

THE SANCTITY OF RULE OF LAW, NATIONAL SECURITY AND PERSONAL LIBERTY IN NIGERIA

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ABSTRACT

The above statement encapsulates the need for adherence to the rule of law in political governance. This has more than ever before brought the primacy between national security and personal liberty of individuals in Nigeria to the front burner. The partisans of rule of law say, it is the font et origo, the father and grundnorm which takes precedence and priority over national security. It is a paradigm shift from the logic of empire, kingdom and fiefdom. The crux of the matter in this piece is which arm of government determines when national security or interest is in jeopardy? This paper therefore examined the concept of the rule of law and the extent to which it can be sacrificed on the altar of national security in a democracy. Using primary and secondary sources of information, the study found that it is dangerous to national security or interest for the executive arm to whimsically deprive citizens of their constitutionally guaranteed rights because of perceived or actual threat to national security. The study concluded that the determination of when national security takes prominence over the rule of law should be the exclusive preserve of the judiciary. To do otherwise would amount to the ruins of law.

Keywords: sanctity, Rule of law, National security, personal liberty.

INTRODUCTION

After scorning many positive orders of court concerning the personal liberty of certain individuals, President Mohammed Buhari stirred the hornets' nest when he publicly declared his disposition to the rule of law. The occasion was at the 58th Annual Nigerian Bar Association Conference in Abuja, August 26, 2018. With great enthusiasm, he declared;

Our apex court has had cause to adopt a position on this issue in this regard and it is now a matter of judicial recognition that; where national security and public interest are threatened, the individual rights of those allegedly responsible must take second

place in favour of the greater good of society (Sekoni,2018 p.18).

In other words, where the rule of law and the imperatives of national security or interest collide, the arc of supremacy would bend in favour of national security or interest. With this, the President has deliberately kicked up legal dust over an issue that has bedeviled government in most of the third world countries and has renewed the fear that we are not yet out of the wood. The source of inspiration for this proposition is from judicial observation made by Hon. Justice Tanko Mohammed,(JSC) now Chief Justice of Nigeria, over an application for bail in the case of *Asari Dakubo v.FRN (2007) ALL FWLR(pt375 p 588)* The President's statement seemed to be an elaboration of a kite earlier flew by Attorney-General of the federation Mr. Abubakar Malami (SAN) to justify the detention of the Islamic Shite leader, Malam El Zakzaky, his wife, Zainab and former National Security Adviser, Col. Sambo Dasuki in persistent violation of positive court orders to the contrary. On a superficial level, the declaration is a notorious fact since there can be no issue of national security or interest if there is no nation, and therefore may be constitutionally right and legally sound; the danger however, is in the details, its political implications and our fidelity to democracy if adopted as a state ideology. There can be no doubt that the maintenance of national security and peace in any country is the solemn responsibilities of the government that should be handled with seriousness and commitment. However there is a thin line between the maintenance of national security and violation of the constitutionally protected human rights of the citizens. The line is usually crossed when government security agencies decide to carry out their constitutional duties using unconstitutional methods. Thus, the President's declaration may simply be regarded as striking a chord in his heart to give the impression that the ruling of the court should serve as a rule of general application in cases of violation of human rights at least to suit his predilections. Hence, the declaration can at best be regarded as belated justification for his disdainful disposition to the rule of law and human rights or an eleventh hour rationalisation of deprivation of liberty of individuals whose actions were perceived to be prejudicial to national security. Indeed, there is growing evidence to suggest that since coming to power of the Buhari's administration, respect for the rule of law seems to be waning, while arbitrariness in the use of state power seems to be gaining ascendancy. The corollary is that the President's declaration has triggered a controversy as to whether chapter IV, especially section 35(1) of the 1999 Constitution of the Federal Republic Nigeria (as amended) (hereinafter cited as CFRN) which is a derivative of rule of law is subordinate to national security or interest. If the answer is in the affirmative, at least for a moment, two questions are relevant. First, what is national security or

interest? And, two who defines it? This is exactly the reason why the novel proposition of the President is interrogated in this study with a view to determining what constitutes national security or interest and the ultimate source of authority to decide when it is in jeopardy. Thus, this paper examined the long term political implications of this proposition and its effects on the rule of law as a pillar of constitutional democracy which is indispensable not only for the stability of the state but also for the liberty of the citizens. To achieve this objective, the paper is structured as follows: section one clarifies the various relevant concepts. Section two examines the political implications of the proposition. Section three discusses the consequential or legal effects of subjugating the rule of law to a specious or nebulous alibi called national security or interest. Section four undertakes a comparative analysis from other jurisdictions, while section five is the conclusion which reiterated unconditional adherence to the rule of law for the triumph of democracy and good governance.

THE RULE OF LAW

The rule of law is a concept of considerable antiquity. It simply means a legal and political doctrine espousing that the government and the governed in a political state are subject to the law. It means that everyone must act within the boundaries of what the law allows and anyone who acts, whether exercising a legal power or asserting a legal right beyond a limit permitted by law will be called to order. The principle has historical connection with political governance. It was initially conceptualised for the protection of individual rights against arbitrary exercise of state power. More lately, the linkage between the rule of law and economic governance has been articulated. It also means predominance of law as opposed to the use of arbitrary power. Its origin dates back to early history. It had being a principle of the English unwritten constitution from the Middle Ages and its supremacy had formed the basis of the struggle between the king and the Parliament which was resolved in favour of the supremacy of the rule of law (Ehi,1988 p.456.). It is the foundation upon which democracy and democratic governments all over the world rest. It distinguishes and differentiates democracy as a preferred system of government. It also presumes that the society in which it operates is governed by laws derived from their constitution and that is why the constitution is rightly seen and recognised as the groundnorm of all laws (Ubani, 2018). According to the Black's Law Dictionary, (Garner, 1999 p. 332) the rule of law is the supremacy of regular law as opposed to arbitrary power. Every person is subject to the ordinary law within the jurisdiction (Ibid, p.332). In Dicey's exposition;

It is the absolute supremacy or predominance of regular law as

opposed to the influence of arbitrary power and excludes the existence of arbitrariness, prerogative or even of rule of wide discretionary authority on the part of government (Dicey 1979 p.1999)

The concept of rule of law is a globally acceptable democratic tenet that places prominence on strict adherence to the due process of law. It presupposes ipso-facto that everyone is equal before the law and that due process of law must necessarily take the centre stage in administering the affairs of the state. A late Nigerian jurist, John Idowu Taylor profoundly captured this position while delivering judgment in *Mohammed Olayori & 2 Ors* (1969 2 All NLR p.298) as follows:

If we are to have our actions guided and restrained in certain ways for the benefit of society in general and individual members in particular then, whatever post we hold, we must succumb to the rule of law. The alternative is anarchy and chaos (Ibid, 308).

The immediate significance of rule of law regime is that it ensures that there is a supreme check on political power used against the peoples' rights (Ubani, 2018) The rule of law guarantees consistency and certainty of outcomes in every possible way in a democratic society such that nothing is left to the whimsicality of political power or individuals within the society. The rule of law collectively symbolizes the most important features of democratic governance such as government of the people, by the people and for the people. Abraham Lincoln 1809 – 1865). The rule of law being a constitutional concept remained the cornerstone of governance in any given polity. It is a nebulous concept whose meaning and centre vary from place to place (Ojo,1987 p.239) and which Lord Coke colourfully spoke of as “golden and straight net wand of law as opposed to the uncertain and crooked cord of discretion” (Olanipekun.2006 p.7)

Late Justice Chukwudifu Oputa (JSC) said in the case of *Government of Lagos State v. Ojukwu* (1986 NWLR pt 18. 621) that “the state is subject to law and that the judiciary is a necessary agency of the rule of law”. The long history of absolute rule in human experience led those seeking a more just order to articulate the need to be more trustful of laws than the heart of man. As John Adams, the second President of the United States said, “the executive shall never exercise the legislative power or judicial powers or either of them to the end that it may be a government of law and not of men (Utomi, 2004 p.132). In other words, without the rule of law, there can be no rule at all (Nwaneri, 2019 p.11), Thus, where there is a negation from the virtue of rule of law, it is a catalyst for the erosion of democracy. Consequently it is safe to say that that there is no democracy without law. Cicero was therefore right during

the heydays of Roman jurisprudence when he said that “we are all slaves of law so that we may be free” (Opata, 1990, p.21) It is worthy of note that the rule of law and the rule of force are mutually exclusive. The Court of Appeal in the case of *Nwadiajuebowe v Nwawo & Ors* (2004 6NWLR pt 869 439) observed “that law rules by reason and morality, force rules by violence and immorality. However, the world no longer has a choice between the rule of force and rule of law. Indeed, if civilization is to survive, it must choose the rule of law through an independent judiciary. Despite God’s omnipotence, His unfathomableness and wisdom, He still chose to govern man through the rule of law. This is embodied in the Ten Commandments given through his servant, Moses on mount Sinai (Exodus 20 3- 17) The whole essence of this is that the rule of law itself was an expression first created by God directing man not to be governed by power or might but by laid down law (Olanipekun, 2006 p.16). Thus, where the rule of law operates, the rule of self help by force is abandoned” (*Nwadiajuebowe v Nwawo* p. 349). In fact, the rule of force makes monsters of the citizens. Although, unlike 1989 Constitution which provides that the “State shall... enforce the rule of law”(Section 16, 1089 Draft Constitution). There is no direct provision in the 1999 CFRN. However, section 17(1) thereof states that “The state social order is founded on ideals of freedom, equality and Justice.” To a discerning mind, these ideals are encapsulated in the rule of law which enables the citizens to experience life that is “nice”, “beautiful and safe”.(Idris &Abdulahi, 2016 p.125) When fully imbibed in Nigeria, we shall be proud of the legacy which the former President of the country, late Umaru Yar’dua would have loved to bequeath to Nigerians, and that is, the establishment of respect for the rule of law. The rule of law does not however mean that a law that is validly made goes uninterrogated. If that happens, even the laws that violate the aspirations and the tenets of democracy and good governance will rule without questions. The failure to adhere to the rule of law ultimately erodes public confidence in both the justice and state systems. Citizens whose faith is eroded are often forced to resort to self-help thus accentuating the situation of lawlessness that the rule of law is conceptualized to mitigate.

It must be emphasised at this stage again that the rule of law is not peculiar to Nigeria alone. It is an epitome of the English Bill of Rights 1689 and the American Declaration of independence July 1776. It motivated the declaration of African Charter for Human and Peoples’ Rights October 21 1986. It engineered the French Declaration of Rights of Man August 27, 1789 and The United Nations Declaration of Human Rights in 1948. It therefore represents Man’s triumph over arbitrariness, prejudices, personal hunches and morbid predilection.(Taiwo,2007). It is no surprise therefore that in modern times, the rule of law appears more fully to be identified

with human rights incorporated into the constitution of modern states. (Ehio p. 1958, p. 458)..

NATIONAL SECURITY

There is no single universally accepted definition of national security or interest. It means different things to different people. The concept is widely interpreted by different scholars and analysts. However, it is always discussed in the context of the ability of a nation state not only to protect its citizens from internal and external aggression but also to pursue those things that promote their welfare in an environment free from hostility. It is conceived as freedom from danger or threats to a nation's ability to protect and develop itself, promote its cherished values and legitimate interest.(Nwanegbo & Odigbo, 2013 p.296). In the context of this discussion, national security "refers to the capacity of a state to promote the pursuit and realization of the fundamental needs and vital interests of man and society and to protect them from threats which may be economic, social, environmental, political, and military in nature.(Igbinovia & Igbinovia,2013 p.71). It is also within this context that former Nigeria's President, Olusegun Obasanjo said

The primary objective of National Security shall be to strengthen the federal republic of Nigeria to advance her interests and her objectives to curtail instability, control crime, eliminate corruption, enhance genuine development, progress and growth and improve the welfare and well being and quality of life of every person. (Ibid. p.71)..

The United Nations Development Programme (1994&1996) posits that human security (an aspect of National security) refers to "freedom from fear, freedom from want and safety from chronic threats such as hunger, disease and repression from sudden and harmful disruption in the patterns of daily life...

The former United States Secretary of Defence, Brown Harold stated that "national security is the ability to preserve the nation's physical integrity and territory to maintain its economic relations with the rest of the world on reasonable terms to preserve its nature, institution and governance from disruption from outside and to control its borders" (Harold,(1983 p.281). In year 2000, the Obasanjo's administration developed the strategic security policy document for Nigeria. In it, national security is identified as "the aggregation of security interest of all individuals and institutions in the territory of Nigeria" (Obasanjo, 2000 p.11). Thus, the world over, the concern for security for sustainable development and good governance takes the centre stage of national discourse. A country is therefore secured to the

extent that the political leadership is able to anticipate, recognize and respond effectively to these threats using the available national resources to ensure the safety of life and property of the citizens (Igbinoia, p.71) In other words; a secure environment provides a safe haven for other important socio-economic, religious, and political development. The inability of a nation to guarantee the safety of life and property of her citizenry negates the very existence of the government of the nation and especially, that of social contract between the rulers and the ruled. In order to ensure that the safety of life and properties of Nigerians are of paramount consideration, the 1999 CFRN provides in the fundamental objectives and directive Principles of state policy that the security and welfare of the people shall be the primary purpose of government This provision places onerous responsibilities on the Nigerian government to develop adequate capacity to cater for the protection of, and defence of her citizenry.. However, many of the fundamental rights of individuals contained in Chapter IV of 1999 CFRN cannot invalidate any law that is reasonably justifiable in democratic society in the interest of defence, public safety, and public order (section 45 1999 CFRN).

PERSONAL LIBERTY

The right to personal liberty is the “right not to be subjected to imprisonment, arrest, and other physical coercion in any way that does not admit of legal justification (Akande,2000 p 78). It is the ability to live without undue interference from government or its agencies. It involves the capacity to choose between good and evil. Right to personal liberty is one of the most important of all rights with a wider scope that encompasses other rights such as right to movement, right to assemble and associate. (Okoronye & Okiri, 2013 p 40). Democracy as a form of government enhances personal liberty. It should be noted that personal liberty is not the total absence of restraint. The intention is to ensure the freedom of every person to make full use of his faculties as long as he does not harm other persons while doing so.(Ridgway K. &Foley,1971). It means not only freedom from bodily restraint but rights to contract, to have an occupation or acquire knowledge, to marry, have a home, children, to worship and have privileges recognized at law for happiness of free men (Akande, 2000 p.79). To achieve these objectives, the constitution provides that

Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law (Section 35(1) 1999 CFRN)

Thus, in the case of *Unyirioha, v. IGP* (2009, 3NWLR (pt128) p.342), the court held

that “by virtue of the provisions of section 35 (1) and 36(6) of the 1999 CFRN, every citizen is entitled to his personal liberty and no person shall deprive of his liberty except as stipulated by the constitution or any other statute.” (Ibid, p.362) The court further held that “a Nigerian citizen is entitled to his God given natural rights free from incarceration save in accordance with all the fundamental laws of the land, that is, the CFRN and other relevant legislations which are not inconsistent with the former.”(Ibid, p.375) Since an accused person is presumed innocent until his guilt is established, it will not be fair to detain him pending the determination of his case hence the institution of bail by criminal law to take care of the situation. (Akande, p.79) .

In spite of the high premium placed on the fundamental rights of the citizenry, some of the rights are not after all inviolable. The violation of these rights must however conform to the circumstances and procedures that espouse the rule of law, the letters, substance and the spirit of the provisions of the constitution.(section 45(1) 1999CFRN). The liberties and rights of Nigerians under the constitution also remain the concern of the judiciary. This is well adumbrated in the case of Director of SSS vs. Olisa Agbakoba.,(1999 3 NWLR pt 595 340). where the Supreme Court courageously held that no right of Nigerians should be arbitrarily and capriciously denied (Ibid, p.358). Thus, since the adoption of 1979 constitution which was consolidated in the 1999 constitution, Nigeria has adopted democratic system of government with the rule of law as its underpinning. The extent that the protection of these rights is guaranteed indicates the democratic strength of a country. Indeed, human rights and the rule of law are important to the well being of any democratic society. It includes not only civil and political rights but also economics, social and cultural rights They are all well articulated in and entrenched in many national constitutions and the Charter of the United Nations, the Universal Declaration of Human Rights and other Human Rights Treaties to which Nigeria is a signatory. (Falana, 2008 p 11)

The Political Implications of Subjugating the Rule of law

May 29, 1999 was a defining day for Nigeria when it transited from military rule to a constitutional democracy. It was an historic return of democracy when Chief Olusegun Obasanjo was sworn in as a democratically elected President with the 1999 CFRN as the font et origo, i.e. the groundnorm.(section1(1)1999 CFRN) The 1999 CFRN unequivocally provides that the Federal Republic of Nigeria “shall be a state based on the principle of democracy and social justice.” (Section 14(1) 1999CFRN) The excitement of the arrival of democracy the second time was so palpable that Nigerians heave a sigh of relief from military despotism. Expectations are also high to the extent that people believed that democracy, if properly nurtured and sustained

will ensure the protection of their fundamental rights which were routinely denied by the military political adventurers. The rights embody the principles of the rule of law as variously defined and applied such that any legislative or executive acts contrary to the provisions are rendered void and unconstitutional. (Ohio,).

What then is the definitional imperative of democracy and its alluring features that make even the most conspicuous form of despotism sing its virtues in order to sanctify and legitimize its existence? One defence of democracy has been that, "it is a means of safeguarding the liberty of individuals, of protecting them against unnecessary constraint on their action" (Ozoeneman, 1992 p.374). Prof. Ben Nwabueze says constitutional democracy is

about the use of the constitution as a supreme and fundamental law to regulate and limit the powers of government ... constitutional democracy is, in a word, concerned to secure not only a government of the people, but more importantly a government of laws rather than of men.(Ibid p.374).

The former Governor of Central Bank of Nigeria sees democracy as a form of civilian led governance in which all citizens have fundamentally equal rights, votes, and privileges. (Soludo, 2005, p.16). Today democracy is undoubtedly becoming the only acceptable system of government over the world as any other system is taken as unacceptable.

From the foregoing, it is clear that nothing distinguishes a free country from a country under arbitrary rule than observance of rule of law. The significant question now is, what political model are will now advocating for the country if the novel proposition of the President is allowed to hold sway or adopted as a state ideology? Are we gradually sliding back to dictatorship after over twenty-one years of constitutional democracy? A detailed examination of the President's proposition in this study will determine whether we have got to the enviable stage to roll out the drums in celebration of democracy and its supporting pillar- the rule of law, or whether we should use the conclusion which we shall arrive at the end of this study for a sober reflection.

With regards to the determination of when national security is in jeopardy, it is conceded that it is an important condition in the job description of an elected President in a free democratic society. He is to preserve law and order by guaranteeing the security of life and property. (Amuta, 2018). Chidi Amuta, a political commentator is of the view that "it is only fair that we trust the President in determining what constitutes national security and what acts of citizens could put it

in danger.” This is because according to him, “there is in the management of national security an implicit assumption that the President has privilege access to intelligence that is not available to the rest of us”(Ibid). To that extent, we can assume that the President’s judgment on such matters will be in the highest national interest and in conformity with the values that inform every democracy. However, it is often the case that the executive finds it difficult to rise above its own narrow and political interest. Therefore, great caution needs to be applied in granting the President the prerogative of determining what constitutes national security suo motu. (ibid). Thus, where the definition of national security is skewed to resemble partisan or personal or political interest, then there is danger to the entire society. In this situation, only the courts can intercede to decide the extent of the President’s authority and where the fundamental rights of individuals begin. This is exactly the gravamen of the decision in *Agbaje v. Commissioner of Police*. (1969 N.M. L. R. p.137).

Professor Ernest Ojukwu (SAN) holds the view that the President should not have made the statement. According to him, “There is a fundamental problem which we need to address on the issue. If our President says that the rule of law must be subject to national interest, it is an ominous sign that our democracy has failed” (Amuta 2018) Similarly, Abeni Mohammed (SAN), another political commentator asked this rhetorical question. “What is national interest that the rule of law must be sacrificed for?” In his own perspective, he says that

It is in the national interest of any government to obey and subject Nigeria to the rule of law. Where there is rule of law, every interest, including that of the nation is safeguarded. A country without the rule of law is a lawless jungle (Ibid).

However, there is a segment of Nigerians who believe that like every concept, the rule of law is not cast in iron i.e. there are limitations to its application and therefore should not be made sacred and inviolable in spite of the will and convenience of the people. (Mohammed, 2018 p.19). In fact, Judges are often advised to balance competing values of freedom and equality in ways that correspond with popular democratic sentiment which may not always be consistent with the rule of law If the war against corruption is to be fought and won, they contend, the rule of law must be tampered with. (Ani, 2018). To this group of Nigerians, that includes disobedience of court orders sometimes as well as trampling upon the citizen’s fundamental human rights to be able to have a sane society that will be beneficial to all. (Ibid) This group seems to be on the same page with the President and the Attorney-General of the federation. They contend that the rule of law precept is an unnecessary hurdle when national security and interest is under actual threat of being jeopardized. They

are of the firm view that because of the exigency inherent in national security and the tardiness of the rule of law, national security should take the place of primacy (Mohammed, p.19). In justification, they draw inspiration from the laws that guide the conduct of war. According to Adamu Monammed:

... The rules of war are imposed on combatants by law, but expediency alone governs when to shoot and how to avoid being shot. The concept of national security supersedes the principle of rule of law to the extent that the demands of national security often cannot brook the lethargy of the rule of law. It is incumbent on national security sometimes to assert outside of the due process of law in much the same way that in war situations, the laws are silent amidst the rumblings of arms (Ibid)

They are also of the view that national security is a veritable sanctuary, a safe haven for all including the rule of law. Adamu Mohammed concluded that;

Everything including the rule of law bleeds when the security of a nation is put in harm's way, but the rule of law itself can afford to bleed without occasioning harm to national security...if the exigencies of national security must wait on the tardiness of rule of law, then it is the law that is served by man and not the other way round. (Ibid)..

There is no doubt that this view is in support of the President's proposition. Professor Saggy, one of the acclaimed constitutional lawyers in the country is also an ally of the President on this issue. Instead of advocating the cause of the rule of law as he has done in previous occasions, (Busia, 1975) he advocated for another legal framework – the “rule of justice,” to take precedent over the rule of law. He put the matter thus:

I agree with him (the President) absolutely, I will even go further ... my own extends to robbers and looters and criminals in the society who jump at human rights and the rule of law forgetting that there is rule of justice. When you loot and subvert the economy of the country and millions of Nigerians are suffering, the interest of the country should override any rule of law (Adebayo, 2018)

He reinforced his deep conviction that the rule of law and the virtues of fundamental human rights have been a veritable refuge for economic saboteurs. He said with an

incisive voice, laden with anger and frustration that “alleged criminals should not feel secure in the arms of the law when millions of our countrymen are going down because of their sabotaging our economy. I completely agreed with the President and concluded that the rule of justice for Nigerians is superior to rule of law for individuals.”(Ibid)..

The above statement of the learned Professor must have been motivated by the seemingly exasperating war against elites’ corruption in the country. There is no doubt that corruption is very pervasive in the country. It has become endemic and it has always been the bane of our democracy. (Awomolo, 2016 p.33). It exists in public and private sectors and has also become a monster that is ravaging our society. A concerned historian profoundly captured the deleterious effect of corruption in the following words.

Pathetically, the mindset of the Nigerian political leadership has been that of self-service as some of the leaders are mired in the pursuit of selfish and personal goals at the expense of broader national interest. Consequently, emphasis has been on personal aggrandisement and self-glorification with the result that corruption has become a euphemism for explaining political leadership in Nigeria in relation to the management of national wealth (Ogbeidi, 2012 p.3)..

This in no small measure has undermined development which has affected all social sectors including education, health care, housing and employment. (Arinze & Anishiem, 2017 p.185). It has also become a scourge that if drastic measures are not taken, the country may collapse under the heavy yoke of corrupt oligarchs, and if we play the ostrich, the devastation which corruption will inflict on the economic well being of the country may be more serious than that of corona virus. However, “the rule of justice” as proposed by Professor Sagay is not known to democracy as a political system of governance anywhere in the world. It is perhaps a feature of political system characterised by dictatorship or absolutism. What the learned professor is probably advocating for, in our own view, is trial by courts or tribunals whose decisions are final or subject to the confirmation of the ruling cabal reminiscence of the trials by the Military Tribunals during the military administration of Major- General Muhammad Buhari. (Oship. 1988 p. 460) . Or is the learned professor calling for a hybrid regime, partly democratic and partly authoritarian? It is submitted with the greatest respect to the learned Professor that whatever be the meaning and scope of the ‘rule of justice’ it may not be a better alternative in solving the problems of corruption in the country. Graft is an attitudinal problem and

it is better minimised by the combination of the present regime of rule of law under a viable democracy and re-orientation of the citizenry through moral persuasive entreaties. This is preferable to adopting the nebulous “rule of justice,’ or any other rule the extent of which it can advance good governance and fundamental human rights of our citizenry we do not know.

However, it is conceded that democracy and ipso facto, the due process of rule of law, may be slow, cumbersome and lethargic, it constitutes the best form of government such that any assault on it like disobedience to court orders constitutes a threat and potent danger. As stated earlier, the world no longer has a choice between the rule of force or any other rule, and the rule of law. In a nation where open defiance to court orders has been turned to state ideology, the rule of law is seriously imperiled. To constantly scale the wall of rule of law by citing national security as an absolute, unquestionable prerogative of the executive is to veer in the direction of autocracy and medieval absolutism reminiscence of the reign of Louis the XIV who, at the height of his despotic rule in France declared L’etat c’est moi i.e. I, am the state.(<https://www.google.com>). While no court will overrule a President on a genuine national security assessment or decision as it happened in Dokubo’s case, no credible court will grant a President the authority to violate individual rights under the guise of the exigency of national security.(Amuta, 2018).

The Consequence of Subjugating the Rule of Law.

The consequences of subjugating the rule of law to national security in a democracy are no less important than the political implications. More than twenty-one years after the adoption of constitutional democracy, there has emerged a frightening threat to what should have been the benefits of a new found political order in Nigeria, i.e. unqualified observance of human rights except as limited by law (Section 45(1) (a-b) CFRN) by the government. On the contrary, what has been witnessed so far is a phenomenon that constitutes serious danger to the sustenance of the rule of law. This is manifested in among other things, conscription of civic space, intolerance of opposition elements willful disobedience of court orders, and reckless invasion of the temple of justice.

It will be recalled that two cases were in the public domain when the President made the statement. The cases of former National Security Adviser Sambo Dasuki, and that of the Shiite leader, El Zakzaky and his wife Zainab, all detained by Department of State Security Service allegedly for breach of national security offences. The facts in Dokubo Asari’s case were not on all fours with these two cases. The President

extrapolated his statement from the lead judgment of the case. In these two subsequent cases the court granted bail. Nevertheless, the government treated the orders of court with disdain encouraging its agency (the DSS) to trot out cynical excuses for disobedience in the name of nebulous alibi called national security. (Yusuf, 2018 p.2).

Disobedience to court orders has however become a phenomenon in Nigeria which is considered as the height of executive lawlessness and a veritable threat to the very essence of law in the society (Jegede, 1993 p.56). No doubt; the sanctity of the law depends on the respect for the judicial process through which orders according to the law are made. Disobedience to court orders is definitely an act of rebellion against the law and a society which continues to tolerate and condone such a conduct negates the very essence of rule of law. (Ibid, p.57) The inevitable consequence of subordinating the rule of law to national security in a democracy is the enthronement of anarchy and chaos in the society. This is because the coercive power of the court is authorised by law. If the law is suspended, the citizenry would not obey the law and respect the rights of others. Prof. Wole Soyinka noted with serious concern that disobedience of court order by government can lead to a situation in which there is general civil disobedience in the society. According to him;

it is so obvious - state disobedience leads eventually to civil disobedience, piecemeal or through collective withdrawal of recognition of other structures of authority. That way leads to chaos but who set it in motion? as often the case, the state. Unquestionably, such a state bears full responsibility for the ensuing social condition known as anomie. (Oluokun, 2019)

The ensuing chaotic situation is demonstrated in plethora of judicial pronouncements especially by the Supreme Court. The locus classicus being the case of Ezekiel Hart vs. Ezekiel Hart. (1990 1 NWLR (pt 126) 276) where Honourable Justice Walis (JSC) cited the dictum of O'Leavy in Canada Metal Co Ltd vs. Canada Broadcasting Corp. No 2 (1980 A.C. p.952) as follows

To allow courts' order to be disobeyed would be to tread the road towards anarchy. If orders of courts can be treated with disrespect, the whole administration of justice is brought to scorn...(Ibid p.279).

Similarly, in Military Governor of Lagos state v. Chief Emeka Ojukwu 1986 NWLR (pt18) p.621.). The government of Lagos state refused to comply with the order of the Court of Appeal to reinstate the respondent after his forceful ejection from the subject matter of the suit. The former Chief justice of Nigeria Honourable

Justice Mohammed Lawal Uwais (JSC) stressed that “it is a matter of grave concern that the military Government of Lagos State should be seen to disregard a lawful order issued by a court of law.” (ibid p.639) According to the learned Justice, “if governments treat court orders with levity and contempt, the confidence of the citizens in the courts will be seriously eroded and the effect of that will be the beginning of anarchy in replacement for the rule of law”.. (Ibid). The court concluded that “if anyone should be wary of orders of court, it is the authorities; for they, more than anyone else, need the application of the rule of law in order to govern properly and effectively.” Also, the Supreme Court emphasized the sacrosanct duty of obedience to court order when the federal government suspended statutory allocation to the local government in Lagos state.

The routine flouting of court orders made the unassuming and the conservative former Chief Justice of Nigeria Honourable Mohammed Lawal Uwais(JSC) to lament and warn of the dangers inherent in government’s condescending attitude to court orders at year 2005 All Nigerian Judge’s Conference in Abuja He said:

Our various governments are threatening the rule of law by rampant disobedience of court orders. This in my humble opinion is not a good testimonial for democratic government anchored on the rule of law. (Ellis, 2005 p.20)..

The 1999 CFRN also underscores the sanctity of judicial pronouncement. This in effect means that the functionaries of government, no matter how highly placed are duty bound not only to observe, but also to enforce any judgment of court of records. (Section 287 (1) (2) (3) 1999 CFRN) By the letters, substance and spirit of these provision, the executive authorities are not given the discretion to pick and choose which order or judgment to obey. It is therefore disheartening to note that in Nigeria, instances of blatant and willful disobedience of court order by the executive are replete. This creates the impression that the executive is above the law. It is our considered view that the decision of the government to ignore the court orders by keeping the applicants and many others in similar situation in perpetual detention amounted to executive lawlessness and governmental capriciousness. It is also a mockery of rule of law and a flagrant recourse to the rule of man which can only and always be arbitrary. This is not a good testimony for the rule of law whose foundation is democracy. The reasonable option for the DSS in such situation if it professes the rule of law is to appeal the decision of the Federal High Court Abuja to a higher Court. The executive has to be reminded that if it has to govern effectively, it has to abide by the rule of law even when it is not convenience After all, the Judiciary as a third arm of leadership in any country is created by God. The Magistrate and Judges are God’s

own Ministers who bear the sword to execute and dispense justice in the society. All souls must therefore be subject to them to avoid the wrath of God. Thus, no man or authority on earth is above or below the law. The law does not ask any man's permission when it asks for obedience. Obedience to it is demanded as a right, not asked as a favour, for there could only be the peace of the grave yard when the values espoused under the rule of law are trampled upon.

It is instructive to note that, the systemic desecration of the sanctity of rule of law especially by way of defilement of judicial pronouncements is not peculiar to Nigeria alone. It is commonplace in many countries in Africa. For instance, in Swaziland, the government raised the level of disobedience to court orders into an art. This prompted all the Judges to resign in protest. After almost two years, the judges returned to work after the government assured them that it would adhere to their decisions (Ellis, p.20). In late Mugabe's Zimbabwe, disobedience to court orders was not regarded as an aberration. In fact, legal practitioners were routinely threatened by members of the Police simply because they are carrying out their legitimate duties.(Ibid p.20). However, history reminds us that many autocratic regimes that African continent has become notorious for, started by openly defying the courts. For instance, Mobutu Sese Seko of democratic republic of Congo made nothing of courts' orders. He went ahead to sack judges whose judgment he did not agree with. He eventually condescended to the barbaric level of getting judicial officers murdered for daring to give judicial pronouncement against his government.(Taiwo, 2007 p.283) In the Caribbean nation of Haiti, the poor state of the judicial system was a result of the progressive desecration of the courts. The government chose the judgment to obey and ignored the rest. (Ibid, p.283)

The Rule of Law in the UK and the US

The rule of law is one of the longest established common law fundamental principles of government of the United Kingdom dating to Magna Carta of 1215. It is employed through many separate ideas. Among them is that law and order in contrast to anarchy i.e. the running of government in line with the law and normative discussion about the right of the state as compared to the individual (Wikipedia, online). It is often contrasted with the rule of men in which a powerful strong man sets policy and rules for everybody else by fiat at his whim but himself subject to no law. The rule of law is an aspect of the British constitution that has been emphasized by A.V. Dicey (Dicey 1979 p.199) and it is an important aspect of British politics. The significant feature of rule of law in the United Kingdom is that individual liberties depend on it and it involves the absence of arbitrary power on the part of the government and prevents it from making retrospective laws. This means that no man is punishable

except for a distinct breach of the law of the land. This however requires that law should be open and accessible, clear and certain. This creates a lot of challenge in British society as law is hard to read and inaccessible as many laws are passed through delegated legislation (ibid).

In the UK, the rule of law does not exist to the same extent as it does in the US. For instance; the Queen is above the law. Civil and Criminal proceedings cannot be taken against her (the sovereign) as a person under UK law. Acts of parliament do not apply to her in her personal capacity unless they expressly stated to do so. In fact obedience to law in the UK is a function of proximity to the crown

In the US, the constitution is the nation's fundamental law. It codifies the core values of the people. Under it, the court has the responsibility to interpret the constitution and any other law passed by the Congress. The rule of law in the US, as in any other country is a principle under which all persons, institutions and entities are accountable to the laws that are publicly promulgated, equally enforced, independently adjudicated and consistent with international human right principles. The American concept of rule of law also stems from magna carta in 1215 which stated that "No free man shall be seized or imprisoned, or stripped of his rights, or possessions, or outlawed, or exiled, or deprived of his standing in any way, nor we will proceed with force against him or send others to do so, except by the lawful judgment of his equals or by the law of the land A former United States ambassador to Nigeria John E.Reinhardt is of the view that every nation has a legal system for the maintenance of rule of law. He argues that "some of this system may be more successful than the others in providing order with justice. But equal justice for mankind is still the ideal for which most people of the world hope. (Reinhardt,1973, p.151). The former Ambassador is of the view that man has progressed as his civilization has developed. As a result, he argues that "years ago, in almost every society, the community demanded and obtained laws ending the practice of dueling among individual as a means of settling disputes (Ibid).

Two cases in particular exemplified that the rule of law is well rooted in the US and that no one is above or beyond the law. The first is the case of President Richard Nixon of the Watergate fame. He refused for a full day to respond to a subpoena by the House Committee that was investigating the case. At the last minute, he complied i.e., he respected the rule of law. He however resigned before he had to answer the law's question. The second was in respect of President Bill Clinton in Monica Lewinsky case. As a sitting President, he swore under oath to answer specific questions about his relationship with Ms Monica Lewinsky. He could not avoid answering the investigator's questions. He respected the rule of law.

The importance of reconciling personal liberty and national security is also emphasized in the US after 9/11 terrorists attack. Soon after, the executives seeming repressive approach quickly roiled citizens about arbitrary and abusive treatment of suspects. Under pressure from citizens and the media, the Congress quickly introduced legislations to ensure that response to terrorism is in consonance with the culture of rule of law. (Sekoni, p.18). Thus, the Congress foreclosed the probability of concentrating too much power in the executive. Before this step was taken, it was not uncommon for ordinary citizen to cry foul about deprivation of suspect freedom during interrogation and detention of suspects.(Ibid, p.18). The duty of government which is committed to the rule of law is to ensure that court orders are complied with by the executive and all per person.. This is well adumbrated in 1957 in the US case of Brown vs. Topeka (347 US 483 (1954) when President Dwight Eisenhower placed 10,000 members of Arkansas National Guard under Federal control and dispatched 1,000 United States Army Paratroopers to assist them in enforcing the judgment of a federal court for the admission of nine black students in Central High School, Little Rock, Arkansas. The ruling of the court had abolished segregation in public schools in the United States. (Falana, 2018).. In justifying this action, President Eisenhower said that “the very basis of our individual rights and freedom rests upon the certainty that the President and the executive branch will support and ensure the carrying out of the decisions of the federal courts even, when necessary with all the means at the President’s command” (Sekoni, p.18).

SUMMARY AND CONCLUSION

This piece has examined and argued that the rule of law is the bedrock upon which any democratic state is built. It is the political and constitutional principle that stipulates the supremacy of the law over the ruler, the ruled and all the decisions taken in the country. The paper further argued that in the absence of rule of law, what obtains is chaos, lawlessness, arbitrariness, abuse of power and unabashed absolutism. The key questions to which answers have been proffered are; how best can we protect national security and fundamental rights of citizens? Secondly, who determines what constitutes a threat to national security. It is unequivocally asserted with humility in this paper that the power to determine when national security takes prominence over the rule of law is the exclusive preserve of the judiciary. It does not domicile in any other arm of government. This decision is usually reached after a careful evaluation of evidence and material particulars presented before the court. Nigeria cannot afford to stoop so low to discountenance the rule of law for executive whimsicality. The corollary is anarchy which can endanger the nation that has had too many miraculous reprieves. The country needs

more than a case over bail application that fizzled out before jettisoning the constitution backed belief in the rule of law. Although corruption has become endemic, gripping the body and soul of the nation. It has become an albatross on the neck of the country. However, fighting corruption is good, protecting national security and peace is excellent. The drawback is when unlawful means are adopted to facilitate these actions, it becomes suspect. When government gives the impression or creates the perception that protecting national security is being exploited as a convenient alibi to deny citizens of their fundamental human rights, silence critics, and intimidate opposition elements, it means that the rule of law and democracy are under siege. The existing laws in our statute books are adequate to combat the deleterious effects of corruption and maintain national security. To suddenly abandon the rule of law for a nebulous “rule of justice” or any other rule by whatever name, is to embark on a wild goose chase. It is a whirlwind that blows nobody any good.

The cost of living in a society where the rule of law is not protected cannot be justified. The cost will certainly be too high. Unconditional respect for supremacy of rule of law is the surest way to enhance good governance which will engender unrivalled national development. It will also ensure that the aspiration of A.V. Dicey et al that there is a need to be more trustful of law than the heart of man will not perish from the surface of the earth. Until this is achieved, there will be no cause to roll out the drums in celebration of our nascent democracy. Instead our immediate challenge now is a deep introspection of the past in order to determine what the future holds for us. Nevertheless, it is submitted most humbly that, as long as the rule of law is subservient to national security, so long will it serve as a sad reminder of the dark days of the military political predators when the sacred chapter IV of the 1979 Constitution of the Federal Republic of Nigeria was suspended and citizens detained for months. The sustenance of the proposition of the President as a state ideology is to walk down that path of perdition again.

REFERENCES

- Adebayo, I. (2018). President Buhari, the Rule of Law and National Interest: Matters Arising. Retrieved from < <https://www.shinesyoureya.org> >
- Aguda, O. (2000). *Understanding the Nigerian Constitution 1999*. Lagos: M.I.J. Publishers.

- Ahuraka Y. I. (2018, September 3). Dissecting PMB's Concept and National Security. Leadership Newspaper, . 12
- Akande, J. O. (2000). *Introduction To The Constitution of the Federal Republic of Nigeria* 1999. Lagos: M. I. J. Publishers. 78
- Amuta C. (2018, Rule of Law and National Security. Retrieved from <<https://www.thisdaylive.com>>.
- Ani S. (2019). Between Rule of Law and National Security: Fresh Anxiety. The Sun Nigeria. Retrieved from < <https://www.sunnewsunline.com>>between –rule-of—and-national- security.
- Appadorai, A. (2004). *The Substance of Politics*. Oxford: Oxford University Press, 68
- Arinze C. & Anishiem M. (2017). Right to Development in Nigeria: An Index of Democracy. *African Journal of Law and Human Rights*, . 1, 185
- Awomolo A.S. (2016). Nurturing Nigeria's Democracy Through the Law. The First Distinguished Guest Lecture of the Faculty of Law Bowen University Iwo. Nigeria
- Busia K.A. (1975). The Ingredient of Democracy, In Mutiso M. & Rohio. S.(eds), *Readings In African Political Thought*. London: Heinemann Books England, 456.
- Dicey, A.V. (1979). *Introduction to the Study of the Law of The Constitution, 10th edition*. Palgrave Macmillan, London 199.
- Ekweonu C. C. (2013). The Federal Ministry of Justice, The Rule of Law and the Challenges of Justice Administration in an Era of transformation. *The Justice Journal: A Journal of Contemporary Legal Issues*, Federal Ministry of Justice Abuja. Nigeria. 5, 1
- Ellis. M. (2005). *Strengthening African Democracy, The Rule of Law and Institutions Building*. Lagos: Nayee Law Publication Ltd, 20
- Falana,F. (2019). Rule of Law and Security" Retrieved from <<https://www./thisdaylive.com>>.

- Garner, B.A. (1999). *The Black's Law Dictionary, 7th edition*. West Group Publishing Co St Paul minn.
- Gubak. H. D. & Kwopman, B. (2018). "National Security Challenges and Sustainable Development in Nigeria: A Critical Analysis of the Niger Delta Region". *Global Journal of Political Science and Administration* 6(4), 32.
- Igbinovia, P.E. & Igbinovia, B.A. (2013). The National Security Advisor in the United States and Nigeria: A Comparative Perspective. *The Constitution*. 13(1). 71.
- Jaja N. C. & Odigbo (2013). Security and National Development in Nigeria: The threats of Boko Haram. *International Journal of Humanities and Social Sciences* 3(1) 286.
- Jegede M.I. (1993). What is wrong with the Law? *Nigerian Institute of Advanced Legal Studies, Annual Lecture Series* 12, 56.
- Mbachu, O. (1992). Democracy And The Rule of Law: A case Study of Nigeria. *The Indian Journal of Political Science* 53(3) ,374.
- Mohammed Adamu, M. (2018, September 27). An'nt The Rule of Law a bitch. III. *The Nation*, 19.
- Musa I. & Musa Yusuf, A.M (2016). Rule of Law, Personal Safety and National Security in Nigeria. *International Journal of Arts & Science*, 125.
- Ogbeidi M. M. (2012). Political Leadership and Corruption in Nigeria Since 1960: Socio- economic Analysts. *Journal of Nigeria Studies*, 1(2), 3.
- Ojo A. (1987). *Constitutional Law and Military Rule in Nigeria*. Ibadan: Evans Bros.
- Okoronye, I. & Okiri, M. O. (2013). Assessment of the Right to Personal Liberty under Nigeria's Democracy: 1999-2013. *Net Journal of Social Science*, 2, 40.
- Olanipekun O. (2006). Assault on the Rule of Law: A Veritable Threat To Democracy. The Text of The First Annual Emeritus Professor David. A, Ijalaye Lecture delivered at The Faculty of Law O.A.U. Ile-Ife. Nigeria. 16.

Oluokun, A. (2019, April 19). Nigeria: The Road to Dictatorship. PM News , Retrieved from <<https://www.pmnewsnigeria.com>>.

Oputa, C. (1990). The Independence of the Judiciary in a Democratic Society. Its needs, positive and negative aspects". *Justice Journal: A Journal of Contemporary Legal Problems*, Federal Ministry of Justice Abuja.1 (3), 21.

Oshio P. E. (1988). Rule of Law, Military Government, and Dilemma of Nigerian Courts. *Journal of the Indian Law Institute*. 30 (4) ,456.

Ridgway, K &.Foley Jr. (1971). Individual Liberty and the Rule of law. Retrieved from <<https://www.fee.org/articles/individual-liberty-and—the-rule-of-law>>.

Reinhardt J.E. (1973). Fifth Annual Conference of Nigerian Society of International Law. Elias T.O. (1978) (ed) Proceedings of The Fourth, Fifth and Sixth Annual Conference of the Nigerian Society of International Law. T.O. Elias (ed) Ethiope Publishing Corporation, Benin City, Nigeria. 150 -151.

Sagay I. (1988). *Legacy For Posterity: The work of the Supreme Court (1980- 1988)*. Lagos, Nigerian Law Publications.

Sekoni, R . (2018 September 12). Recognising Liberty and Security. *The Nation*. Nigeria 18

Soludo C. C.(2005). The Political Economy of Sustainable Democracy in Nigeria. A 2005 Democracy Day Lecture of The Federal Republic of Nigeria held at the Main Hall, ECOWAS Secretariat, and Asokoro Abuja. Nigeria. 16.

Taiwo L.O. (2007). Democracy, Court, and Rule of Law in Nigeria: Problems and Prospects. *East African Journal of Peace and Human Rights*. 13 (2), 270.

The Holy Bible, Book of Exodus 20, verses 3- 17.

Ubani A. (2017). In Defence of Rule of Law in Nigeria. Retrieved from <<https://www.orderpaper.ng.com/defence-rule-law-Nigeria>>.

Utomi, P. (2004). The Rule of Law, Property Rights and Challenge of Prosperity in Nigeria. *The Advocate*. 24,132.