



# The Judiciary and Democracy Consolidation in Nigeria Under the Buhari Administration

Okeke, Remi Chukwudi<sup>1\*</sup>, Idike, Adeline Nnenna<sup>2</sup>

<sup>1\*</sup>*Department Of Public Administration And Local Government  
University of Nigeria, Nsukka*

*Phone: 08035523818, Email: Remiokeke@Gmail.Come*

<sup>2</sup>*Ph.D.Department Of Political Science And Mass Communication  
Federal University, Ndufu-Alike Ikwo (Funai) Ebonyi State  
Nigeria*

*Email: ojeleogbu@yahoo.com*

**ABSTRACT:** *This study examined the role of the judiciary in democracy consolidation in Nigeria (under the Buhari administration). Hence the general objective of the study was to examine the role of the judiciary in democracy consolidation in Nigeria, under the Buhari administration. The twin research questions were accordingly as follows: how has the judiciary fared in the area of contributions to democracy consolidation and what role must the judiciary play in engendering democracy consolidation in Nigeria under the Buhari dispensation? The study found that the role of the judiciary in democracy consolidation in Nigeria, particularly under the Buhari administration could not be described as unassailable. It was highlighted in the work that the checks and balances inherent in the executive-legislature-judiciary relations in a democracy, must not be done with impunity by the personnel of any of the three organs of government. And so let it be with the arrest, detention and trial of judges in the course of democracy consolidation in Nigeria, under the Buhari administration, the study concludes. But let no judge be arrested again. In other words, let no judge do again what may precipitate the arrest of a judge.*

**KEY WORDS:** *The Judiciary, Democracy Consolidation, Nigeria, Buhari Administration*

## INTRODUCTION

Nigeria's democracy is till classifiable as an emergent type. Its structures and trajectories are still undergoing some forms of trial and experimentation. The foundation of Nigeria's democracy has accordingly remained palpably weak. Among the three organs of government in Nigeria, the executive, the legislature and the judiciary, the issues of checks, balances, complementarities and legitimacies, have therefore remained continuously contentious (Oni, 2014). The struggle for unhelpful independence and unnecessary superiority among the institutions has remained highly pronounced. Above all, each of the three organs of government has continued to be enmeshed in monumental corruption. Obutte (2016) hence argues that if the judiciary, considered the beacon of a democratic process and good governance is tainted in corruption, the developmental objectives of the country will remain a mirage. And in any case there is research evidence that corruption is actually prevalent in all areas of the Nigerian justice system (Oduntan, 2017). Enofe, Ezeani & Eichie (2015) thus assert that corruption has transmuted from vice to virtue in Nigeria. It is thus against this background that this study examines the issue of the judiciary and democracy consolidation in Nigeria under the Buhari administration. Hence, the general objective of the study is to examine the role of the judiciary in

democracy consolidation in Nigeria, under the Buhari administration (which is still in power). The twin research questions are accordingly as follows: how has the judiciary fared in the area of contributions to democracy consolidation and what role must the judiciary play in engendering democracy consolidation in Nigeria under the Buhari dispensation?

## **CONCEPTUAL ISSUE(S)**

### **Democracy Consolidation or Democratic Consolidation**

In extant literature, democratic consolidation is a more common language of social science scholarship than democracy consolidation (Shedler, 1998; Omotola, 2009; Omotola, 2011; Inokoba and Kumokor, 2011; Osinachukwu and Jawan, 2011; Kwasau, 2013; Ebirim, 2014 Adeosun, 2014; Oni, 2014, etc). Ebirim (2014) has posited that democratic consolidation may be defined as a status of democratic maturity such that it can no longer be threatened or truncated by reactionary forces whether internal or external. Furthermore, argues Ebirim, democratic consolidation is the process by which a new democracy matures, such that it is unlikely to revert to authoritarianism. Then citing Diamond (1999), Kwasau (2013) sees democratic consolidation as the process of achieving broad and deep legitimation, such that all significant political actors believe that popular rule is better for their society than any other realistic alternative they can imagine. It also connects the act of reducing the probability of the breakdown of the system to the point where democracy can be said that it will persist (Idike, 2014).

Literally, the concept means an identifiable phase in the transition from authoritarian rule to civil rule and by extension, democratic systems that are germane and fundamental to the establishment and entronement of a stable, institutional and enduring democracy (Oni, 2014). According to Osinachukwu and Jawan (2011), democratic consolidation implies a democracy that can stand the test of time and this can be assured if those values that make democracy worthwhile are fully institutionalized. Citing Shedler (1998), Adeosun, 2014) posits that democratic consolidation is one concept that has attracted the attention of scholars and policy makers since the advent of the third wave of democratization, it is an omnibus concept, a garbage-can concept, a catch-all concept, lacking a core meaning that would unite all modes of usage. And I argued in Idike (2014) that democratic consolidation is a process; it is not an event. I argued that it stands for the process of ensuring that the well-being of citizens is more guaranteed under a current democratic dispensation than the preceding authoritarianism.

In this study however, I argue that the terminology of democratic consolidation incidentally shifts the emphasis on the subject matter of interrogation from “democracy” to “consolidation”. It thus sounds as if what should be done ‘democratically’ is the “consolidation”. In this regard, the focus of this particular study is on democracy consolidation, which refers to the process of safeguarding democracy against the onslaught of non-democrats. Democracy consolidation therefore implies the existence of certain democratic structures and culture, which could be leveraged upon in ensuring that the well-being of citizens is more guaranteed, under a current democratic dispensation than the preceding regimes.

### **NIGERIA’S DEMOCRACY NARRATIVE: A REVIEW**

The Nigerian state has experienced an immensely checkered narrative of democracy. According to Oni (2014) therefore, problematizing Nigeria’s efforts at democratization would require a re-examination of the historical events that created the Nigerian entity. The country was granted the status of independence by her British colonizers in October 1960. Democracy is in this study therefore assumed to have become a system of government for this country from this date. By January 1966 however, the Military had sacked the democratically elected government in the new Nigerian nation. This marked the beginning of the end for the first phase of democracy in the Nigerian state. At the end of a civil war that followed (1967-1970) the military

remained in power but handed over to yet another civilian set of rulers in 1979. In 1983 the Military came again and democracy was again suspended. Up to the year 1999 in the country, it was the military strongmen that were in power, with the intermittent enticement of the Nigerian bloody civilians with snippets of democracy tastes (Chukwuemeka, Anazodo & Ezeigwe, 2011; Nwanolue and Ojukwu, 2012).

President Olusegun Obasanjo, former military ruler (1975-1979) was elected in 1999 under the banner of the People's Democratic Party (PDP), derisively referred to by opposition Nigerians as People Deceiving People. Under this party, the Nigerian democracy continued on the path of what must pass as democratic experimentation for a period of sixteen years. In the 2015 general elections, an amalgam of other political parties (political groupings that obtained statutory registration and accordingly claimed to be political parties) under the aegis of the All Progressives Congress (APC) defeated the PDP at the presidential level. The party's incumbent President Goodluck Jonathan therefore handed over to Muhammadu Buhari, Nigeria's former military ruler (1983-1985) who led the APC as presidential candidate. This gave birth to the Buhari administration.

But what achievement(s) has democracy recorded in this country from the colonial master's departure to the current period? According to Arowolo and Aluko (2012), Nigeria's democracy is being manipulated by those in power. They employ and monopolize state machinery to maintain their hold on power. The Obasanjo administration, for instance, was noted for its selective judgment and flagrant disrespect for and disobedience to the rule of law; this is also a function of ineffective rules and weak institution. The administration hunted its opponents with the awe of the Economic and Financial Crimes Commission (EFCC). It is only natural and expected, therefore, that in a situation where political opponents are clamped down upon, the political space becomes heated and tension-soaked as the opponents strive to 'balance the terror' (Arowolo & Aluko, 2012).

Then according to Arowolo and Aluko (2010), political violence is gradually becoming a permanent feature of democratization in Nigeria. This is because every campaign ground is soaked with violence and killings. It is capable of truncating Nigeria's democracy if not curtailed. Democratization process in Nigeria is growing at a very sluggish trend, thus threatening the basis of political stability, deepening the root of political gerontocracy and strengthening sectional political hegemony (Arowolo & Aluko, 2010). They further assert:

Political violence seems to be institutionalized since it emanates from the corridor of power and so politics and political activities become exclusive rights of the 'dirty' politicians who make politics dirty in the first place. The fact that political game in Nigeria is played at variance with set rules makes it a dirty game. Politics is a clean game outside the shores of Africa and it becomes dirty at its importation to Africa. Politics must have been infested with greed, tribalism, intolerance, injustice and parochial instinct of political leadership (Arowolo & Aluko, 2010).

Ojajorotu and Allen (2009) had earlier queried: What does democracy do or fail to do about the welfare of Nigerians? Then citing Kalu (2004) and Ake (1996) Ojajorotu and Allen also provide the following reaction: the history of democracy, economic development and welfare for citizens in Nigeria has been that of disappointment. The two researchers then continued:

Institutions such as the civil society organizations, independent judiciary, and political parties, regular free and fair elections, to mention but a few, provide avenues through which citizens can demand accountability from leaders. Accountable leaders can generally directly or indirectly contribute to improvement of welfare of citizens. In the case of Nigeria, viewing it from a time-series between 1999 and date, the institutions emerged but remained essentially weak in terms of response to the political, economic and social needs of citizens. For instance, electoral institutions created to manage elections have been unable to permit substantial

involvement of citizens in the electoral process. Effecting a regime change through the ballot box has then been difficult for citizens.

According to Chukwuemeka, Anazodo & Ezeigwe (2011), the military continued in power up till May, 1999 because Nigeria was unable to nurture an enduring democracy. More so, the political parties, associations and of course the entire polity were not strong. Political parties were also formed on ethnic basis; irregular political practices had eaten deeper and deeper into the body politic of Nigeria. Procedures for transfer of power were not also strong; the procedures were not orderly as to be compared with what obtained in western capitalist nations and even the newest states like Philippines, India (Chukwuemeka, Anazodo & Ezeigwe, 2011). Superfluous as the allegations may be, the truism was that rigging, thuggery and flagrant falsification of figures were rampantly witnessed in the various elections conducted in Nigeria from 1963 till date (Chukwuemeka, Anazodo & Ezeigwe, 2011). These researchers further highlight as follows:

The type of democracy practiced in Nigeria falls short of the following principles as enunciated by Jones (2006) (a) Equality – equalitarian status for all persons in the polity (b) Alternative choices – the masses should be able to decipher the type of political ideology, party or interest which suits their desires. (c) Regular consultations – people should be consulted over debatable issues, to air their views and discuss with the elected representatives when necessary. Government should avoid taking decisions arbitrarily. (d) Regular elections – ideal democracy should be devoid of absolutism, despotism and ‘sittight’ leadership/tenure elongation. Regular election should be held to elect new candidates from the masses. Even if the incumbents should continue on the demand of the majority, elections should be conducted to test their candidacy. (e) Majority rule – ideal democracy should adopt populist programmes which should be in the interest of the masses. (f) Enlightened electorates – citizenry ought to be educated and awareness created in the workings of government. Political socialization should also be inculcated in the electorates to avoid anti-democratic electoral practices (Chukwuemeka, Anazodo & Ezeigwe, 2011).

Regrettably, Nwanolue and Ojukwu (2012) observed, the practice of the so-called democracy in the 21st Century Nigeria is intrinsically characterized by political instability, social acabre (sic), cultural balderdash and economic quagmire, resulting in unemployment of all forms, leading to abject hunger and indescribable poverty. The attendant implication of this misnomer are practical existence of all manner of crimes such as kidnapping, armed robbery, prostitution, sexual slavery, pen-robbery, and electioneering bickering and hooliganism (Nwanolue and Ojukwu, 2012). It is further opined in this review that the observations of Nwanolue and Ojukwu have remained germane in the Nigerian brand of democracy under the Buhari administration. After all these years of democracy in the Nigerian state, the citizens are yet to connect with the essence of democracy. It has indeed remained a bewildering experience for the masses while for the elite it has alternatively remained a case of business as usual. Then what is the role of the judiciary under such disconcerting configurations?

## **THE JUDICIARY IN THE CONTEXT OF DEMOCRACY IN NIGERIA**

The Nigerian judiciary has also been characterized by an immensely checkered history. At different times in its highly unsteady story it had played the role of an anti-democratic institution, particularly during the era of military rule in the country. The judiciary indeed played a central role in the annulment of the June 12 election in the country by the military (Obutte, 2016), an election reputed to be the freest and fairest so far in Nigeria. In this regard, citing Agbo (2008), Enweremadu (2011) further narrates:

The drama began when Justice Basse Ikpeme of the Abuja High Court granted an interim injunction stopping the conduct of the presidential polls. This order came only two days before the election and was given despite an existing law barring the courts from entertaining suits relating to the elections. More importantly,

the ruling was in response to a suit instituted by the Association for a Better Nigeria (ABN), led by a controversial politician, Arthur Nzeribe, who was a well-known advocate of military rule. Although the National Electoral Commission (NEC) disobeyed the ruling on the grounds that Section 37 of the Transition to Civil Rule Decree ousted all court rulings on the conduct of an election, the contradictory actions of the courts gave the then military ruler, General Ibrahim Babangida, sufficient reasons to annul the elections

Citing Abdulhameed (2013), Aver and Orban (2014) have indeed argued as follows on the role of the judiciary in a democratic system of government:

The judiciary is the foundation upon which democracy grows and develops. This is so because the judiciary is the only organ that deals with the administration and dispensation of justice in any democratic nation. Because of its importance in human society, it behooves on those who are entrusted with the dispensation of justice to be guided by the principle of truth and morality. It is a major feature of a democratic system of government. It interprets the laws that are made by the legislative branch or those that are made on the authority of the legislature. The existence of a judiciary in a democratic government is justified by the Principle of Separation of Powers which states that personnel who make laws should be separated from those who implement those laws; those who implement the law should be separated from those who interpret laws. This principle of good governance is expected to prevent dictatorship and arbitrary rule.

But the Nigerian judiciary has made democracy to become chronically sick (Aver & Orban, 2014). The judiciary in the country has nearly made what is in place to become a cash and carry democracy. Aver & Orban (2014) further narrates that more worrisome of the defects of the judiciary in Nigeria is the fact of this important organ of government associating itself with unbridled corruption, where desperate politicians go to great lengths to corrupt judges in order to secure undue advantages for themselves at the detriment of the poor masses. Hence, the integrity of the Nigerian judiciary became questionable, as contrary to the assertion that the judiciary is the last hope of the common man, when the chips were down, it had always been on the side of the ruling class in Nigeria (against the poor masses). As such, it does not promote the development of democracy in the country (Aver & Orban, 2014). Furthermore, citing Aver & Orban (2014), Enofe, Ezeani & Eichie (2015), declare as follows:

The image of the judiciary in Nigeria today is that of an institution where anything goes, as a lot of people have been perverting justice, especially civil and political cases. For instance, in the 2003 elections, politicians effectively killed democracy in Nigeria and it was buried by the judiciary. The elections were allegedly rigged throughout the federation and every election monitor attested to that effect. The Catholic Secretariat in Nigeria deployed more than 30,000 election monitors, who asserted that there were no elections in most parts of Nigeria, where the president's cronies were declared winners. The opposition parties, and even the People's Democratic Party (PDP) enemy factions, who went to court, thinking that the judiciary was the last bastion of democracy, were shocked as most of the fraudulent elections were upheld by the election tribunals.

In an admirable attempt to balance the scorecard of the Nigerian judiciary in historical terms, particularly from the period that followed the 2003 general elections, Enweremadu (2011) opines:

While the benefits of most institutional reforms have been difficult to measure, there has been significant progress in a few other key areas of national political life. One of them is the relatively successful reform of the judiciary, which has led to the institution's gradual emergence as a courageous and impartial arbiter in intra-elite electoral disputes in this chronically unstable federation. The transformation of the judiciary is amply demonstrated by the large number of judicial pronouncements that have upturned the results of several flawed elections and restored to office elected officials, such as state governors, wrongfully removed from their positions.

Enweremadu concludes that Nigerian politicians were increasingly resorting to the courts to resolve their differences and had come to see an acceptance of court verdicts, in whichever direction they went, as being in their long-term interest. However, the lingering notion of the Nigerian judiciary is that of an institution that is corruption-tainted. The politicians are also the prominent culprits or the major suspects in the subsisting assumption of a deeply compromised judiciary in the current Nigerian democracy setting. A Chief Justice of Nigeria had accordingly declared: In light of the challenges that the Nigerian judiciary grapples with, there is no disputing the fact that, as it stands today, it appears that the society we serve is not entirely satisfied with our performance (MUSDAPHER, 2011). Situating his contribution against an overall background of an assumption of lack of judicial independence, ABDULLAHI (2014) posits:

That the nation's Judiciary is currently passing through a difficult and traumatic phase in its annals is quite obvious and certainly not in doubt. It is a phase which is evidently marked by deep loss of faith in the judicial process and the courts. Claims of ethnic lopsidedness in the composition of the Federal Judiciary, serious allegation of corruption, ineptitude, laziness, incompetence against judicial officers, charges of abuse of office even against the Supreme Court judges in the discharge of its judicial functions and stemming out from want of judicial independence are bound. The above has prevented the Nigerian Judiciary over the years from acting as a check on the excesses of other arms of government within its constitutional boundaries.

ABDULLAHI (2014) then in simple terminology defines judicial independence as the ability of a judge to decide a matter free from pressures or inducements. Furthermore, in agreement with DAUDU (2014), he adds that judicial independence means the ability of the Judiciary to be independent, by being separate from government and other concentrations of power. Accordingly, the principal role of an independent Judiciary is to uphold the rule of law and to ensure the supremacy of the law. A critical and relevant question (as posed by ABDULLAHI) thus remains: Independence of the Judiciary in Nigeria is it a myth or reality? As contended by ABDULLAHI (2014) how has the absence of independence influenced the incidence of corruption in the Nigerian judiciary? As a matter of fact, the two variables are related. It was under this scenario of a problematic judiciary that the Buhari administration was inaugurated. The critical tasks of the administration therefore included/include what must be done to restore the status of the judiciary in Nigeria as the bastion of constitutional democracy in the country (MUSDAPHER, 2011).

### **THE NIGERIAN JUDICIARY IN THE BUHARI DISPENSATION: WHAT MUST BE DONE**

Beginning from July 29, 1999, democracy has remained the system of government in Nigeria. The martial music that previously heralded the truncation of democracy by some military invaders has not been heard again in this nation. The Buhari administration is therefore also saddled with the challenge of democracy consolidation in the country. What must be done therefore covers the task of safeguarding democracy in the country against the onslaught of non-democrats, which extends to corrupt judicial officers. Democracy consolidation implies the guarantee of the existence of certain democratic structures and culture, which include judicial structures and culture that would be leveraged upon in ensuring that the well-being of citizens is even more guaranteed, under the current Buhari democratic dispensation than the preceding regimes.

In continuing with the interrogation of what is to be done, we shall consider an aspect of what has been done, under the Buhari administration. Thus in October 2016, the Nigerian central government executed the arrest of serving Nigerian judges suspected to have aided and abetted corruption over the years. But, the arrest of the judges, which was carried out by operatives from the Department of Security Services, was in relation to those who allegedly took huge cash to pervert the cause of Justice before, during and after the 2015 general elections. Among those taken into custody were two Supreme Court Justices, who allegedly played ignoble but crucial roles in subverting judgment in favour of one of the two leading political parties. Three

judges from Sokoto, Bauchi and Kano were also taken into custody for allegedly collecting bribes (Daniel, 2016). Similarly, a Federal High Court judge in Abuja and another who recently countered his colleague's judgment relating to some political party crises was also picked up. Also taken into custody were some suspected fraudulent court registrars, believed to have aided and abetted the sale of justice. Another federal high court judge in Abuja had his house surrounded by DSS operatives but the secret police could not break in. The judge, who recently freed a retired Air Force officer accused of taking bribes running into billions of naira, was scared and was calling for help, not knowing why he was surrounded by armed security men. A top Federal Ministry of Justice official subsequently confirmed that the Federal Government had commenced the arrest and detention of some corrupt judges as part of its effort to cleanse the judiciary (Daniel, 2016).

According to Okakwu (2016), the spokesperson of Nigeria's Supreme Court, Ahuraka Isah, subsequently confirmed reports that two Supreme Court judges accused of corruption had stopped sitting. The two judges were among seven judges arrested by operatives of the State Security Service, following allegations of corruption. Mr. Isah, who spoke for the Chief Justice of Nigeria, Mahmud Mohammed, said the Supreme Court judges suspended sittings since the raid on their homes and their subsequent arrest. The two affected Supreme Court justices voluntarily excused themselves from all judicial functions since the raid occurred. While the affected judges had denied any wrongdoing, claiming victimization for previous stands they took against public officials, the SSS (State Security Service) said their arrest followed credible information about the judges' alleged involvement in bribery and corruption. The SSS also accused the National Judicial Council of not judiciously treating petitions against corrupt judges. The NJC denied the allegation by the SSS (Okakwu, 2016).

Sahara Reporters (2016) subsequently published the list of judges named in what it termed a confidential list of the dubious judicial officers, forwarded to President Muhammadu Buhari. In the report of Sahara Reporters, graphic details of the various allegations against the judges were tendered. Then in his official reaction to all of this, President Muhammadu Buhari said the raids on the judges' residences by the State Security Service, SSS, was an assault on corruption and not on the judiciary. The president in a statement by his media adviser, Garba Shehu, described the raids as 'surgical', saying due process was followed in the arrests (Ukpong, 2016). The Nigerian presidency was in this regard undoubtedly acting in furtherance of democracy consolidation. Judicial impunity, the incidence of corrupt judges, the dispensing of cash and carry judgments and partisan political association by judicial officers are certainly tendencies that if left unchecked could derail a country's democracy consolidation.

However, the checks and balances inherent in the executive-legislature-judiciary relations in a democracy must not also be done with impunity by the personnel of any of the three organs of government. The role of the judiciary is as critical as the role of the other two organs of government in democracy consolidation. The judiciary in the fourth republic of Nigeria for instance, was carpeted and disregarded with impunity by an all-powerful executive (led by Chief Olusegun Obasanjo) who saw itself as superior to other organs of government (Oni, 2014). This is not the brand of judiciary that is advocated for democracy consolidation in the Buhari era, a judiciary that timidly obeys the orders of the men of the executive branch of government. What must be done therefore entails a national reformation of the judiciary. It implies the engendering of an independent judiciary, which would be separate from government and other concentrations of power (Daudu, 2014). It requires other revolutionary measures not merely the arrest of judges. And this is what the executive arm of government may facilitate under the Buhari administration.

## CONCLUSION

The Buhari administration operates fundamentally on a flagship policy of anti-corruption. It is a golden opportunity therefore for the judiciary in Nigeria to reclaim its independence. Basically, an independent

judiciary should strive to restore the hope of the citizenry by upholding basic notions of justice (Obutte, 2016). The current role of the judiciary in democracy consolidation in Nigeria, particularly under the Buhari administration cannot be described as unassailable. Yet, denied of the positive impact of the judiciary, democracy consolidation would become moribund. We cannot successfully serve God and mammon. The Nigerian judge must choose to uphold at all times the basic notions of justice. The words of members of the Bench must become their bonds again in this country. Let it be the resolve of Nigerian judges, as their new contribution to the cause of democracy consolidation, under the Buhari administration, that to call the integrity of a Judge to question shall become a taboo again in Nigeria, as every Judge, whether of the Lower Court or the Higher Court resolves to live above board (Aloma, 2012 in Obutte, 2016). In conclusion, we quote Lord Denning: What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on, and that will be bad for both (Lord Denning). And so let it be with the arrest, detention and trial of judges in the course of democracy consolidation under the Buhari administration. But let no judge be arrested again. In other words, let no judge do again what may precipitate the arrest of a judge.

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