contradictions in such states. In this regard, Sierra Leone and Liberia readily come to mind.²

1 Diamond, Larry. 2008. *The Spirit of Democracy: The Struggle to Build Free Societies Throughout the World*. Times Books/Henry Holt: New York.

2 Abdullah, Ibrahim. 2004. ed. 'Introduction: Between Democracy and Terror.' Abdullah, Ibrahim. *Between Democracy and Terror: The Sierra Leone Civil War*. Dakar: CODESRIA.

At the wake of the third wave of the democratisation process, it was argued that different routs can be taken towards democratisation³. A decade later, the literature on democratisation present the concept as a single, albeit complex, evolutionary process within and around which defined stages towards the realisation of democracy can be recognised⁴. After another decade, that is, since the 2000s emerging realities present democracy as alienating the people from the state⁵, conflict generating because of failure of power-sharing agreements⁶, and breeding general insecurity consequent upon failed and mismanaged elections⁷.

The extant realities in many of democratising polities present democracy as lacking in the fundamentals of the rule of law such as checks and balances because power is usually centralised and personalised by holders of offices who often manipulate other arms of government because of the unrestrained powers they wield.⁸ In this regard, the executive arm of government has been observed as the guiltiest while the legislature has been the victim in most cases⁹. This phenomenon remains acutely incompatible with the rule of law. This has had unsavoury consequences on peace and the democratisation process in many polities.

Since 29 May 1999, when the fourth democratic republic of Nigeria was inaugurated there have been a stealthy entronement and entrenchment of practises and values that are at variance with democratic values and norms in the constituent states of Nigeria and at the national level. Based on this trend as observed between 1999 and 2004, Nigeria has been

3 Huntington, Samuel.P. 1991. *Third Wave of Democratisation in the Late Twentieth Century*. Norman: OK.

4 Diamond, Larry. 2001. 'Developing Democracy: Toward Consolidation.' Stepan, A. *Arguing Comparative Politics*. Oxford: 295-314.

5 Collier, Paul. 2010. *Wars, Guns and Votes Democracy in Dangerous Places*. London: Vintage.

6 Mehler, Andreas. 2009. 'Peace and Power-Sharing in Africa: A Not So Obvious Relationship'. *African Affairs*, 108/432, 453-44'. In: *African Affairs*, 108/432, 453-473. Oxford University Press. Accessed on 26/10/2011 www.oxfordjournals.org.

7 Osuntokun, Jide. 2011. Nigeria and the Curse of Elections. *The Nation Newspaper*. October 7: 12.

8 Boas, Morten. and Dunn, Kelvin.C. 2007. eds. *African Guerrillas: Raging Against the Machine*. Lynne Rienner Publishers: London.

9 Simbine, Tonia. 2007. *Assessing the Role of the Legislature in a Democracy: A Case Study of Oyo State House of Assembly*. Ibadan: NISER Monograph Series No. 1.

analysed as undergoing a transition to civilian rule while democratisation remains a serious challenge.¹⁰

The victim of the mismanaged democratisation processes in many of these democratising states is the constitution. For instance, one of the most abused provisions in the constitution has been the immunity clause contrary to the intent of the authors of the constitution; it has become a temporary shield for corrupt public officers against prosecution.¹¹ Since the inception of the extant fourth republic, the immunity clause has been one of the reasons why corruption remains endemic and why politics has become attractive to criminals¹². This is because it not only provides protection against prosecution; it gives them a direct and wider access to exercise their kleptomaniac proclivities on the public till. However, these challenges cannot take away the desirability of democracy as a preferred system of government when compared with other systems.

This is why examining cases of abuse of the rule of law provides an opportunity to put Nigeria's democracy in perspective and context. This also, affords the gauging of Nigeria's democratisation process in its conformity and adherence to the twin concept of rule of law and constitutionalism and ascertaining if democracy as being practised today is as desired. In doing this, this paper proceeds and posits that contrary to normative expectations that democracy and the rule of law are mutually reinforcing and supportive of peace; the human factor plays a determinant role that may negate this assumption. The paper examines the abuse of the rule of law and the instrumentalisation of the impeachment provision in the constitution for sardonic goals which torpedoed sustainable peace and consolidation of democracy in two states in Nigeria.

Trends and Patterns of Democratisation(s) in Post-Cold War Africa

The consolidation of democracy occurs in a sequence. The first stage is the *opening* which is typified by the emergence and clash of the hardliners (anti-democracy) and soft-liners (pro-democracy) within the

10 Agbaje, Adigun A.B., Onwudiwe, Ebere and Diamond, Larry. 2004. 'Introduction: Between the Past and the Future.' Agbaje, Adigun A.B; Diamond, Larry and Onwudiwe, Ebere. (eds). *Nigeria's Struggle for Democracy and Good Governance A Festschrift for Oyeleye Oyediran*. Ibadan: University Press.

11 Adebawale, Wale. 2010. A Paradise for Maggots The Story of a Nigerian Anti-Graft Czar. Nigeria: @ Wale Adebawale 2010.

12 Ibid: footnote 5.

dictatorial regime or the military class as the situation may be. This is followed by the *breakthrough* when the military junta collapses or the one-party regime is replaced by a new democratic government that emerges from national elections, the promulgation of a new constitution and the establishment or inauguration of institutional structures of democracy especially the legislature.¹³ After these two, comes the *consolidation* of democracy. This is usually a slow but conscious process of transforming democratic forms into substance, through the reform of state institutions to conform with democratic norms, regularisation of elections, strengthening of civil society and the complete habituation of the society to the new rules of the game.¹⁴

Democratisation which is the process culminating in the consolidation of democracy is fraught with so many obstacles in many democratising post-Cold War polities. In order to deepen analysis, there have also emerged the *minimalist* and the *maximalist* notions of democratisation¹⁵. The minimalists' opine that the minimum indices of democratisation are: free, fair and competitive multi-party electoral contests at regular intervals of time, freedom of association and expression, rule of law and an independent judiciary to check abuses and use of arbitrary power, a free and empowered legislature to democratically check executive excesses, transparent conduct of state-businesses, and avenues for citizens to seek redress like the ombudsman. The main thesis of the minimalists is that once these indices are present, then democratisation albeit in a flawed manner, can be seen to have started which should logically culminate in consolidation of democracy.

Democratisation in its third wave has been with different peculiarities in Africa¹⁶. This has informed the notion of democratisations in Africa because of its varied manifestation across the continent. Varied as it might have been, many African countries experienced multi-party elections with different outcomes; there were forceful and peaceful

13 Carothers, Thomas. (2002). 'The End of the Transition Paradigm.' *Journal of Democracy* 13:1 The Johns Hopkins University Press and the National Endowment for Democracy.

14 USAID (1998). *Handbook on Democracy and Program Indicators*. Washington D.C: USAID.

15 Nwabueze, Ben. (2004). *Constitutional Democracy in Africa: The Return of Africa to Constitutional Democracy*. Abuja: Spectrum Books Limited.

16 Brown, Stephen and Kaiser Paul. (2007). 'Democratisations in Africa: Attempts, Hindrances and Prospects'. *Third World Quarterly* Vol 28. 6. www.informaworld.com

ceding or sharing of power by the military or one-party states¹⁷, in some, the ruling parties manipulated the process to perpetuate itself in power, while in some; the military truncated the democratic process.¹⁸

Threats to democratisation in Africa include; the difficulty of playing the game according to the rules, lack of adherence to the universally accepted norms of the conduct of elections and governance processes which present many African democracies as lacking any founding and constituting normative order.¹⁹ This implies that in many countries of the continent, democratisation still suffers from lack of certain fundamental characteristics. The absence of these core fundamentals has made politics amoral and bred more conflict and antagonism than peace and cooperation even amongst the three tiers of government especially between the legislature and the executive²⁰. All of these confirm the assertion that recent democratic openings in Africa moved only a small distance away from authoritarianism²¹.

For example in Botswana popularly referred to as one of Africa's *premier* democracies, democratisation is rooted in authoritarian praxis because of the continued dominance of just one political party since independence.²² The smooth transition and uninterrupted succession in Benin Republic is still marred by continued electoral malpractices, endemic corruption, ethno-regional cleavages which aid the recycling of elites while inhibiting compromise and national integration.²³ In Kenya, shedding the obesity of one-party state and ethnic rivalries remain a stumbling block to the democratisation process after holding four multi-party elections (1992, 1997, 2002 and 2007).

The democratisation process in Nigeria is high in deficit of the ethos of democracy. This has been traced to the inability of the ruling class to turn a new leaf from the military ways which are typically abhorrent of dissent, separation of powers, rule of law, constitutionalism and the opposition. In a depreciating order and with each succeeded by a worse

17 Ibid: footnote 13.

18 Ibid: footnote 15.

19 Williams, Adebayo. (2003). "Towards the Transformation of Nigeria: A Jubilee of Elite Infamy". Address Presented to a Group of Nigeria Professionals as Part of Nigeria's 43rd Independence Anniversary. Albany, Georgia, USA October 1.

20 Osaghae, Eghosa.E and Suberu, Rotimi.T (2006). *A History of Identities, Violence and Instability in Nigeria*. Crise Working Paper 6: www.crise.ac.uk accessed on 18th May 2007.

21 Ibid: footnote 14.

22 Ibid: footnote 16.

23 Segal, A. (1996). Can Democratic Transitions Tame Political Successions? *Africa Today* 43 (4) pp 369-84

experience, the conduct of elections have been characterised by poor administration, complicity of security agencies and brazen rigging that have characterised successive elections since 2003²⁴ until 2011 when there appeared a debatable improvement in the conduct performance of Nigeria's election management body.

Consequently, rather than fulfilment, democratisation has produced disappointment in many states of the continent especially the absence of sustainable peace which tends to erroneously equate democratisation with violence, poverty, insecurity and tension. Although, the end of authoritarian rule might have brought about the start of the transition process, consolidation of democracy is continually precluded, flawed and blocked by most incumbents with rare emergence of truly democratic regimes.

Rule of Law in Nigeria's Fourth Republic: Structural and Behavioural Hindrances

The downward slide of democratisation in Nigeria since 1999 has exposed a number of dark spots that speak to the inadequacies inherent in Nigeria's constitution and the character of the ruling elite dominated mainly by ex-militarymen²⁵ who constitute the core of those who subvert and manipulate the electoral process constituting the *selectariat*. These are the people who have appropriated Harold Lasswell's definition of politics because they largely determine who gets what and when. The *selectariat* can be seen in the light of the comprador elites, comprador bourgeoisie and the national bourgeoisie of Pakistan – interested in the ownership and control of industrial capital and means of production including wealthy and powerful rural and urban families and a metropolitan bourgeoisie operating behind the scene.²⁶

In Nigeria, the *selectariat* is dominated by ex-militarymen going by their (in)visible control of the People's Democratic Party (PDP), the ruling party at the national level since 1999. The involvement and dominance of ex-military officers in politics dates back to the nursery stage of the Second Republic. Specifically between late 1976 and 1978

24 Tinubu, Ahmed. B. (2011). *Democracy and the Rebirth of Opposition in Nigeria*. Speech Delivered at the Chatham House, London United Kingdom 18, July.

25 Adekanye, John.B (1999). *The Retired Military as Emergent Power Factor in Nigeria*. Ibadan: Heinemann Educational Books.

26 Smith, Brian .C. (2003). *Understanding Third World Politics Theories of Political Change and Development*. New York. Palgrave Macmillan.

when a number of ex-military officers became active and direct participants in the political process²⁷. Major-Generals R.A Adebayo and Usman Katsina as well as Inspector-General of Police Kam Salem were prominent foundation members of the conservative National Party of Nigeria (NPN)²⁸. The aggregation of these ex-military officers and politicians form the core of the Nigerian *selectariat* who select and determine what happens in the major political parties and instrumentalise the electorate because of their wealth, control and influence on the electoral process. In Nigeria and countries with similar characteristics, the citizens are so-called only by expression because they have limited and constrained avenues of functional political participation. This is because; elections are actually contests between clientelistic and corrupt parties where bad governance has become a natural condition.

All of these reflect the subversive role of the Nigerian ruling elite against the rule of law typical of ruling elites around the world because of their penchant to monopolise power rather than utilising it for development of transparent laws, strong institutions and market competition.²⁹ This discouraging trend may be one of the reasons why critics of democracy question its desirability and feasibility in emerging democracies.³⁰ Its feasibility comes under scrutiny because they consider it a Great Lie³¹ vis-a-vis its normative assumptions that hinges it on the people yet operates in contradistinction to it. The extant practice of the system in many African countries renders fallacious the assumption that it is a government of the people, by the people and for the people as espoused by Abraham Lincoln³². Also, the manifestation of democracy during this period gives resonance to the following opinion that:

democracy does not mean and cannot mean that the people actually rule in any obvious sense of the 'people' and 'rule'. Democracy means only that the people have the opportunity of accepting or refusing the men who are to rule them . . . now one aspect of this may be expressed by saying that

27 Ibid : footnote 25.

28 Ibid : footnote 25.

29 Ibid: footnote 26.

30 Gilley, Bruce. 2009. 'Is Democracy Possible?' *Journal of Democracy*. Volume 20 Number 1 National Endowment for Democracy and Johns Hopkins University.

31 Ginsberg, Benjamin. 2007. *The American Lie: Government by the People and Other Political Fables*. Boulder, Colo: Paradigm.

32 Abrahamsen, Rita. 2001. *Disciplining Democracy: Development Discourse and Good Governance in Africa*. London: Zed Books.

democracy is the rule of the politicians³³ or the *selectariat* who determines and presents to the public who gets what and at when (emphasis added).

This is why the rule of law and the constitution should be sacrosanct in a democracy. It is in the light of this that constitution making process preparatory to transition and democratisation becomes germane. In Nigeria, constitutional conferences have ended in fiascos which underscore the inability of the stakeholders to agree on the terms of association.³⁴ Constitution making processes in Nigeria also serve as reminders of the differences which: Zik wanted *forgotten*, which Bello wanted *understood*, which Balewa described as '*petty tribal jealousies*' and which provoked Awolowo to conclude that 'Nigeria was a mere geographical expression'.³⁵ All of these speak to the inchoate form of the Nigerian project and the fragility of peace within and amongst its constituents.

As a peacebuilding strategy, democracy or democratisation is prescribed because it is expected to be inclusive and deliberative in postconflict states. This makes the long-espoused notion of consociational democracy and democratic elections thinkable in most plural postconflict state.³⁶ This notion is hinged on the expectation that democracy and elections should cause political parties to reach out to regions and ethnic nationalities other than their own in soliciting for votes which can bring about ethnic cooperation and understanding across different parts of the country while a credible electoral process will confer legitimacy on the emergent government. On the contrary, democracy and elections especially when flawed have accentuated the fault lines in many countries of the continent Cote d'Ivoire and Kenya are stark illustrations of this.

Despite the quantum of external support from the international community towards sustainable peace and consolidation of democracy to democratising postconflict states in Africa and particularly in Nigeria³⁷, deepening and owning the democratic project and process remains a huge

33 Schumpeter, Joseph.A 1976. *Capitalism, Socialism and Democracy*. Allen & Unwin: London.

34 Othman, Sheu and Williams, Gavin. 1999. 'Power, Politics and Democracy in Nigeria.' Hyslop, J (ed.) *African Democracy in the Era of Globalisation*. Johannesburg.

35 Ibid: footnote 11: 102.

36 Lijphart, Arendt. 1977. *Democracy in Plural Societies*. New Haven: Yale University.

37 Ibid: footnote 6.

challenge.³⁸ This is evident in the behaviour of politicians and public office holders in many states of the country amongst other ills. Since 1999, democracy in Nigeria has been without a social contract due to the mismanagement of elections by politicians³⁹. The net effect of this is the occupation of political offices by illegitimate regimes in many states of Nigeria chiefly as a result of the warped electoral process⁴⁰.

The adoption of only bribery and not resorting to inviting the military by the supporters and opponents of the *third-term agenda* of President Olusegun Obasanjo (tenure elongation) despite the links, influence and control they wield on the military underscore the preference of democracy by the *selectariat*⁴¹. Similarly, the non-interference of the military while President Yar'Adua was incommunicado can be described as a symbolic display of institutional support from the military for the democratic process, which may actually belie the democratic ethos of the *selectariat* that must have discouraged the military from direct interference. On the other hand, the continued (re)distribution of state resources within elites has been identified as a stronger reason for the continued preference and survival of democracy in many states of the continent.⁴²

Impeachment, the Rule of Law and Executive-Legislature Relations in Nigeria

"Impeachment" has its roots in Latin, meaning becoming entrapped or caught with analogue in the French verb *empercher*⁴³ (to prevent). To

- 38 De Zeeuw, Jeroene. and Kumar, Krishna. 2006. *Promoting Democracy in Post-conflict Societies*. Lynne Rienner Publishers. London.
- 39 Kew, Darren. 2010. 'Nigerian Elections and the Neopatrimonial Paradox: In Search of the Social Contract.' Adebani, Wale and Obadare, Ebenezer. ed. *Journal of Contemporary African Studies*. Routledge: London.
- 40 Omotola, Sola. 2010. 'Explaining Electoral Violence in Africa's 'new' Democracies'. *African Journal of Conflict Resolution*, Volume 10, Number 3.
- 41 Posner, Daniel.N and Young, Daniel. J 2007. 'The Institutionalisation of Political Power in Africa.' *Journal of Democracy*, Volume 18, Number 3 July: National Endowment for Democracy and Johns Hopkins University.
- 42 Englerbert, Peter. 2007. 'Wither the Separatist Motive?' Boas, M. and Dunn, K.C. (2007) (eds). *African Guerrillas: Raging Against the Machine*. Lynne Rienner Publishers: London.
- 43 Awah, Animi. 2009. 'Politics of Impeachment: Legislative Control or Arbitrariness'. In: Azinge, Ephany. and Owasanoye, Bolaji. eds., *Rule of Law and Good Governance*. Lagos: Nigerian Institute of Advanced Legal Studies.

impeach is to be found faulty or called to question by the legislature and it first occurred in England in 1376 when two British lords and four commoners were charged with removing the staple from Calais (the French port that was under the control of the British between 1347-1588), they were lending the King's money at usurious interest and buying crown debts for small sums and paying themselves in full out of the treasury.⁴⁴ The two lords were impeached from the House of Lords, while the four commoners were imprisoned. Succinctly put it can be expressed as the removal from office of a public official by presenting a written charge.⁴⁵ Those who can be impeached include; the Speaker or Deputy Speaker of any legislative House; the States and Federal Chief Judges or the Chief Justice of the Federation; the Governor or Deputy Governor and the President or Vice President.⁴⁶ It serves as a legislative weapon which operates as a check on the exercise of executive responsibilities with the overall intent of preventing the abuse of power by those elected into public offices.⁴⁷

One of the defining features of the rule of law according to A.V. Dicey who pioneered discussions on the concept is that no man should be made to suffer or lose his or her rights and liberty except for contravening an existing law known to the courts of the land.⁴⁸ Using this as a lens, it becomes basic to establish a *prima facie* case against anybody including public office holders before being punished. There has also been an advocacy for *rule of just law* and not just rule of law because the rule of law *simpliciter* is open to abuse and has its own limits.⁴⁹

Since 1999, impeachment and threats of it remains one of the many instances of infringements on the rule of law resulting in tension, instability and insecurity in Nigeria at all tiers of government. The trend constitutes no mean threat to the consolidation of democracy. This is because incessant conflicts between the two arms inhibit the smooth

- 44 Ologbenla, Derin. 2007. 'The Law of Impeachment and its Implications for Nigeria's Democracy.' Olurode, L (Ed) *Impeachment and the Rule of Law: The Future of Democracy in Nigeria*. A Special Publication of the Faculty of the Social Sciences, University of Lagos. Lagos
- 45 Ibidapo-Obe, Akin. 2007. 'The Theory and Practice of Impeachment.' Olurode, Lai. ed *Impeachment and the Rule of Law: The Future of Democracy in Nigeria*. A Special Publication of the Faculty of the Social Sciences, University of Lagos. Lagos.
- 46 Ibid : footnote 45.
- 47 Ibid : footnote 44.
- 48 Ibid : footnote 45.
- 49 Oyeboade Akin. 2005. *The Law and Nation-Building in Nigeria*. Lagos: Centre for Political and Administrative Research.

running of government causing loss of valuable time and resources. The relationship between the executive and legislature in Nigeria's fourth republic has been adversarial owing in most instances to the alleged interference of the executive in the affairs of the legislature at both the state and federal levels.

Impeachment entails the act of preparing accusations against public officials and trial of such officials.⁵⁰ It is a veritable tool in any representative government to prevent despotism, absolutism and unrestrained use of executive power. However, it became a tool of mutual back-lashing, political witch-hunt, and instrument of settling personal and political vendetta.⁵¹

Two interesting episodes threatened the polity as a result of the conflict between the executive and the legislature at the federal level in 2002 and 2006. The legislature issued an ultimatum of fourteen days to President Olusegun Obasanjo to resign or face impeachment over several constitutional breaches.⁵² The legislature backed down after mediatory efforts by two eminent Nigerians; a former President and another former military Head of State in persons of Alhaji Shehu Shagari and General Yakubu Gowon. The legislature went ahead to checkmate President Obasanjo's attempt to alter the constitution in order to remain in office for third term. Obasanjo's decision to step down, adhering to constitutional guidelines, demonstrates that the legislature can go a long way in ensuring compliance with the constitution by the executive.

Similarly, President Goodluck Jonathan was widely reported to have expressed dissatisfaction with the choice of Tambuwal, the current Speaker of Nigeria's House of Representatives because his choice by majority of members of the House led to the defeat of his own candidate in the person of Mulikat Akande by 259 to 92 votes.⁵³ Although superficially hinging his displeasure on the disregard of the zoning of the office of the Speaker of the House of Representatives to the South-Western geo-political zone of the country by members of the Peoples' Democratic Party (PDP), this can as well be seen as a subtle way of

50 Ali, Yussuf, O. (2007). "The Impeachment Sections in the Nigerian Constitutions: Yesterday, Today and Tomorrow", Kupolati Taiwo, ESQ, ed., *Current Issues in Nigeria Jurisprudence Essays in Honour of Chief Adegboyega Awomolo*, SAN. Lagos: Renaissance Law Publishers.

51 Ibid: footnote 51.

52 Political Instability Task Force Report (2008). *Polity Country Report 2008*. Central Intelligence Agency.

54 Odebo, Niyi, Ameh, John, Soriwei, Fidelis and Oluwole Josiah. (2011). 'Reps defy Jonathan, PDP, Elect Tambuwal'. *The Punch Newspaper* June 7: Cover Story.

having control of the a branch of the legislature which has been characteristic of the executive arm of government in Nigeria's fourth republic.

At the state level, the relationship was also not crises-free or tension-free as both went for each other's jugular in a contest for domination which led in many instances to the removal of the Speakers in the States Houses of Assemblies and threats of impeachment against Governors of such states.⁵⁴

Such tensed relationship led to the intractable conflict between the executive led by Otunba Gbenga Daniel former governor of Ogun state (2003-2011) and the legislature due to the allegation that the Governor wanted to make the legislature an extension of his executive cabinet of appointed officials who carries his out his opinions unchallenged. The resistance of this move by the Speaker Hon. Samson Tunji Egbetokun and majority of House Members caused a polarisation of the House into the Group of 15 (G15) and Group 11 (G11). The conflict climaxed when Speaker Tunji Egbetokun leader of the G15 was illegally impeached on September 6, 2010 by 9 out of the 26 members who violently invaded the hallowed chambers at the wee hours of the day and purportedly suspended the entire G15 who constituted the majority on the instructions of the governor.⁵⁵

Erosion of the Rule of Law and Promotion of Semi-Democracy in Africa

In as much as there is no uniformed manifestation of democratisation in Africa, there has emerged shared patterns of political behaviour and culture especially in the quest for political power which is often done in contravention of the tenets of the rule of law. This brings to the fore the need to closely scrutinise:

the manner in which power is obtained, exercised and controlled, the purpose for which it is used, the manner in which decisions are made, the factors which influence the making of those decisions, and the context in

54 Awah, Animi. (2009). 'Politics of Impeachment: Legislative Control or Arbitrariness', in Azinge, Ephany. and Owasanoye, Bolaji eds., *Rule of Law and Good Governance*. Nigerian Institute of Advanced Legal Studies. Lagos.

55 Ekott, Inni. 2010. "Reps threaten to take over Ogun Assembly in seven days", *Next234 Newspaper* October 15.

which those decisions take place as reflective of the nature and character of politics in any country.⁵⁶

The current bureaucrats and politicians have become addicted and unrepentant of the authoritarian and commanding ways of the military and this continues to have uncomplimentary effects on the stability and consolidation of democracy.⁵⁷ As the dominant political culture, the net effect on the rule of law has been destructive. In the destruction and violation of the rule of law, the executive arm of government has been most culpable. However, this is not peculiar to Nigeria alone. This is because despite over two decades of the third wave of democratisation in Africa, Latin America and Russia, a gradual and deliberate erosion of the rule of law has accompanied this process.⁵⁸ In Nigeria, the process of drafting constitutions has always excluded the people:⁵⁹

In compacting its constitutions the country has never adopted a participatory or process-led approach . . . It has consistently been elite-driven, with the state playing a critical role in determining the content of the final document. It is no wonder that the constitutions have hardly served as coherent compacts for determining the relationship between the ruled and the rulers, none had been able to ensure the rule of law and popular participation, much less transparency, accountability and social justice. Nigerian constitutions have been opportunistic documents . . . finally Nigerian constitutions have never been instruments for ensuring the survival of the democratic project, neither have they prevented nor discouraged the subversion of the democratic enterprise by the military.

This paper adds that besides not providing insurance for the democratic project, Nigeria's constitutions since 1966 have been patently militaristic in content and undemocratic in practice. Therefore, with the domination of the democratic space by ex-militarymen, the abuse of the constitution has further continued since 1999; leaving little hope for consolidation of democracy, strengthening of the rule of law and constitutionalism. This underscores the fragility and paradoxical nature of

Nigeria's democracy which this paper describes as a *semi-democracy*.⁶⁰ They are democracies that struggle to be or pretend to be democratic but still suffer from a democratic deficit which makes them prone to civil war even more than autocracies. Similitudes of these are the *at-risk democracies*.⁶¹

This paper opines that the consistent abuse of the rule of law and non-adherence to constitutionalism by the actors in Nigeria's fourth republic configure Nigeria's democracy as a semi-democracy. This is a system in which the rule of law and constitutionalism mean little or nothing because of the lack of a normative order or amoral politics. It is also a peculiar paradox because despite these apparent contradictions, Nigeria's minimal democracy has been electorally stable since 1999 despite not meeting the need of the electorate and agitated groups within the polity; in diametrical negation of a fundamental of democratic stability which is; the capabilities of a democratic system to meet the demands placed on the system.⁶² This article posits that democracy has been stable in Nigeria because it continues to meet the demands placed on it by the *selectariat* to the detriment of the majority of the people. This has led to institutionalised corruption which configures the country as a paradise for maggots while further widening the divergence and disconnect between the Nigerian state and its citizens. It further confirms the perception of the state an eatery wherein people take their turns to eat or are invited to 'come and eat' based on exchange relations and politics of the belly bereft of scruples.⁶³

Prelude to Ladoja's 'Impeachment': A Divided House, Factionalism and Clientelism

Events leading to the 'impeachment' of Senator Rashidi Ladoja pointedly speak to the lack of any normative order in the conduct of politics and governance by leading actors of both Federal and Oyo state during the period. The impeachment was the continuation of the conflict between a bitter and disappointed political patron (godfather) and a *stingy* political

56 Babawale, Tunde. 2007 Culture, Politics and Sustainable Development: Lessons for Nigeria. Lagos: CBAAC Occasional Monograph, No.4 p. 12.

57 Ihonvbere, Julius.O. 2004. 'Constitutionalism and the National Question.' Agbaje A.B.A, Diamond. L and, Onwudiwe. E. eds *Nigeria's Struggle For Democracy And Good Governance; A Festschrift For Oyeleye Oyediran*. Ibadan: Ibadan University Press. pp: 243-262.

58 Ibid: footnote 30.

59 Ibid : footnote 58.

60 Henderson, Errol and Singer, David. J 2002. 'Civil War in the Post-Colonial World 1946-1992'. In: *Journal of Peace Research*, Vol. 37, No. 3, pp. 275-99.

61 Ibid: footnote 11.

62 Ibid: footnote 11.

63 Ibid: footnote 11.

client (godson).⁶⁴ This conflict spiralled into the House of Assembly leading to its polarisation into camps of 18 for the political godfather in person of Lamidi Adedibu and 14 for the embattled governor. The episodic events in the House of Assembly after the removal of Mikhael Azeez Alarape the Speaker loyal to the governor is worthy of copious citation:⁶⁵

Abraham Adeolu Adeleke who was his Deputy, assumed the position of Speaker while the choice of another Deputy to fill the vacant seat caused a problem that aggravated the crisis leading to the attack of some members on the grounds of the House. Hon Oluyemi Taiwo (Ibarapa Constituency) was later chosen by the House as Deputy Speaker to the discomfiture of the governor, who felt that the replacement should be from Oke Ogun, the constituency of the impeached speaker. The situation continued to the extent that earlier in September the House's mace was deposited with the Police Command for safe keeping. It was there until Monday, December 12, when the lawmakers loyal to the political patron retrieved it and went to the House to hold a session. During this sitting, they suspended seven lawmakers on the government (executive side), including the Speaker, Adeleke.

With the above done, the House of Assembly became tumultuous as each faction stuck to its gun. The faction loyal to the godfather relocated to an eyebrow hotel in Ibadan the state capital where they continued legislative business. On one occasion, Honourables loyal to the political patron (Lamidi Adedibu) led by the new Speaker sat in the House of Assembly with the mace brought by the Sergeant-at-Arms but the session ended in confusion as the faction loyal to the governor disrupted the session and later sat to discountenance the actions taken by the faction loyal to the political patron.

The polarisation of a State House of Assembly made up of 32 members out of whom 31 belonged to the Peoples Democratic Party (PDP) aptly qualifies as a House divided against itself. As the dominant political party at the federal level since 1999 the description of the party vis-a-vis its history and character have received attention from foreign and local scholars and commentators alike:

64 Animasawun Gbemisola. 2009 'Godfatherism' and Nigeria's Fourth Republic: Violence and Political Insecurity in Ibadan. www.ifra-nigeria.org

65 Simbine, Tonia (2007). *Assessing the Role of the Legislature in a Democracy: A Case Study of Oyo State House of Assembly*. Ibadan: NISER Monograph Series No.1.

as a party formed by a coalition of Nigeria's most powerful neopatrimonial network; devoid of any ideology it was little more than alliance of convenience amongst the oligarchs sitting atop these personal networks from across the nation particularly from the; North-East, middle-belt, Niger-Delta and South-East region. Most of these individual had worked close with military governments in the past and had grown rich from their association and thus were seen as largely safe for the existing military officers. Each was expected to 'deliver' his state or states.⁶⁶

Wole Soyinka describes the PDP as: "a nest of murderers, their purpose is power, and to attain and retain this at all costs is a mission that harbours a deep contempt for moral scruples".⁶⁷

The party can also be described as hegemonic going by its metamorphosis from the Northern Peoples' Congress (NPC) to the National Party of Nigeria (NPN) through to the PDP. Hegemonic parties are a subset of the competitive system of political parties.⁶⁸ They are hegemonic because they stay in power for a long time. In managing conflicts and intra-party crises, political parties of neo-patrimonials like the PDP as described earlier rely only on repression and as such are unable to manage or cope with conflicts within their fold.⁶⁹

Typical of political parties in the Third World, the distribution of rewards to supporters and clients on personalised basis, the demand and (mis)management of same was at the heart of the crises between the governor and the political patron. Cognisant of the deficiency of the party in ideology, factionalism summed up as the aggregate of alliances and coalitions between leaders and followers with no ideological foundation except to win electoral support became inevitable. The determination of the PDP to win the gubernatorial election in Oyo state as part of a larger agenda to return President Obasanjo for a second term and to strengthen his hold on the party made the party a client of Lamidi Adedibu known as the strong-man of Ibadan politics. The relationship of the PDP, seekers of offices on its platform and Lamidi Adedibu can be aptly situated within the context of clientelism defined as a rational behaviour for people under

66 Ibid: footnote 40: 518

67 Adebawale, Wale. 2006. The Assassin's Republic, *TheNews Magazine*, August 14: 14.

68 Ibid: footnote 40.

69 Ibid: footnote 40.

conditions of inequality and entered into when people need the support of regional, ethnic and personal factions⁷⁰.

Therefore, the division of the House against itself in the prelude to the impeachment of Ladoja can be seen in the party's lack of ideology, factions within the party and the clientelistic relationship entered into by members of the PDP including Ladoja in their bids for electoral support. A character sketch of Adedibu shows him as one who lives on government (military and civilian) and prides himself collecting from government and distributing to the poor⁷¹. This is illustrative of the relationship of the PDP and Adedibu on one hand and the source of Chief Adedibu's influence on the electorate on the other hand.

Ladoja's Impeachment: Procedural Abuse and Infringements on the Rule of Law

The 'impeachment' of Senator Rashidi Ladoja was done in contravention of the constitution and constitutionalism – done outside the precincts of the House of Assembly; with 16 out of the 32 members present while only 14 voted which did not constitute the two-third of thirty-two, nevertheless, there was a caricatured-process of impeachment:⁷²

The panel sat on January 5 despite the suit filed by the Speaker on behalf of the Governor. It heard the 14-count allegations . . . Governor Ladoja was not represented. The panel's sitting was adjourned till January 9 at the instance of the Governor to enable him enter his defence. When Mallam Yusus Alli (SAN) appeared on his behalf on Monday, . . . to challenge the constitution of the panel and the qualifications of four of the members. The objection was nonetheless overruled. The panel, amidst disapproval by Alli, wound up on the same Monday evening without any written defence presented by the governor. With the deployment of mobile policemen to and armoured personnel carriers (APC) to strategic areas of the city on Wednesday evening, it was obvious that the state governor would be impeached. This happened on Thursday January 12 . . . at 8.52 am by 16 members of the House.'

The refusal of the Attorney General of the federation to implement the reinstatement of the illegally removed governor by the Court of Appeal speaks of an abuse and disregard for the rule of law and ironically

70 Clapham, Christopher. 1992. 'Clientelism and the State'. Clapham, C. (ed) *Private Patronage and Public Power: Political Clientelism in the Modern State*. London: Francis Pinter.

71 Ibid: footnote 67.

72 Ibid: footnote 67.

by the number one legal officer in the country during this period. This flagrant disregard came on the heels of a judgment by the full complement of Court of Appeal that faulted the impeachment in a ruling given on November 1, 2006.⁷³

DSP's Theatrics and Intrigues of an Impeachment

The impeachment of former governor of Bayelsa State whose full given names are: Diepreye meaning: *this is your gift*, Solomon, Peter and surname Alamieyeseigha meaning *God never does anything wrong*⁷⁴, was characterised by a lots of drama and melodrama. Unlike the case of Ladoja, the only foe he could not overcome was his kleptomaniac tendencies which did him in eventually. After jumping bail in United Kingdom where he was facing trial for laundering the equivalent of \$3.2 million in cash in his London home and UK Bank accounts, he appeared in Amassoma his hometown in Nigeria on November 20 2005 in *mysterious* circumstances which received global opprobrium. The New York Times Magazine wondered that:

General Abacha who ruled the country from 1993 to 1998 never fled money-laundering charges in a foreign land by donning a dress and a wig to match forged travel documents, as Mr. Alamieyeseigha the governor of a small oil-producing state in the Niger Delta . . . for their sheer audacity, Alamieyeseigha's antics are likely to earn him a prominent place among leaders who in the past four decades are believed to have stolen or misspent \$400 billion in government money . . .⁷⁵

In front of a hysterically jubilant crowd of supporters in Yenagoa on the November 22, 2005, Alamieyeseigha told the doting crowd: 'I cannot tell you how I was brought here. It is a mystery. All the glory goes to God'⁷⁶. Analysing the rationale for his dramatic escape and the theatrics that defined it, it is clear that coming home was to hide under the umbrella of the immunity clause in order to stave off arrest or prosecution as provided in Section 308 of the 1999 constitution.⁷⁷

73 Ibid: footnote 67.

74 Ibid: footnote 11.

75 Ibid: footnote 11:146.

76 Ibid: footnote 11: 146.

77 Ibid: footnote 11:147.

DSP's Impeachment and the Legislature: Accountability or Self-Preservation?

Given the global shame brought upon the country by his shameful act of jumping bail, there was pressure on the Bayelsa State House of Assembly made up of many loyalists of DSP to commence impeachment procedures against Alamiyeseigha. The first move towards this was the impeachment of the Speaker and his Deputy – arrowheads of Alamiyeseigha's loyalists. Cognisant of his imminent removal, Alamiyeseigha rationalised his abuse of the public till by asking: "If I am corrupt, did I steal Federal Government's money? Or is my state complaining that I stole its money? . . . the Federal Government does not have the right . . . if I stole money from my State, the House of Assembly is the right organ to prosecute".⁷⁸

However, the main behind the initiation of the impeachment process against Alamiyeseigha was informed by a desperate attempt at self-preservation by the members of the House of Assembly more than any act of legislative over-sight or ensuring accountability:

On Tuesday, November 22, the EFCC sent a report on the governor's alleged heist adding up to over ₦1.7 billion to the State Assembly. . . the members . . . themselves were no saints. They knew that the only way they could save their necks was to sacrifice the embattled governor. They were ready to work with the EFCC to ensure this.⁷⁹

Sequel to this, the House under its new leadership hurriedly commenced impeachment procedures on November 22 2005 and officially impeached Alamiyeseigha on December 9 2005.⁸⁰ It is noteworthy that the impeachment was not only done outside the precincts of the House, it was done in Lagos State and supervised by the EFCC. However, while there were obvious justifiable grounds for the impeachment, this article considers the procedures adopted as infractions on the constitution because of the fact that the House was intimidated, hoodwinked and coerced into it.

78 Ibid: footnote 45: 11.

79 Ibid: footnote 11:147.

80 Ibid: footnote 45.