Assessment of the right to personal liberty under Nigeria’s democracy: 1999 - 2013

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ABSTRACT

Democracy is a means for the people to choose their leaders and to hold them accountable for their policies and conduct in life. Personal liberty is the ability to live without undue interference from government and fellow citizens and the capacity to choose between good and evil. Democracy ordinarily should enhance personal liberty. In this paper, we examined the extent to which the right to personal liberty has been respected in Nigeria between 1999 and 2013. This study also considered the dangers and national development implications of abuse of the right to personal liberty in Nigeria’s developing economy and struggling democracy. Data was collected and analysed using the secondary sources of data collection. The finding is that notwithstanding the restoration of democratic rule in Nigeria since 1999 cases of unlawful detentions by the police, the military and vigilante groups as well as long period of detentions in the prisons abound in Nigeria. Consequently, a number of legal and institutional reforms were recommended. The recommendations include the reform of the Nigeria Police Force and the Courts, abolition of Vigilante Groups, and ensuring that police officers are held accountable for acts of impurity and human rights violations committed by them.

Keywords: Personal liberty, democracy, national development, human rights.

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INTRODUCTION

It was a historic return of democracy in Nigeria when Olusegun Obasanjo was sworn in as Nigeria’s president on 29th May 1999. People’s expectations were very high as democracy when properly practiced ensures the proper management of a country’s economic and social resources for development. Democracy also engenders the protection of fundamental human rights and the attainment of social justice in the society. This paper assessed how far Nigeria’s democracy has fared since 1999 in the protection and promotion of the right to personal liberty. Also considered briefly is the linkage between democracy and national development and the impact of violations of personal liberty on the economic and social development of Nigeria. Finally, recommendations on measures that should be put in place to enhance the protection of the right to personal liberty in Nigeria were proffered.

LITERATURE REVIEW

The right to personal liberty is the right not to be subjected to imprisonment, arrest and other physical coercion in any manner that does not admit of legal justification (Dicey, 2011). The right primarily assures a person of the freedom to stay or move about at his own will, direction and time (Ngwakwe, 2008). Liberty has also been defined as denoting freedom from bodily restraint and the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry to establish a home and bring up children, to worship God according to the dictates of his
own conscience and generally to enjoy those privileges long recognized as being essential to the orderly pursuit of happiness. Plato called it the ‘good life’ for citizens and it is the duty of the state to promote it and ensure the stability of the regime (Plato, 2003). Violation of the right to personal liberty take different forms including but not limited to all forms of arrest, detention, incarceration, imprisonment and obstruction of movement.

On the other hand, democracy is perceived and used by various people in different ways. It is that form of government in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation as distinguished from monarchy, aristocracy or oligarchy (Schattschneider, 2005). According to Schattschneider, ‘democracy is a competitive political system in which competing leaders and organizations define the alternatives of public policy in such a way that the public can participate in the decision making process (Eso, 2003).

Democracy according to Lincoln is government of the people, by the people and for the people. This implies that such government must have been elected by a majority of the people whom the government is meant to rule. The people must have been free to vote (Nwatu, 2004).

Elections lie at the heart of the democratic process because it is through election that government by consent is assured. As a concept, electoral process involves such variables as structures namely: the constitution, political parties, institutions such as the Electoral Commission, Tribunals etc.

According to Mackenzie, the following conditions must exist to have free and fair elections:

(a) an independent judiciary to interpret the law;
(b) an honest, non-partisan administration to run the elections;
(c) a developed system of political parties, well organized to put their policies, traditions and teams of candidates before the electors as alternatives between which to choose; and
(d) a general acceptance throughout the political community of certain rather vague rules of the game which limit the struggle for power because of some unspoken sentiment that the rules are not observed more or less faithfully, the game itself will disappear amid the wreckage of the whole system.2

Democracy is a means of achieving good governance and good governance ensures respect for basic freedoms including the right to personal liberty. Good governance and integrity require the rule of law, effective state institutions, transparency and accountability in the management of public affairs, respect for human rights and the meaningful participation of all citizens in the political processes and decisions affecting their lives (Annan, 1999). Thus, the fundamental condition for good governance is the attainment of fundamental rights and social justice in Nigeria. Worthy of being discussed is also the linkage between democracy and national development.

Western liberalists formerly conceived development as the capacity of a more or less static national economy to generate and sustain increase in its gross national product (Todaro and Smith, 2004). Later it was conceived as a multi-dimensional process involving major changes in social structures, popular attitudes, and national institutions, as well as the acceleration of economic growth, the reduction of inequality and the eradication of poverty. Thus, many writers such as Nnabue (2012:18) and Mashood (2011:1) insist that development must concern what is happening to poverty, unemployment and inequality.

National development is therefore the ability of a country to improve the social welfare of the people by providing social amenities such as quality education, potable water, transportation infrastructure, medical care etc. it involves increased economic efficiency, expansion of national economic capacity and technological advancement.3 Recently, scholars like Gbade and Olusesan (2005:69-70) have extended the notion of national development to include such areas like national self-determination, environmentally sustainable development, human rights protection, gender equality, freedom to define one’s needs and taking part in decisions that affect one’s life (Gbade and Olusesan, 2005).

The linkage between democracy and development cannot therefore be overemphasized. Democracy guarantees good governance which in turn results in provision of dividends of democracy in the form of good roads and efficient transportation system, affordable and efficient healthcare, food, respect for and promotion of civil liberties etc.

**RIGHT TO PERSONAL LIBERTY UNDER THE 1999 CONSTITUTION OF NIGERIA**

Section 35 of the 1999 Constitution of Nigeria guarantees the right to personal liberty and provides that every person shall be entitled to his personal liberty. However, subsection 1a to f of the said section provides for the circumstances under which this right may be deprived an individual. The circumstances include:

(a) Execution of the sentence or order of a court in

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1 The US Supreme Court in Meyer v Nebraska, 262 US 399.
right of a criminal offence of which he has been found guilty;
(b) By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;
(c) For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
(d) In the case of a person who has not attained the age of 18 years, for the purpose of his education or welfare;
(e) In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; and
(f) For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person.

There are also provisions for arraignment of a person detained before a court of law within a reasonable time. Reasonable time is defined to mean a period of one day if there is a court of competent jurisdiction within a radius of forty kilometers or a period of two days in other cases. A longer period can only be allowed if the court considers it reasonable. The constitution also recognises the right to bail of any person charged to court on allegation of a criminal offence. The rationale behind the right to bail was clearly stated by Idoko J. (as he then was) in Onu Obekpa v COP6 as follows:
It allows those who might be wrongly accused to escape punishment which any period of imprisonment would inflict while awaiting trial; to stay out of prison guarantees easy accessibility to counsel and witnesses who ensure unhampered opportunity for preparation of defence. Of much further advantages in this regard is this fact that unless the right to bail or to freedom before conviction is preserved, protected and allowed, the presumption of innocence constitutionally guaranteed to every individual accused of a criminal offence would lose its meaning and force.

Finally, on this point, it is important to note that detention of a person for the crime committed by another violates the right to personal liberty of the innocent because criminal liability is personal.7 Let us now examine the extent to which the right to personal liberty has been respected in Nigeria from 1999 till date.

RIGHT TO PERSONAL LIBERTY IN NIGERIA: 1999 – 2013
Notwithstanding the constitutional provisions safeguarding the right to personal liberty and the retreat of the military to the barracks in May 1999, the right to personal liberty of Nigerians continued to be violated. These violations are not only perpetrated by the police but also by government sponsored vigilante groups as well as members of the armed forces. Violations also result from the long delay in the criminal trial process. In the year 2000, many cases of police brutally and illegal detentions were reported.8 One of the cases was that of one Vitus Obi. The offence for which he was arrested was alleged to have been committed by his younger brother Benjamin Obi but it was Vitus who was detained and tortured until he became paralysed and later died as result of torture. Benjamin Obi had been sent to the bank by his employees, Shoetide Nigeria Limited, but claimed that he had been attacked and robbed by motor-cycle riding armed robbers. His telephoned report to his employer was met with disbelief and they threatened to hand him over to the police. Benjamin told his mother, Mrs Justina Obi a petty trader, and three of his siblings that he was afraid to go to the Police Station because they were sure to torture him for an offence he did not commit. Fearing that the police might come for his mother and sibling he advised them to stay away from their Idi Mangoro apartment for a while. However, on Sunday the 3rd December 2000, Adindu Chikezie, one of Benjamin’s cousins was arrested by the Rapid Response Squad (RRS) when he went to the deserted apartment at Idi Mangoro. The next day, Adindu was taken to SARS and detained. The following Wednesday Adindu led the SARS operatives to Vitus Obi’s workplace at Ogba where he was arrested and detained in place of his brother. Applications for bail by Vitus relations and his Umulwe Mbanem Local Government Town Union were turned down by IPO Ugwu, who insisted that Vitus’ mother be brought to the station before he could release Vitus and Adindu. On December 14, Mrs Justina Obi reported to the police and was detained. Adindu was released the same day after the IPO had demand and received the sum of N14,000.00 but Vitus was not released as promised by the IPO. On the same night, while in detention, Mrs Obi heard her son’s voice screaming in anguish and shouting for help from an Inner Chamber of the station. It was clear to her that he was being mercilessly tortured, but when she attempted to go to him, the policeman guarding her restrained her. Vitus died the following day. Upon examination, the doctor on duty discovered that Vitus’s hipbone and spinal cord were broken and that there was a deep wound next to his anus which was rotting internally.9

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7 Decision of the Court of Appeal (Nigeria) in ACB v Okonkwo (1997) 1 NWLR 195.
8 Many of the Reports Discussed here were taken from the Civil Liberties Organisation (CLO) Annual Report 2000
9 Ibid pp. 52-55.
There was also the case of Kelechi Dike who lodged a report at Afonja Police Post Akowonjo Lagos that one Yemi had sold to him an expired popular brand of yoghurt called “Fan yogo”. The suspect was arrested and brought to the station where upon being questioned, he confessed. Then the Investigating Police Officer (IPO) advised him to beg Dike for forgiveness. When he did so, Dike agreed to withdraw the case but to his surprise, the IPO demanded money from him (Dike) for ‘opening of file’ for his case. Dike offered them N200 but they insisted on N500 which Dike could not pay. The police consequently charged him for misconduct and detained him until about 8 pm that night when his father came and paid some money to take him on bail.8

The case of Josiah Nwachukwu was also very pathetic. One Kojo had falsely reported to the police that Josiah Nwachukwu stole US $2,000,000.00 (Two million US Dollars) which he claimed that his sister had brought back from USA. Nwachukwu was arrested and the next thing, he and others were paraded as the alleged confessed killers of Alhaji Kudirat Abiola, Pa Alfred Rowane, Mrs Tejuosho and other pro-democracy activists assassinated during the regime of late Sanni Abacha. He remained in detention for four months without trial before he was released for want of evidence.9

The culture of violations of the right to personal liberty of Nigeria by the police continued in 2001. According to the Committee for the Defence of Human Rights (CDHR), there were no fewer than one thousand five hundred youths who were Awaiting Trial Inmates across the different prisons in the country. Most of them had been in detention for years without appearing in court once. A good example was one Saheed Adeyi who has been held without trial as a robbery suspect since June 1991. The CDHR Report disclosed that there were about 45,000 persons in the various prisons in the country and that 70% of this number were Awaiting Trial Inmates. Even juveniles are not left out. In a 2003 Report of Field Visits to Prisons, Police Cells and Juvenile Detention Centre in Nigeria, it was discovered that there were 902 juveniles in custody with most of them Awaiting Trial Inmates.10 On December 20, 2001, John Akujobi (83 years) and his wife were arrested and detained by the police in connection with the allegation of a bank fraud involving their son.

One aspect of the violation of the right to personal liberty during the Olusegun Obasanjo era (1999 to 2007) was the emergence of Vigilante groups. These vigilante groups emerged in communities and cities across the country as a result of the failure of the police to provide adequate security for the people. The Vigilante groups included the Bakassi Boys of Aba, Abia State, the O’dua Peoples Congress (OPC) in the South West, the Onitsha Traders Association (OTA), Operation Zaki in many parts of the North East and the Egbesu Boys of the Niger Delta. Although these Vigilante groups were credited with more success than the police, they nevertheless engaged in various forms of violations of the right to personal liberty of Nigerians. Cases of arrests, detentions and torture by vigilante groups abound. In some cases, they kill innocent citizens without recourse to the court of law. Politicians also used them to fight their perceived political enemies or to settle some scores. Example the CLO reported that the July 1999 killing of Okechukwu Maduekwe and Chukwudozie Nwachukwu had revealed the link between the Bakassi Boys and the State House Umuahia. The police Investigation Report of the killing stated that the action of the Abia State Government by inviting the notorious group leaves much to be desired going by their crude, barbaric and unethical approach to crime and suspected criminals (CLO Annual Report, 2000).

Cases of arrests and detentions also continued during the Yar’adua/Jonathan administration. A 2007 – 2008 National Prison Audit carried out by the National Human Rights Commission shows that there were a total of 6,932 Awaiting Trial Inmates in the three political zones of Northern Nigeria. In the three political zones of Southern Nigeria, the figure was 15,333.11 The Prison Audit for 2009 paints a similar picture. The National Human Rights Commission’s Prison Audit for the year 2012 released on the 16th of May 2013 shows that out of 227 prisons in Nigeria, 173 were audited and the number of Awaiting Trial Inmates stood at 35,889 (Onwubiko, 1993).

Presently, the violations of the right to personal liberty of Nigerians have been exacerbated by the involvement of the armed forces in the fight against terrorism, kidnapping, oil bunkering and other vices. In most states of the North-Eastern Region especially, Bornu, Yobe and Adamawa, long hours of curfew (some unofficial) have been imposed and people cannot go about during the period. In some parts of Bornu and Yobe states, churches and schools have been closed down as a result of the activities of the Boko Haram terrorist group. The group has also carried attacks in Kano and Kaduna States resulting in people staying indoors or the Security Forces imposing restrictions. States in the South are also not free of molestations by the police and the military who are in the habit of storming hotels and bars and arresting and detaining people indiscriminately. All these are evidence of inexorable erosion of the right to personal liberty in Nigeria since 1999.

CAUSES AND EFFECTS OF THE VIOLATIONS

One of the factors that results in the large number of

8 Ibid pp. 64 – 65.
9 Ibid pp. 72 – 73.
Awaiting Trial Inmates in the Nigerian Prisons is the practice of Holding Charge. Under the practice, the police charges an accused person for an offence or offences usually before a magistrate who does not have the jurisdiction to hear and determine the charge. Consequently, the Magistrate makes an order for the accused person to be detained in a prison and for the case file to be transferred to the Director of Public Prosecution (DPP) for advice. From this point, several events may take place. The police may fail to transfer the file to the DPP. If the file is transferred, the DPP may fail to proffer advice and charge the accused formerly to the court that has jurisdiction or recommend his release. If it takes many years to charge the accused to court, the witnesses may no longer be available and in some cases, the case file will be missing. In the case of Enwere v Commissioner of Police\textsuperscript{12} the Nigerian Supreme Court held that a ‘holden charge’ is unknown to Nigerian law and an accused person detained there under is entitled to be released on bail within a reasonable time before trial especially in non-capital offences. The practice has persisted inspite of this clear legal authority which has been followed by later decision.\textsuperscript{13}

Another factor that causes widespread arrests and long detentions is the calibre of the Nigerian Police Officers. A large percentage of policemen were not vetted upon recruitment resulting in persons of questionable characters joining the force (Dambazau, 1999). A former Inspector General of Police Mr Ehindoro consistently maintained that those recruited into the Force between 2000 and 2005 were not properly screened. According to American State Department’s Human Rights Report for 2004, the Nigerian Police was described as ‘a frequent human rights offender’ and that police officers were often...

‘...not held accountable for excessive or deadly force or for deaths of persons in custody...’

The report further went on to describe the police as operating with impunity in the apprehension, illegal detention and sometimes execution of criminal suspects.\textsuperscript{14} The failure of the police authorities to effectively discipline erring members of the force is worrisome and has encouraged acts of impunity by police officers. Another tragic aspect of this problem is that victims of police brutality and unlawful arrests and detentions end up getting nothing in the form of compensation or damages from the police. Every year, the courts award millions of Naira against the police authorities and police officers but the police will not pay and no execution would be levied against their properties because the law requires the consent of the Attorney-General before such execution could be levied.\textsuperscript{15}

Another important factor is the long delay in concluding matters in our courts. The long delay has been blamed on repeated adjournments, judicial vacancies, transfers and lack of preparation (Zannah, 2000). Other factors include refusal especially by magistrates to grant bail even in clear bailable offences; granting bail with onerous conditions which the accused person may end up unable to fulfill; impecuniosity of some convicts who cannot pay small amounts of money imposed on them as fines; delay in filing information by the Ministry of Justice etc.

Now what are the effects of violations of the right to personal liberty? Violations of the right to personal liberty no doubt impact negatively on national development. The place of human resources in development process cannot be over-emphasised. It has been submitted that for the sustainable economic development of Africa, both human and social development must be promoted (Boderin, 2011). According to the UNDP human development consists of four main components namely:

(i) Productivity, which is to the effect that people must be entitled to increase their productivity and to participate fully in the process of income generation and remunerative employment.
(ii) Equity, which is to the effect that people must have access to equal opportunities
(iii) Sustainability, which is to the effect that access to opportunities must be ensured not only for the present generation but for future generation as well; and
(iv) Empowerment, which is to the effect that development must be by people, and people must participate fully in the decisions and processes that shape their lives.

As for social development, it encompasses ‘respect for human rights and fundamental freedoms, accountable governance, popular participation and effective democratic institutions’ (UNDP Human Development Report, 1995). There is no doubt that the large number of prisoners in Nigeria especially the Awaiting Trial Inmates are youths in their productive years. Long period of unlawful and unnecessary detention in police cells and prisons results in losses to the national economy.

According to Kofi Annan, countries which are well governed and respect the human rights of their citizens are better placed to overcome obstacles to development (Annan, 2005). Earlier in 1986, the UN General Assembly had resolved that, ‘the human person is the central subject of development and should be the active participant and beneficiary of the right to development’

\textsuperscript{12} (1993)6 NWLR (Pt 299) 333.
\textsuperscript{13} Chinemelu v State (1998) 1 ACLR 501 where the Court of Appeal held that a ‘holden charge’ is unknown to the Criminal Procedure Law or any law for that matter.
\textsuperscript{14} American State Department’s Human Rights Report 2004 cited Ibid.
\textsuperscript{15} Order 5 Rule 5 of the Judgments (Enforcement) Rules made pursuant to the Sherrifs and Civil Process Act Cap. LFN 2004.
Besides, there is also the issue of millions of Naira that are spent annually in feeding the inmates and taking care of their clothings and health needs. These large sums could have been spent in the provision of critical infrastructure to Nigerians. The position therefore is that violations of the right to personal liberty of Nigerians have contributed to the economic retardation of the country in view of the fact that the large number of prisoners are fed and clothed by the government. The government also caters for their healthcare needs.

RECOMMENDATIONS AND CONCLUSION

1. In order to avoid impunity and gross violations of the right to personal liberty of Nigerians by the police, urgent reform of the Nigeria Police Force is imperative. Recruitment of fresh police officers should be streamlined and best practices put in place to ensure that bad eggs do not find their way into the Force. Reform of the police must be real and aggressive and not cosmetic. Such reform must involve a serious programme of human rights education and improvement in the working conditions of police officers.

2. Accountability for impunity and human rights violators by the police must be ensured. When a police officer is compelled to pay compensation to victims of his brutality and unlawful detention, he and others would be discouraged from committing similar violations in the future. Our law ought to be amended to ensure that damages awarded to victims of human rights violations by police officers and authorities are paid promptly by the police. The present laws on enforcement of judgments in Nigeria are ineffective as far as enforcement against the police is concerned.

3. The abolition of vigilante groups throughout Nigeria is also recommended. The constitution should be amended to allow the establishment of state police for a state that desires to have one. Such State Police will fill any vacuum in security that might occur as a result of abolition of Vigilante groups. State Police should be made to work under the same operational guideline and discipline of the Nigeria Police Force.

4. In respect of the fight against terrorism, we call for the legal regulation of counter-terrorism measures and the need to respect human right while fighting terrorism. Recently, the Nigerian Army was accused by the Amnesty International of grave human rights violations in Borno State including detentions, torture, indiscriminate and excessive attacks and killing of innocent civilians.

5. There is also the need for the reform of our courts. Adequate number of Judges and Magistrates should be appointed. The courts must also be equipped with modern information technology and recording equipment to ensure speedy trial of cases. When this is done, the Criminal Procedure Law can then be amended to provide for a specific period during which criminal trial must be concluded as in election petition cases. Our criminal procedure law should also be amended to allow non-custodial sentencing in some offences.

6. To ensure the trial of indigent detainees, we call for proper funding of the Legal Aid Council (Ojukwu, 2012; Nwankwo, 2012)\(^\text{16}\) to enable them cope with the high number of Awaiting Trial Inmates who cannot afford to retain counsel to defend them. The Council should employ more lawyers and establish more offices in the country.

It is recommended that there should be a Legal Aid Council Office in at least all the Judicial Divisions of the High Court of each State including the Federal Capital Territory. It is the hope that if these measures are put in place, the right to personal liberty of Nigerians would be protected and enhanced in the years ahead.

REFERENCES


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\(^{16}\) The Council was established by the Legal Aid Act of 2011. The 2011 Act repeals the Legal Aid Act of 1976 Cap L.9 LFN 2004. For more on the Legal Aid Act

