

The Right to Democracy and Good Governance and its Implication for Nigeria and Kenya

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Abstract

The right to vote in any democracy encourages civic consciousness through political participation, which is the bedrock of democracy. Democracy is regarded as one of the universal core values and principles of the United Nations. Democracy has come to stay around the world, and Africa as a continent has embraced it even though with some form of resistance from some states, who are used to unitary or monarchical systems. The benefits of democracy cannot be overemphasized as they are interrelated with good governance because the absence of one leads to the absence of the other. The article assessed the practice of democracy and its implication for good governance in Nigeria and Kenya. The selection of countries to analyze is based on the writer's preference because of their similarities with Nigeria. The article discussed the relevant International Laws and Conventions on the subject matter, and also considered opinions of writers in journals and textbooks on the subject matter. The article found that corruption is a major hindrance to the effective implementation of the right to democracy and good governance in the countries considered. The paper recommended, among other things, the strengthening of electoral bodies such as the Independent National Electoral Commission (INEC), elimination of corruption in the system, domestication, enforcement and a thorough application of International Conventions such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Democracy, Election and Governance. Among the recommendations also was mass public enlightenment of voters before and after elections, to avoid post-election violence.

Key words: right, democracy, democratic rights, good governance, Nigeria, Kenya

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Introduction

The right to choose who governs one is a constitutional right of every citizen and it behooves on government to ensure that citizen exercise their franchise to have an inclusive governance. Democracy provides an opportunity for citizens to table their needs as a community to get the most out of life through representation or individual participation. The freedom to choose is a liberty given to humans from creation according to the holy book where God gave Adam the freedom to use the garden and name the animals the way he so desires¹. In the same manner, democracy allows freedom to choose who governs and be removed when dissatisfied.²

Democracy in modern societies is generally linked to the civil and political human rights of a people. This is because modern societies are based on the freedom of the individual and the equality of citizens before the law.³ In this work, democracy is used to mean the peoples' participation in decision making through their choice, holding their leaders to account and change of their representatives and government. Choice, accountability and change can only be practiced through periodic free and fair elections. In this context, therefore, there is no democracy without human rights⁴

There is no such thing as a perfect democracy anywhere, but the practice of democracy in Africa is not comparable to that of the developed countries, as a great deal of the practice is influenced by the colonial masters whose objectives were to maintain law and order, and to exploit the economic resources of a country. This trend was followed by African leaders at dawn of independence but these are by no means the tenets of democracy and have manifested in poor governance. A profile of African leaders in the first 30 years of independence shows that their focus was on personal aggrandizement

¹ The Holy Bible, Genesis chapter 1 verse 28-31

² Said Adejumobi, 'Between Democracy And Development In Africa: What Are The Missing
Links'http://documents.worldbank.org/curated/en/143061468741593788/820140748_2004041400400401/additional/28762.pdf accessed 20th March 2020

³ Sidgi Kaballo, 'Human Rights and Democratization in Africa' *Political Studies Association XLIII* Blackwell Publishers 1995 189-203

⁴ A Aidoo, 'Africa: democracy without Human Rights?' *Human Rights Quarterly*, (1993) 15 703

and the quest to retain power by subduing opposition that demand good governance.⁵

The freedom to choose who to govern a community lies in that community that will be ultimately affected by decisions made by the government. The right to elect or choose leaders to rule is considered as the fourth-generation rights in international law. Developed countries have comparatively achieved maximum values of democracy and good governance but that cannot be said of most developing countries in Africa. The International Covenant on Civil and Political Rights (ICCPR) explicitly states that the right to democracy is the responsibility of government, which most African countries are a signatory to, including Nigeria.

The article examines the issue of the right to democracy and good governance. This is preceded by conceptual clarifications to have a good understanding of the topic at hand, as well as consider the International Regional and Domestic framework for sustaining such rights. It also examines the practice of democratic rights and the deliverable which is good governance in developed countries and suggests where African countries can borrow a leaf therefrom. The practice of democracy in Kenya and Nigeria is considered. The paper then concludes with recommendations.

Conceptual Clarifications

Rights

Several definitions of rights abound, but the article will narrow it to the most appropriate that applies to the topic under discussion. Right means that thing a person is entitled to or allowed to do as an individual which is guaranteed as freedom.⁶ A right as a concept, therefore, applies to everyone irrespective of location; it can also be seen as the sovereignty to act without permission of others. When there is a right, there is a duty not to infract on someone's right. It is, therefore, said that a right is a correlative duty. A right can also be categorized as civil and constitutional. Civil rights are said to be natural right, that are inherent for all human beings, for

⁵ (n, 2)

⁶ United for human rights, available online at <<https://www.humanrights.com/what-are-human-rights/>> accessed 25th March 2020

instance, right to life. Constitutional rights on the other hand, are those rights enshrined in the constitution of a state, and they are actionable when breached and attract sanctions.⁷

Democracy

Britannica defines democracy as literally, rule by the people. The term is derived from the Greek ‘demokratia’ which was coined from *Demos* ‘The people’ and *Kratos* ‘rule’ in the middle of the 15th century BC to denote the political systems then existing in some Greek cities notably, Athens.⁸ Democracy is a system of government in which all people of a country can vote to elect their representatives.⁹ It is a government by the people in which the supreme power is vested in the people and exercised directly by them or by the elected agents under a free electoral system.¹⁰ Abraham Lincoln, in one of his speeches, describes Democracy ‘as a government of the people by the people and for the people’. The definition of democracy might not be definite because democracy means different things to different people but by outlining the features of democracy, we can be on a fairly common ground on what the concept entails. These elements include:

1. Sovereignty of the people
2. Government based upon consent of the governed
3. Majority rule
4. Minority rights protected
5. Guarantee of basic human rights
6. Free and fair election
7. Equity before the law
8. Due process of law
9. Constitutional limits of government
10. Social, economic and political pluralism
11. Values of tolerance, pragmatism, cooperation and compromise¹¹.

⁷ The free Dictionary by Farlex , available at <<https://www.thefreedictionary.com/human+rights>>accessed 20th February 2020

⁸ Britannica, available online at <<https://www.britannica.com/topic/democracy>> accessed 20 February 2020

⁹ Oxford Learners Dictionary, International Student Edition. 8th edition p 388

¹⁰ Defining democracy available at < <http://www.act.org.tw/infonsa/2htm/docs/whatsdem>> accessed 25 march 2020

¹¹ What is democracy: available online at <<https://www.ushistory.org/gov/1c.asp>>accessed 22nd April 2020

Good Governance

It is pertinent, before delving into definition of good governance, to take a cursory look at the overall objective of government in any modern democracy. The Nigerian constitution amply provides for the basics upon which the three arms of government would operate¹². It has as its objectives the following:

- i. That sovereignty belongs to the people from which all powers are derived,
- ii. That the primary purpose of government is to provide security and welfare of the people, and
- iii. there must be participation of the people in the government.

The business of governance is either directly carried out by public institutions or private establishments, but regulated by law made by the state. It is perhaps important to mention that some of the common needs of the citizens are health care, quality education, housing, fairness and justice, personal security. The audit of the service delivery in these areas would determine whether there is good governance or not. An attempt at the definition would be made along this line of thought.¹³

Good governance has no single or exhaustive definition or scope. The term is used with great flexibility but associated with difficulty in operational level because it does not have universally accepted definition. Good governance is associated with political and institutional process. Political, by the manner in which representation is considered in forming government. This will entail the right to vote and secure representation at the law-making body such as parliament or representatives in a composition of non-elective bodies.

The term is often used collectively as one word but it is believed to be associated with political and institutional process. It has been defined in different terms but, put simply, governance means the process of decision making and the process by which decisions are implemented (or not implemented). Good governance

¹² Constitution of the Federal Republic of Nigeria, 1999 (as amended) s14 (2)

¹³ CJ Dakas, 'Democratic Governance and the Rule of Law in Nigeria' *Rule of Law and Good Governance Journal Nigeria Institute of Advanced Legal Studies* 2009 87

can also be used in context like corporate governance, international governance, national governance and also local governance. It can be described as good when reforms and rule of law are fully implemented and bad governance is said to be the cause and root of evils in a society where nothing works and there is no respect for the law, and development is minimal.¹⁴

Good governance, therefore, is a platform of implementing decisions made in an institution, society or community as it affects them directly. It also borders on the responsibility of actors in governance to meet the demands of the citizens that are being governed, in the process of implementing government policies and objective that would lead to overall development. It can be described as good when reforms and rule of law are fully implemented. It also borders on the ability of persons or bodies charged with the responsibility to meet the general needs of the citizens according to law, fairly and justly devoid of arbitrariness.

Good governance is essential to achieve development. It has the following basic attributes:

1. *Accountability* – It entails responsibility on decision makers who are representatives of the public to be accountable. This cannot be enforced without transparency and rule of law.¹⁵
2. *Rule of Law* – Good governance ensures fair legal framework and its enforceability that is impartial and also ensures the protection of human rights. Rule of law is doing things according to law with the ultimate objectives of achieving fairness and equality devoid of arbitrariness.
3. *Consensus Orientation* - Good governance mediates on the interest of the people to reach a consensus on policies and procedures. This can only be achieved from understanding historical, cultural and social context of a given community.¹⁶

¹⁴ ibid

¹⁵ Yap Sheng, 'what is Good governance' United Nations Economic and Social Commission for Asia and the Pacific available at <<https://www.unescap.org/sites/default/files/good-governance.pdf>>accessed on 24th February 2019

¹⁶ UNDP Governance for Sustainable Human Development, United Nations Development, 1997 available<http://hdr.undp.org/sites/default/files/reports/258/hdr_1997_en_complete_nostats.pdf> accessed 20th March 2019

4. *Equity and Inclusiveness* – The wellbeing of a community in good governance depends on how inclusive the people are involved in issues that affect them, especially the most vulnerable to improve or maintain their wellbeing.
5. *Effectiveness and Efficiency* – Good governance connotes also the process where natural resources are utilized properly at their disposal and the protection of environment.¹⁷
6. *Transparency* – Transparency means that the enforcement of such decisions should be available and accessible and easy to see by the people who would be affected directly by such decisions and its enforcement.
7. *Participation* – Participation in good governance means direct involvement of both men and women. It could be direct or through legitimate intermediate institutions or representatives,¹⁸
8. *Responsiveness* – This requires institutions to serve all stakeholders who would be affected directly by decisions made. It could be internal or external within a reasonable timeframe.
9. *Strategic Vision* – This entails a sense of what is needed for development and requires leaders and the public to have a broad and long-term perspective on good governance and human development, which can be grounded by an understanding of historical, cultural and social complexities.¹⁹

Elements of Democracy and Good Governance as Observed from Developed Countries in Comparism with What obtains in Africa

Since the fall of the Berlin wall in 1889, African countries which were mostly single party, dictatorship and one-man military regimes have tried to embrace the tenets of democracy to suit both national circumstances and international best practices. This has been accompanied by various challenges including perhaps trying to make uniform practice to accord international expectations.

A developed country is a country whose economic flow and growth is stable and strong by economic standard and are said to be

¹⁷ Ibid

¹⁸ ibid

¹⁹ ibid

highly industrialized and have a high per capital income.²⁰ Developed countries are said to be politically stable and have a well- structured political system and have a high level of technology. The under developed countries are countries with low income per capital, economically weak with a poor political system and a few or non - existence of industries in the country. In the under developed country, the economic, social and Political system is always unstable with weak industrial development and poor infrastructure²¹

Developed countries whose democracies are considered highly successful are generally democratically and politically stable. They may, however, be affected by poor governance and their economy may suffer but are not affected by the outcome of elections as in developing countries. Developed democracies such as the United States of America and the United Kingdom appear to be patriotic and nationalistically focused. The common features of these developed democracies can be summarized as follows:²²

- a. They have a working electoral system in place developed over time;
- b. Most of them run a welfare system that takes care of the weaker members of the society and general social services such as efficient health care and education system, developed infrastructure which are the basis of resentment in governance;
- c. Strong legal regime in place to punish corruption, especially from public office holders;
- d. Developed electoral system that minimizes electoral fraud especially with the aid of technology.

The above listed are the missing links in Africa. If the continent can imbibe them, then democracy will be grounded and

²⁰ Economic Inequality: Differences in Developed and Developing Nations <https://study.com/academy/lesson/economic-inequality-differences-in-developed-and-developing-nations.html> accessed 3 May 2020

²¹ Mary Adejo, 'Difference between development and underdevelopment in economy of countries' available online at <https://www.legit.ng/1215170-difference-development-underdevelopment-economy-countries.html><https://www.legit.ng/1215170-difference-development-underdevelopment-economy-countries.html> accessed 3 May 2020

²² Democracy and Democratization in Developed Countries', available online at <http://www.hsph.harvard.edu/ihs/publicatios/pdf> accessed 20 April 2020

good governance will flourish. The focus of good governance is access to justice, protection of human rights, management of resources and the respect for human rights as well as living in a corruption free society. It has been said that democracy in itself is not absolute but can be achieved in part. Good governance could be by way of putting in place mechanisms to strengthen the capacities of management in all sectors of development. The concept of good governance refers to task of running a government with set objectives that will benefit the people. In Africa, the problem that has engulfed the continent is that of governance as has been identified by the former secretary general of the United Nations, Kofi Annan. He stated that:

For Africa to prosper, good governance, the rule of law, and systems of accountability are essential to ensure that resources are subject to public scrutiny and used effectively and efficiently, for these the continent needs determined political leadership to set and drive plans for equitable growth and poverty reduction²³

African leaders need to consolidate democracy and good governance, but in most African countries, the fundamental principles of democratic governance are consistently, deliberately and openly being violated. Some scholars have attributed that character of leadership to be traced and blamed on the imperialism and colonialism, and the fact that most African leaders were not prepared for leadership thereby assuming the seat of leadership without a mandate.

After the partitioning of Africa in 1884-85 by the Portuguese, Italian, Spanish, French, Britain, Germans, Bulgarians, and the Dutch as colonial masters, their main interest in the region was to explore the continent's rich fertile soil and to get an illiterate community for cheap labour.²⁴ That was the era of dictatorship or compulsion in government, but even after the colonial era with many

²³ Key to Governance , available online at<[http:// www.btcctb.org.file/web/publication/democratic-governance](http://www.btcctb.org.file/web/publication/democratic-governance)> accessed on 20th April 2020

²⁴ Chikerema Arthur & others 'Good governance, Democracy and Leadership Styles in Africa' *IOSR Journal of Humanities and Social Science* (2013) 14 available online at <http://www.iosrjournals.org/iosr-jhss/papers/Vol14-issue5/301456750.pdf?id=6913> accessed on 22 August 2019

African countries gaining independence by the 1960s, African leaders were still not ready for governance after independence.²⁵

The occupation of the colonial masters left behind inherited structures, armies and infrastructure. Therefore, the focus of African leaders who took over power after independence on the continent were no longer putting in policies to build but to enjoy what the colonial masters built. Sequence to such development, the political atmosphere was based on culture, ethnicity, authoritarian patterns of governance, and controlling the state resources became the primary purpose of political party aspirants.

The larger part of the continent was still categorized as underdeveloped, economically and politically, with less productivity, poor citizenry riddled with extreme hunger and sicknesses due to poor management of resources and poor living conditions and a region engulfed with violence as a result of failure of government. Most African countries have experienced violence after gaining independence because they are not used to the practice of democracy and some countries experienced forceful military takeovers through *coups de tat*²⁶

In Africa, the system of democracy is usually a one party system, where one political party always dominates so much so that when the opposition gets the seat, the ruling party finds it difficult to relinquish power which is usually accompanied by violence, massacre of innocent citizens, rape and all forms of human rights abuses. In some cases, the government forces have been responsible for these abuses, for example, the genocide of Rwanda which claimed the lives of about 800,000 defenseless civilians, massacre in Zimbabwe 1983-87 and the Kenyan election violence of 2007.²⁷ In Zimbabwe, there was crisis when the results of the 2008 presidential election took two (2) weeks to be announced. In Nigeria after the

²⁵ ibid

²⁶ It is important to note that for sustained democracy to be in place, all the attributes of good governance have to be imbibed. The failure of political leaders to deliver dividends of democracy leads to military intervention or the breakdown of the law and order. Although, often times military interventions is sometimes motivated by dubious intentions which are responsible for civil disenchantment with corrupt and visionless political leaders.

²⁷ Steven Feldstein, 'Zimbabwe's coup did not Create Democracy from Dictatorship' 2018 available online at <<https://www.google.com/amp/s/theconversation.com/amp/zimbabwes-coup-did-not-create-democracy-from-dictatorship-101510>>accessed 2 May 2020

presidential election of 2011, many lives were lost in the post-election violence that followed in many Northern states, many youth corps members who served as electoral officers during the elections were killed.²⁸

African leaders are not unconnected to the problems, the tussle for power has been the order of the day and the practice of enriching themselves and their relations when they assume power is widespread thereby making the citizen poorer while they are enriching themselves to the extent of being classified as the richest leaders in the world. For instance, the former Libyan President Ghaddafi was among the richest leaders in the world, and in the helm of affairs was his immediate family and most of his relations.²⁹

Twenty years after the National independence of Zimbabwe in the year 2000, Zimbabweans experienced a major setback in its growing democracy, the ruling party in Zimbabwe (Zimbabwe African National Union Patriotic) organized unemployed youths and landless peasants to invade white owned commercial farm,³⁰ because of the emergence of the opposition party, Movement for Democratic Change (MDC) which was popular at that time and attracted thousands of Zimbabweans,³¹

Other democratic events in Zimbabwe have brought major setback in the socio-economic lives of the people with a decline of about 50 percent in the nation's manufacturing companies, the mining and agricultural sectors also collapsed with high rates of corruption, rising inflation, decline saving investment, inadequate foreign exchange affecting import capacity, erratic fuel supplies and interruptions of electric supply.

Since year 2000, the ZANU-PF regime has transformed Zimbabwe into a state where rule of law is not only selectively applied but draconian legislations are enacted and used as a tool of repression. Robert Mugabe was militarily removed from office in

²⁸ Nic Cheesema, 'Democracy is Taking Root in Africa. But that doesn't mean it works all the time' <<https://theconversation.com/democracy-is-taking-root-in-africa-but-that-doesnt-mean-it-works-all-the-time-78273>> accessed 22nd April 2020

²⁹ (n, 13)

³⁰ Because of the emergence of opposition parties the ZANU-F sensed defeat in the forthcoming polls in June 2000 with it quickly realized that it was headed for humiliating defeat at the polls.

³¹ This included the white farmers and businessmen owing to the unresolved land issue.

November 2017 after 37 years in office, opening the door for the country's first real leadership transition since 1980. Even the election which brought in Emerson Mnangagwa as president was also marred with irregularities and election violence³²

Elections, repeatedly, have resulted into violence in Burundi with the party losing not accepting the result, making the people to refer to elections as 'electoral trauma'. Recently, Evariste Ndayishimiye, the ruling party's candidate handpicked by the outgoing president, won the country's competitive election since the decade-long civil war. The election also had allegation of rigging, violence and reprehension during the campaign.³³ Before the recent elections, the incumbent president Pierre Nkurunziza, had shown outright disregard for the Arusha peace agreement on transition of power. The Arusha peace agreement was signed for peace and reconciliation after several years of negotiations to put an end to the ethno-political crisis and embrace the values of democracy by adopting an election law through the independent electoral commission and review of the constitutional framework. After the signing of the agreement, the election that followed in 2003 was somewhat free and fair as observed with the NCDD-FDD party taking over from the ruling party in both parliament and at the local level. In November 2015, the then President of the United States, Barack Obama, signed an Executive Order sanctioning individuals that contributed to the turmoil in the country.³⁴

³² Steven Feldstein, 'Zimbabwe's coup did not Create Democracy from Dictatorship' 2018 available online at <https://www.google.com/amp/s/theconversion.com/amp/zimbabwes-coup-did-not-create-democracy-from-dictatorship-101510> accessed 2 May 2020

³³ Jason Burke, 'Burundi Ruling Party Candidate Wins Election amid Rigging Claims' 25 May 2020 available online at <https://www.google.com/amp/s/amp.theguardian.com/world/2020/may/25/burundi-ruling-party-candidate-wins-elections-since-1993> accessed 26 May 2020

³⁴ Steven Feldstein, 'Human Rights and Democracy Trends in Africa' Relief web International December 2015 available online at <https://reliefweb.int/report/world/human-rights-and-democracy-trends-in-africa> accessed 10 May 2020

Legal Framework on the Right to Democracy and Good Governance

The right to vote is viewed by some as a mere civil right dependent on law, while others see it as a fundamental political right. Boyer in his classic work classified the right to vote as a fundamental political right as it produces the most direct verdict by the citizens on the performance of those who govern them.³⁵ Even though the right to vote is not provided for as a fundamental right guaranteed under Chapter IV of the Constitution of the Federal Republic of Nigeria, 1999 it may be argued that this right has been implicitly provided for by the same constitution through section 77 and, section 12 (1) of the Electoral Act 2010 and section 1(2) of the Registration of Voters Act 1991.

Democratic rights are given to citizens by the constitution to participate in electing their leaders; it entails the right to directly or indirectly participate in choosing their representatives. The right describes that the will of the people is the only strength of the government and that shall be expressed through free and genuine elections.³⁶ The International legal provision on such rights is Article 25 of the International Covenant on Civil and Political Rights (ICCPR), which gives all citizens right to freely take part in the affairs of the country, to which both Nigeria and Kenya are signatory. Also, the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides that all persons have the right to self-determination, including the right to freely determine their political status.³⁷ The question is, are democratic rights enforceable? Are they sufficiently provided by law? Are they protected? Unlike the Kenyan Electoral laws that expressly provide for democratic right, there is need to give the legal basis and foundation of democratic rights in Nigeria. A major hindrance to effective

³⁵ Patrick Boyer, 'Political Rights: The Legal Framework of Elections in Canada' 1981 121 see also *Lisco v. Love* DC Cold, 219 F. Supp. 922

³⁶ Right to Democracy 'Youth For Human Rights' available online at <https://www.youthforhumanrights.org/what-are-human-rights/videos/right-to-democracy.html> accessed 5 March 2020

³⁷ Tikanga Manapori, 'Democratic rights' available online at <https://www.hrc.co.nz/files/7614/2388/0484/HRNZ_10_Democratic_Rights.pdf> accessed 6 March 2020

implementation of the provision of the International Conventions lies in section 12 of the 1999 constitution of the Federal Republic of Nigeria, 1999 (a) amended which provides the requirement of domestication of such conventions before they can be implemented. This remains a draw back in the enforcement of democratic rights in Nigeria. The advantage of including such rights expressly in the constitution will show that all citizens have a fair, equal and inclusive voice in the democratic process, and it will also constitute a basis for approaching the courts.³⁸

The right to democracy and good governance is provided by several laws, International and Regional Conventions such as the under listed:

- a. The Constitution of the Federal Republic of Nigeria, 1999 (as amended)
- b. Universal Declaration of Human Rights 1948, particularly Article 21, which recognizes the importance of participatory governance
- c. United Nations Convention on Civil and Political Rights, Article 25
- d. The African Charter on Democracy, Elections and Governance
- e. International Covenant on Economic, Social and Cultural Rights and
- f. The Millennium Development Summit of 2005

Article 21 of ‘the Universal Declaration of Human Rights essentially states that the will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures’.³⁹

The role that periodic free elections play in ensuring respect for political rights is also enshrined in the International Covenant on Civil and Political Rights, particularly Article 25, which recognizes that every citizen has the right ‘to vote and to be elected at

³⁸ Oludolapo Makinde, ‘1999 Constitution and the Right to Vote’ February 2018, available online at <<https://www.google.com/amp/s/punchng.com/1999-constitution-and-right-to-vote/%3famp=1>> accessed 2 May 2020

³⁹ *ibid*

genuine periodic elections, which shall be held by secret ballot, guaranteeing the free expression of the will of the electors.....’ This is regarded as one of the key international guarantee, of voting rights and free elections.⁴⁰

On 30 January 2007, members of the African Union at a conference in Addis Ababa adopted ‘The African Charter on Democracy, Elections and Governance’ which came into effect in February 2012. The main goal of the charter is the encouragement and promotion of democracy and human rights in Africa.⁴¹ The major problem of this beautiful convention is domestication by member states, and this has to be done before enforcement. The charter is divided into seven (7) parts and contains 53 articles. Article 2 outlines the objectives of the charters, most related to the topic of discussion are the objectives contained in paragraphs 1, 3, 6 and 10 which provide:

Para 1; Promote adherence, by each state party, to the universal values and principles of democracy and respect for human rights;

Para 3; Promote the holding of regular free and fair elections to institutionalize legitimate authority of representation government as well as democratic change of governments.

Para 6; Nurture, support and consolidate good governance by promoting democratic culture and practice, building and strengthening governance institutions and inculcating political pluralism and tolerance.

Para 10; Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs.

ARTICLE 8 paragraph 1 provides: ‘State parties shall eliminate all forms of discriminations especially those based on

⁴⁰ ibid

⁴¹ Stacy-Ann Elvy, ‘Towards a New Democratic Africa: The African Charter on Democracy, Elections and Governance’ *Emory International Law Review*, available online at <<https://law.emory.edu/eilr/content/volume-27/issue-1/articles/towards-new-democratic-africa.html>> accessed 2 May 2020

political opinion, gender, ethnic, religious and racial grounds as well as any other form of intolerance’.

ARTICLE 10 paragraph 3 provides; ‘State parties shall protect the right to equality before the law and equal protection by the law as a fundamental precondition for a just and democratic society’.

ARTICLE 12 mandates all state actors to encourage peaceful democracy and implement programmes to back it up: paragraph 1 provides; State parties shall promote good governance by ensuring transparent and accountable administration. The charter also mandates each member state to hold regular transparent, free and fair elections in accordance to the charter.

ARTICLE 17 provide thus; State parties re-affirm their commitment to regularly holding transparent, free and fair election in accordance with the union’s Declaration on the principles governing democratic election in Africa. It also provides for appropriate sanction on any state that unconstitutionally changes power without the due process in accordance to the charter.

ARTICLE 23 paragraphs 4 and 5 provide: ‘State parties agree that the use of, inter alia, the following illegal means of accessing or maintaining power constitute an unconstitutional change of government and shall draw appropriate sanctions by the union’:

3. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or
4. Any amendment or revision of the constitution or legal instruments, which is infringement on the principles of democratic change of government.⁴²

Whether the African states in practice adhere to the provisions of the charter or not, or what happens to the ills occasioned by bad governance before the advent of the charter, and whether the new development will cure the anomalies, remain to be seen.

⁴² The African Charter on Democracy, Elections and Governance, February 2012

Right to Democracy and Good Governance in Kenya

Kenya, according to the classification of African regimes by the end of 2008, was described as a democratic country.⁴³ The past years of independence from 1962 in Kenya have been a struggle both politically and economically. At independence, the people of Kenya were in high expectation that the new state would bring good governance to the country both politically and economically.⁴⁴

Kenya has been a one party state since December 1964 when it became a republic up until the 1980s, and politics was based on promoting the interest of the incumbent ethnic group and factional inter-play to achieve political objectives.⁴⁵ In June 1982, the National Assembly of Kenya passed Article 2A of the Constitution of Kenya, officially making Kenya a *de jure* one-party state. This brought about the consolidation of power within the ruling party, which made the freedom to speak freely, assemble or move within the country impossible for the opposition leader. There were wide spread state sponsored oppressions all over the country.⁴⁶ In 1990, the clamor for change dominated the country from all sectors; the civil societies and the religious organizations. This prompted the president to call for a constitutional review.⁴⁷

As at 1992, political leaders and human rights defenders in Kenya came together, amid serious repression, and saw the need for multiparty system in the constitution of Kenya to accommodate other

⁴³ Nic Cheeseman 'Understanding the lessons of Kenya's 2017 elections' Democracy in Africa available online at <<http://democracyinafrica.org/understanding-lessons-kenyas-2017-election/>> accessed 12 March 2020

⁴⁴ ibid

⁴⁵ Adams Oloo and Walter O Yugi, 'Democracy and good governance in Kenya: prospects and obstacles' available online at <<https://profiles.uonbi.ac.ke/aoloo/publications/democratization-process-kenya-prospects-and-obstacles>> accessed 22nd May 2020

⁴⁶ Kamau Ngugi and others, 'Human rights defenders securing the right to vote in Kenya' available online at < <https://www.civicus.org/index.php/re-imagining-democracy/stories-from-the-frontlines/3436-human-rights-defenders-securing-the-right-to-vote-in-kenya>> Accessed 3/06/2020

⁴⁷ The president at that time inaugurated a committee for constitutional review and to collate the views of citizens regarding the party's nomination and election. The people's rage was basically on democratic institutions, improvement of public accountability and restoration of faith in the electoral process. Although the committee's terms of reference was too narrow in scope thus the people were not satisfied but were still determined to speak on issues and especially strengthen the commitment to rule of law and respect for human rights among other issues.

parties, apart from the ruling party⁴⁸. This was not successful as injustice and other vices associated with the effect of the one-party state continued. In 2007, the post-election violence that engulfed Kenya after the presidential election fell short of civil war because of the injustice in the regional development and resource control issues lingering in the country.⁴⁹ Security in Kenya has its root in the colonial situation where rule was based on social order of exploitation which continued even after colonial reign, but in a different dimension, instead, the focus became on the protection of the ruling elite and protection of ethnic group and service to the citizen remained chaotic, repressive and unaccountable. The laws governing the electoral system of Kenya include: a) The Constitution of Kenya, 2010. b) The Elections Act, 2011, c) Elections Offenses Act, 2016, d) The Political Parties Act, 2011, e) The Independent Electoral and Boundaries Commission Act, 2011; f) The Elections Campaign Financing Act, 2013; g) The Leadership and Integrity Act, 2012

The grundnorm of the country which is the Constitution of Kenya 2010 gives voting rights to the citizens; it is classified into four and in tandem with international best practice. Article 10 of the Constitution provides for national values and principles that are required to be observed during elections. These values include: good governance, integrity, transparency and accountability⁵⁰

Even after the amendment, the opposition still had no go areas of campaign which were defined as the ruling party zone. This was not in line with the exant position of the laws, and caused post-election violence in the country. Diplomats are of the opinion that Kenya stands as a fork in the road along its democratic journey, the opposition must first accept the decision of the Supreme Court upholding the election of Uhuru Kenyatta as the legitimate president, as threatening violence or extra-constitutional means are not

⁴⁸ Ibid (n, 46)

⁴⁹ Kenya's longstanding issue included regional development resource allocation, the land question historical grievances and widespread ethnic chauvinism which has undermine national solidarity and largely caused the eruption of most post-election violence.

⁵⁰ Constitution of Kenya 2010, Art 10

acceptable means of seizing power.⁵¹ During the 2017 elections, the country saw another shift in the adherence to constitution with a controversial bill amending Kenya's election law which makes it difficult for the Supreme Court to annul elections. This is calculated to impose the candidate of the ruling party, disrupt elections and oppress the opposition.⁵²

The Nigerian Situation

Nigeria, as a constitutional democracy and member of the committee of nations and subscriber to its conventions, has a responsibility to uphold the right to democracy and good governance. Going into the historical overview of how Nigeria got her independence and the continuous coup that the country had undergone before the democratic regime in 1999 will be a boring story over told. The military handing over power on May 29 1999 gave birth to democracy that is still being enjoyed today.

Before the start of the 4th Republic, which for now is the longest civilian rule in the country, there had been 30 years of military rule in between the democratic eras, which the military always claim was for so called maintenance of law and order. Section 1(2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) outlaws' coups as an unconstitutional form of taking over government.⁵³ It is treasonable and punishable under our laws as capital offence. Continuous military rule had stalled development of democracy in the country leading to poor governance.⁵⁴

Some of the problems of Nigerian democracy and governance have continued to be corruption and inability of government to conduct free and fair elections. Corruption has eaten deep into the Nigeria's polity with a large population of the people living in poverty with little or no access to basic amenities. Going by

⁵¹ Kenya's Democracy is at Crossroads' Available online at <<https://ke.usembassy.gov/kenyas-democracy-crossroads/>> accessed 4 April 2020

⁵² Raliya Odinga BBC news published 26 october 2017<<https://www.bbc.com/news/world-africa-41859171>> accessed 03/06/2020

⁵³ Constitution of the Federal Republic of Nigeria 1999 (as amended) s1

⁵⁴ Nwabueze Ben, 'How president Obasanjo subverted Nigeria's Federal System' Gold Press, 2007 94

the World Data Labs Poverty Clock estimates, about 90 million people (roughly half of Nigeria's population) live in extreme poverty.⁵⁵ The present Administration of President Muhammadu Buhari has put some measures to address corruption and has made little progress with the conviction of some corrupt government officials, past governors, chief executives and legislators and judicial officers whose trial has been concluded in courts. Despite all this effort, it has not translated to good governance or better life for the people as the country has overtaken India as the poverty capital of the world. The United Nations Sustainable Development Goal (SDG) to end poverty by 2030 is unlikely to be met. The struggle to lift more citizens out of poverty is an indictment on successive Nigerian governments which have mismanaged the country's vast oil riches through incompetence and corruption.⁵⁶

The efforts made by successive administrations to reduce or eradicate corruption through institutional reform and passage of enabling legislations,⁵⁷ have yielded little or no results as the problem of bad governance seem to have defied solution perhaps due to lack of political will for proper implementation. It is no longer news that Obasanjo's regime which came up with the agencies to arrest and prosecute corrupt public officers through the government agencies have been accused of witch-hunting and being on a revenge mission of real and imaginary enemies. An illustration is the impeachment of Governor Joshua Dariye of Plateau State in 2003(He was later convicted on corruption charges). Also, the case of Governor Ayo Fayose of Ekiti State who was accused of corruption and wrongfully impeached. This view was alluded to by the president and the sequence of events was narrated by Ben

⁵⁵ Muhammad Sani Abdullahi, 'Three Things Nigeria must do to end Poverty' available online at <https://www.weforum.org/agenda/2019/03/90-million-nigerians-lives-in-extreme-poverty-here-are-3-ways-to-bring-them-out/> accessed 9 April 2020

⁵⁶ Yomi Kazeem, 'Nigeria has become the poverty capital of the world' available online at <https://www.google.com/amp/s/qz.com/africa/1313380/nigeria-has-the-highest-rate-of-extreme-poverty-globally/amp/> accessed 10 April 2020

⁵⁷ The establishment of (Independent Corrupt Practices Commission) ICPC and (Economic and Financial Crimes Commission) EFCC, (Bureau of Public Procurement) BPP, the enactment of Freedom of Information Act were all to help curb corruption.

Nwanbueze.⁵⁸ This suggests that the EFCC Act and the so-called ‘war’ against corruption being waged by the agents of president on the basis of its enabling power have virtually destroyed two vital principles of democracy, namely, civil liberties and federalism.⁵⁹

Another illustration of politicization of governance and lack of will to fight corruption in the country happened when President Goodluck Jonathan granted presidential pardon to the former governor of Bayelsa State, D S P Alameiseiya. The former Governor stood trial and was convicted on charges of money laundering in the United Kingdom. Also, Chief Bode George and five others who were chieftains of the then ruling People’s Democratic Party then, were convicted of offences against Public Procurement Act for contract splitting had political interference as in other cases due to his relationship with the then president.

Another challenge hindering good governance is excess spending on the part of government on white elephant projects which has caused the Global Financing Integrity (GFI), a Washington based research advocacy organization, to rate Nigeria the 7th nation with the highest level of illicit financial outflow.⁶⁰

With regard to election being a pillar to right to democracy, the right of a citizen to exercise his right of franchise through the ballot box is fundamental. Conversely, the citizen must also have the right to remove corrupt leaders through the ballot. Where the anti-corruption institutions seem to be failing as is the case in Nigeria, and with the cases of election malpractices on the increase with each passing election, this has made it almost impossible for election to be free and fair in the country.⁶¹

Conclusion and Recommendations

Despite all the challenges, there is still hope for democracy in Africa at large, and Nigeria in particular. Citizens have remained

⁵⁸ Ibid (n, 54)

⁵⁹ Ibid

⁶⁰ Adeyinka Theresa & Emmanuel Oladipo ‘Democracy in Nigeria: Practice, Problems and Prospect’ Developing countries study (2014) (4) available online at <<https://www.iiste.org/Journals/index.php/DCS/article/viewFile/10369/11010>> accessed 17 April 2020

⁶¹ ibid

expectant that government of the day will deliver dividends of democracy. The desire for good governance was seen in citizens active participation in the electoral processes at all levels. The March 2015 general election, in Nigeria was one of the most popular and keenly contested elections; it seemingly expressed the wishes of majority of Nigerians, and was hailed by the global community.⁶² In the 2019 election, even though with large scale reportage of electoral malpractices and pockets of violence, citizens still enforced their right to democracy by voting for candidates of their choice at all levels. Good prospect still abounds for Nigeria in sustaining democracy and good governance through the ballot and increased political participation. Taking a look at the political history of the country shows that there is hope for improvement of the democratic dispensation to actualize the right to democracy and good governance.

The benefits of sustainable democracy and good governance to citizens are the availability of basic social amenities such as roads, health care, social welfare, water, transportation and security. Democracy is not alien in Africa as it has powerful roots in the continent, the problem is acceptance and adherence to democratic values that will make people to flourish. Africans have shown that they want a democracy where good governance strives; this is evident through their efforts in trying to put in place the electoral means as seen in the analysis of Kenya, and Nigerian Democratic legal regime.

Genuine democracy is about freedom of choice; a concept that is meaningless without free and fair elections where the people can choose those who will govern them and also remove or change those who have failed them by democratic means. No democracy exists where respect for the will of the people is absent, true democracy is about freedom of expression, freedom of choice which induces good governance based on political legitimacy, such as is obtainable in developed countries. As discussed earlier in the article,

⁶² (n, 60)

what be devils Africans mostly is ethnicity and corruption.⁶³ In view of the forgoing, the article recommends:

1. Institutional and legal reforms, and the specific provisions for democratic rights in the Nigerian constitution. This will form a strong basis for citizens to approach the courts when a violation occurs.
2. Mass literacy campaign by the National Orientation agency and the mass media in general for citizens to know their right to participate in the electoral process. Other developed countries have been practicing these tenets of democracy and its values to respect the will of the people and involve them in participatory governance, that should be by adhering to the provisions of the electoral laws through conducting free and fair elections. Furthermore, good practices such as sharing positions in governance based on performance of political parties should be encouraged. The practice seems to have worked in Kenya to end post-election violence.

The basis of any government irrespective of the system that is, whether parliamentary or presidential system, whether in developed or developing country, is to attain good governance which delivers maximum benefits to the citizens by way of fairness and equality before the law. There is no perfect democracy anywhere in the world except where the general will of the people is recognized and respected.

⁶³ Raila Odinga, 'Democracy and the challenge of good governance in Africa' available online at <<https://www.waado.org/nigerdelta/essay/odinga-Africa-democracy.html>> accessed 21 April 2020