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International law and civil society

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The role of DNA in demonstration

Edit Duzs

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Keywords: asylum law, DNA, identification, immigration

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The identification problem in administrative law

The 2007 Act LXXX. Asylum law regulates the content of the asylum granted by the state of Hungary as a refugee, subsidiary protection, conditions and procedure for the granting or withdrawing its recognition for provisional shelter. During the visit at the Immigration and Naturalization Office in Hungary I had a chance to interview the officials. During the interview, I learned that the large number of immigrants who is seeking asylum in Hungary do not have any personal documentation, which makes personal identification rather difficult for the authorities. As a result, two scenarios can occur.

One is that the person had no identification in the past, second, is when the person deliberately destroyed the documents after crossing the border. In the event when the immigrant can present the documents, he can be identified, but it is not intended as a fear from deportation Under the extent of previous legislation it was possible to take them into



custody, but the current legislation does not allow, as the Union has the right to launch infringement proceedings against Hungary in this case.

Accordingly, the current provision resulted in a great increase of number of refugees seeking asylum. Since a few month, there is a so called "Asylum detention" is in place whereas in the past, those who have applied for asylum could not be arrested. This has resulted in a tremendous increase in the number of asylum seekers arriving to Hungary. As Hungary is being considered as a transit country, several times it happened that the application has been submitted, and the applicant left to another EU country before the decision has been made on the case. The shelter centres are operating with full capacity, which in many cases has triggered tensions between migrants from different cultures.

The detention has a form of deterrent, because as the result of the process states that the applicant is not entitled for a refugee status, than deportation is lawful. In the case where the applicant is in possession of the needed personal documentation, the authorities will examine whether the document is genuine or not. In many cases the immigrants are representing false documentation. In this meaning all data contained in the document is false, artificially made, even the document itself is factitious. Each document has certain safety elements, when assessing the authenticity, the security features can be found by the inspector. It also happens that the identification is not fake, but counterfeit, when the identity card or passport is valid, but the photo or name is replaced.

In many cases, stolen documents are concerned, which are not modified at all as their physical units are similar. There are cases when it is very difficult to find out the identification as the photo shows similar physical characteristics, therefore discrimination on the basis of the photograph is almost impossible.

In the majority of the cases, the immigrants get these documents as they find an to find an abandoned paper, or they illegally obtain, produce them. Either the individual is in possession of their documents or not, hearing in mandatory in all cases, even asylum seeking is not the case. While the previous legislation allowed the arrest and custody of the immigrants the new policy makes it no longer possible, open accommodation is given which is secured by guards, but with the option to move in and out as the receiving shelters mostly operating at full capacity. During the hearings it can be discovered in many cases that the individuals do not



wish to reveal their nationality but on the other hand that is the main goal is to identify the person and get the necessary information for identification.

If a migrant can provide information such as which country is coming from, credibility needs to be assessed at first and foremost. Credibility can be assessed by cross questioning the applicant such as: what are the geographical conditions in the origin country, name of a main river, mountain, etc. The main aim during my interviews that shed light on the origin and if the seeker can be deported to the origin country based on the right of "refoulement". The questions are not only aiming geographical subjects in nature. It could be also historical, geographical, cultural and many more. The OIN has a Documentation Centre which is responsible for examining facts which are stated during the hearings made by asylum seekers.

For example, if the interviewee claims that in the town where he came from had a major attack by terrorists, the agency Documentation Centre is required to find out that that city is really in danger, or whether indeed persecuted and discriminated the citizens based on by their colour of skin or belief. Also an important part of the procedure is to take finger prints and photo, but in most cases collaboration is being refused. The data from such procedure is being recorded-in the case of collaboration- but some countries do not yet have a personal filing system, therefore the control of the applicant's personal data is difficult.

For example, the inspection of Afghan citizens are difficult, where unfortunately no formal registration system in place. Further to the potential data are recorded and decision takes place based on the collected information. Its being decided whether to accept the request or decline.

The following types are three possible types of decisions

A) Refugee is a person who fulfils the conditions laid down in the Geneva Convention Act. Where, the reason is set for refugee status is set at Article 3.

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.



To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture:
- b) taking of hostages;
- c) outrages upon personal dignity, in particular, humiliating and degrading treatment;
- d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
- e) attempt on the life and physical integrity, especially in the form of manifesting any murder, mutilation, cruel treatment and torture;
- f) taking of hostages;
- g) violation of human dignity, in particular humiliating.
- B) If the individual is not meeting the above criteria, but must be protected, that it results to get protected status. Most frequently occurring in the case of subsidiary protection status, where the applicants removal not possible due to severe conditions at the country of origin.
- C) federated status is granted to the seeker in the event that their removal would cause disadvantages, the right of non-refoulement cannot be applied.

During the asylum seeking procedure in all cases of course you have to consider that the application is based on fair ground. After conviction on the basis, the case moves to the second phase where more detailed and further examination takes place prior to final decision. However, the status awarded periodically reviewed by the authorities.

The examiner needs to be certain time-to time there is an ongoing conflict in the country of origin where individual should be returned. According to the legal provisions in force, the removal could be possible not only to the country of origin, but another third safe country as well. If it is found that during the examination that the conflict no longer exist in the country of origin, withdrawal from the process takes place and the applicant may have to return home. The immigration proceedings are initiated against those immigrants who have come to Hungary not asking for shelter.



If the migrants do not have any documentation, but provides information of the country of origin, than a help from a local consulate can be asked for identification. The consulate interviews the individual for determination of the citizenship. This may take through raisig questions of different subjects such as cultural, historical, geographical, but detecting local dialect, pronunciation can be useful as well. By carrying out the assessment, the officer is able to determine based only on knowledge of the country the country of origin is indeed true or not.

In many cases happens, that the migrants claim to be a citizen of the country which has no, representation in Hungary. By doing this, the main aim of the individual is to have more time in the process as a general rule is that if there is no representation in the country, the government officials need to contact Ministry of Foreign Affairs of the nearest branch office. The proceedings are quite different in the case of underage or young individuals.

It should be noted, that it is difficult to prove that a person is to a child if there are no personal identification in possession and does not know its personal data, especially in an obstruction is encountered, for those who are near the age of maturity. If there is doubt regarding the person's age, medical examination takes place.

The examination will take place within the framework of the teeth, bones analysis and examination of the wrist bone from which true age can be detected. In connection with this method of identification the problem arises because not all countries have the same physical and mental development level of the child migrants, or even malnutrition is presence. Given that people are developing differently in large part of Asia as it may be due either to the different eating habits, child labouring and malnutrition as well. In other words, there are great differences between an American born 14 -year-old and a 14 -year-old Asian child. In many occasions, true age cannot be safely detected, as the individual reached the age of 18, as the error value is exactly 18 years to move around.

Thus, the investigator determined to get to the course of the investigation, that about 16 to 19 years. Minors receive more favourable process, therefore many applicants happens to say they are under-aged. Specifically the applicant can be sent back to the country of origin in the case proper regulations are treated, otherwise not.



The free movement of rights is set by 2007. I. 44. § where following aspects should be considered before a decision is taken:

- a) the nature and gravity of the offense,
- b) the person's age, health status,
- c) the person's family circumstances, the period of the existence of a family relationship,
- d) the number and age of the person's children, method and frequency of communication with them,
- e) if there is any other state where continuation of the family living together does not conflict with legal hurdles, the enumeration of the difficulties with which the family members would face if forced to settle in the territory of the State

the economic situation f) the person concerned,

duration g) residence of the person concerned in Hungary

h) social and cultural integration of the person concerned, the country of origin or existing connections are tight.

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The transfer of contract

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Abstract: The new Hungarian Civil Code codified as a new legal instrument "the transfer of contract". The point of the article is to deal the new law in Hungary and compare it with the Civil Code of other countries and the rules of international documents.

The transfer of a contract means the transfer by agreement from one person (the transferor) to another one (the transferee) of the transferor's contractual position of a contract with another person (the third party). However it might seem to be clear, there were debates about its acceptance, the principles beyond it, the rights and obligations of the three parties or its limits.

In the countries where there is a debate about the acceptance, the question is still open: does it mean the need of a complex, new legal rule, or are the law of the assignment and the substitution of debtor enough?

Keywords: transfer of contract, Hungarian Civil Code, Contract Law

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The new Hungarian Civil Code¹ codifies many legal instruments which were not known by the old one. One of these new legal techniques is the transfer of contract.

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¹ Act. V. of 2013.



The acceptance of the transfer of contract

The transfer of a contract means the transfer by agreement from one person (the transferor) to another one (the transferee) of the transferor's contractual position of a contract with another person (the third party). That means the rights and obligations will be transferred without the simultaneous consent of the third party who stays in the contractual relationship, therefore without a new, trilateral agreement. Through the transfer of contract the conditions of the contract do not change, the transferee receives all the rights and obligations that belonged to the transferor. The third party may approve the transfer in the original contract or anytime later without specifying the transferee. That means that thorough the transfer of contract the contractual rights and duties with all its securities and defences of a bilateral, closed contract shifts to a new party, while the contract will continue to run.

There are situations when the person of a contractual position is changed without the consent of the other one. It can be, for instance in the case of legal succession between corporations or heritably between natural persons. In those cases the law declares the details of the transfer instead of an agreement of the parties. These cases can be regarded as fundamentally different to the transfer of contract therefore their analysis is beyond the length of this article.

Discussions concerning the theoretical possibility of the transfer of contract are connected to the principle of the contractual freedom. The Hungarian legal scientist Gyula Eörsi has declared that the principle of the contractual freedom means that "anyone can enter into a contract with anyone, anytime, it can be any kind of contract and they are free – aside from some, not remarkable legal limits - to appoint the elements of it"2, also it means the free declarations of the contractual rights and obligations, while the obligatory legal norms are the limits of the contractual freedom. The principle of the contractual freedom and its limit ensures the possibility to the legislator to declare or to deny the transfer of contract.

The legal literature – based on German scientists – knows two theories about the contractual transfer of contract: according to the "Zerlegungstheorie" the legal institute of the transfer of contract does not need to be a separated transaction, because a contractual relationship means the sum of rights and obligations, therefore the transfer of contractual position can take place under the rules of assignment and substitution of debt.

² Eörsi, p.64. ³ Bauer, pp.39–40.



According to the "Einheitstheorie" which has been dominant since the 1920s, a contractual position is an integrated institute and not the sum of rights and obligations. Therefore its transfer needs a separated legal action because the assignment means the transfer of claims but not the transfer of contractual rights in their entirety. The substitution of debt is a tripartite agreement which transfers particular debts but not all of the obligations of a contractual position. Consequently claims can be transferred by the assignment and substitution of debt, but the transfer of contractual rights and obligations in general needs a new legal act.

Considering these theories any state can make their own decision about the permission of the transfer of contract. Accordingly there are some countries in which the law regulates (e.g. Italy, the Netherlands) while in others the judge decides about the permission (e.g. Germany) or the rejection (e.g. Hungary). The different practices of the countries have determinant role especially in the field of international trade, where the parties can choose the applicable law.

Transfer of contract: the legal instrument

The transfer of contract means that a contractual position will be transferred in its entirety, while the legal relationship, the contract will be maintained and "the terms of the contract will continue to run and the contract will be governed by the law as applied at the time of conclusion, which is important e.g. for the application of tax law."

As it is seen from above the transfer of contract is a tripartite legal relationship where a new party comes to a bilateral relationship with another bilateral contract. The object of this legal instrument is the contractual position which can be connected to a short- or a long-term relationship; it can apply the whole contract or just a part of it; or even a pre-contract may be transferred.

The nullity of the basic contract impacts on the contract of the transfer, an invalid contract cannot cause any legal effects therefore its position cannot be transferred. In case of a partial nullity of the basic contract the valid parts can be transferred but if the transferee was not informed about the error the rules of the mistake are useable.

⁴ Siber, in Bauer, p.65.

⁵ Withofs, p.2.



In case of the relative ineffectiveness of the contract the party who suffered infringement can choose: regards the contract as valid or can challenge the contract of transfer within the time given by the law, which can be judged invalid ex tunc. In this case the transferee may submit a civil claim against the transferor.

Even in the states where the transfer of contract is accepted, it is not limitless. A position can be non-transferable in the cases when an assignment would not be possible: it can be caused by the object of the contract (e.g. personal contract), by law or by the parties' agreement.

In case of third-party-beneficiary contracts, if the third party is allowed to claim their rights, the contractual position will be transferable, but the transfer cannot have direct effects on the third parties⁶, so their legal situation may not be changed.

The transfer of contract goes through an agreement in which both of the positions may be transferred. The regulations about the form of the transfer-contract are the same as the ones of the original agreement.⁷ The transfer can have a time condition which means the transfer can be permanent or temporary, therefore the transferor will become the contractual partner after a time or condition again.

The third party is allowed to give his consent either in the original contract or in a separated agreement or even in the contract about the transfer, but in the last case it will turn into a tripartite contract, where the legal instrument of the transfer of contract is unnecessary: even the law systems that do not accept the transfer of contract, – as in case of the Hungarian⁸ one – they admit the transfer in a tripartite agreement.

The main problem is the case when the consent is given before the transfer. A theory⁹ claims that the third party authorises the transferor to modify the contract in this case, however the obstacle is the conflicts of interests in this theory. According to another theory¹⁰ the original contract also can contain an offer to the transferor about the transfer. The prevailing theory¹¹ regards this contract as a third-party-beneficiary agreement, where the third party (the transferee) is unknown. The common point of the theories is that all of them recognise that if

⁶ Bauer, p.95.

⁷ Bauer, p.114.

⁸ BH 2006. 409 (Court decision)

⁹ Früh: 102. in Bauer, p.121.

¹⁰ Pieper: 206. in Bauer, p.121.

¹¹ Favre: Rz. 746. in Bauer, p.121., 124.



the original contract changed, a new consent of the third party or a tripartite contract would be needed.

The main economic advantage of the transfer of contract is that it is an effective instrument to realise financial projects. "For instance, a manufacturer of machines often needs resources to finance his production costs, if the machines are leased to his customers. In exchange for the financing, the rights from the lease contracts could be transferred to the financer."

The transfer of contract in the old¹³ and the new¹⁴ Hungarian Civil Code

The Hungarian civil law recognises two ways for altering contractual partner: the assignment and the substitution of debt. Following this attitude of the legal literature¹⁵, the operative Civil Code¹⁶ has rules for these two legal institutes, but they have many differences regarding the transfer of contract.

The practice of the Hungarian courts of justice has declared that there is no possibility to impose a clause about the transfer of contract in the original agreement. That means in the original contract the partners cannot make valid terms about that one of the partners can quit from the contractual relationship and find a new partner for the other one without his consent. But in the international legal practice there is jurisprudence for the transfer of contract, especially in cases, where the transferor is a corporation with economic benefits that uses this legal instrument in its practice.

The new Civil Code¹⁷ makes a difference in this question. Its book Nr. 6 has the title of assignments, transfer of rights, substitution of debt and transfer of contracts. The transfer of rights is also a new legal instrument: it means an assignment of transferable of rights.

The new Civil Code allows the transfer of the contractual rights and obligations in entirety, even it is made possible by the original contract or can be made under a separate agreement later.

¹² Withofs, p.2.

¹³ Act. IV. of 1959

¹⁴ Act. V. of 2013

¹⁵ Szladits, pp.122–131.

¹⁶ According to the Act. VI. of 1959. on 01. 01. 2013.

¹⁷ According to the Act. V. of 2013 at its promulgation



According to the rules of the assignment, the agreement about the transfer must specify at least the debt, the parties, the title and the sum. The personal obligations are not transferable.

The transferor must give the transferee all the necessary information and documents about the relationship and give the notice to the third party about the transfer. According to the rules of the transfer of rights in the new Hungarian Civil Code, if the original obligation is officially registered, its transfer has to be registered, too. 18

During the codification in Hungary there was a debate about the naming of this legal institute. The two main options were the "transfer of contract" and the "assignment of contract". Both of them exist in international legal documents, the Principles of European Contract Law, the legal literature of Germany and Switzerland uses the "transfer of contract" (Vertragsübertragung), while the UNIDROIT Principles and the common law countries prefer the term of the "assignment of contract". The main argument in favour of "transfer of contract" was that the assignment means the transfer of the rights and debts, while the transfer of contract is a complex institution the transfer of a contractual position.¹⁹

International outlook

The instrument of the transfer of contract is dealt with by modern international documents in connection with contract law and also by the Civil Code in many countries. Some of them are described below.

Principles of European Contract Law (PECL)

In the second part of the 20th century there were many efforts to uniform the civil law of Europe; one of them was the work of the Lando Commission, called the Principles of European Contract Law (PECL). It is a "set of general rules which are designed to provide maximum flexibility and thus accommodate future development in legal thinking in the field of contract law". 20 Since it is soft law, without binding force, it is seldom used in practice,

¹⁸ Act. IV. of 2013., 6:202 § (4) Gárdos, p.11.

²⁰ Lando/Beale, p.27.



although it assembles the general rules of the European civil law and could be a basis of a European Civil Code in the future.

The Article 102 of the PECL has the title of "transfer of contract". It allows a party of a contract to agree with a third person to be substituted as the contracting party, if the other party of the relationship assents. In this case the first party is discharged.

Although the PECL has no detailed rules for the transfer of contract, it shows the way of development and the international business actors' need for recognition of the transfer of contract.

Draft Common Frame of Reference

The efforts to uniform the civil law of Europe continued after the PECL, its result was the Draft Common Frame of Reference (DCFR) in 2008. The DCFR contains the principles, definitions and model rules of the European contract law.

The Section 3 of Book III has rules about the transfer of contractual position, giving a possibility to a party of a contractual relationship to agree with a third person – with the consent of the other party – that the latter person is to be substituted as a party to the contractual relationship. Compared to the PECL the DCFR states that the consent of the third party may be given in advance, but in that case the transfer takes effect only after the third party is given notice of it.

UNIDROIT Principles

The UNIDOIT organisation devised the Principles of International Commercial Contracts (the Principles) in 1994, which was reframed in 2004 and in 2010. Although the document has not legal force, in practice it helps to get acquainted with the general principles of the contract law and to interpret them.

Since the edition of 2004 the Section 3 of Chapter 9 has the title of "Assignment of contracts". After giving a definition it declares, that the rules do not apply when the contract is made under special rules governing transfers of contracts in the course of transferring a business. It requires the consent of the other party that may be given in advanced, too. The



other party may discharge the transferor and also retain the transferor as an obligor in case the transferee does not perform properly.

The transfer of contract in the law of some countries

The Article 6:159 of Dutch Code Civil (Burgerlijk Wetboek) allows the transfer of a contractual position with the cooperation of the counterparty, as far as the parties have not agreed otherwise. In the case of transfer of contract the rules of the assignment and the substitution of debt are applicable.²¹

The Italian Civil Code (Codice civile) gives more details. According to the Articles 1406– 1410 the contractual position is transferable with the agreement of the third party. The notification of the third party is necessary.²²

The Civil Code of Portugal (Código civil) is similar to the Italian one, the law rules it according to the type of the original agreement.²³

The assessment of the transfer of contract

Although the legal instrument of the transfer of contract is not accepted in a big number of countries, however due to the economic pretension it will be used in many cases. Within the frames of the transfer of contract a contractual position in its entirety will be allowed to transfer to another party, but it does not mean the need of a complex, new legal rule, in many cases the law of the assignment and the substitution of debtor is useable.

According to my standpoint with the probate of the transfer of contract the Hungarian Civil Code will serve the modern economic and business life, which can be an example to follow.

²¹ Dutch Civil Code 6:157–159 (on 19. 05. 2013) ²² Bauer, p.397.

²³ Gárdos, p.11.



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Passportisation policy of Russia and new old concerns of the Baltics

Ekaterina Zinchenko

Abstract: The collapse of the USSR left millions of ethnic Russians outside of the borders of the Russian Federation. Since then, the Russian state has portrayed itself as a kin-state for Russian minorities and pursued protectionist policies. One if the modes of protection has been the policy of passportisation in the near abroad. Concerns of the bordering countries over the rapidly progressing development and "spread" of Russian passports became particularly sound after the Georgian and South Ossetian War in 2008 and the crisis in Ukraine since 2013 when the involvement of Russia was justified by the protection of Russian citizens and Russian minorities. The paper looks at the Baltic region described by many political analysts as the next possible "target" of Russia's protectionist claims. Of particular interest are the issues concerning Russian minorities in Estonia and Latvia – citizenship and language debates, as well as Russia's and the EU reactions to existing issues.

Keywords: passportisation, Baltics, Russian minorities, kin-state, minority protection

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Introduction

Change of borders after the dissolution of such multinational states as the USSR and Yugoslavia initiated the emergence of a kin-state activism regarding kin minorities who found themselves residing outside the boundaries of a kin-state. While it is arguable whether the boundaries were drawn accordingly, in many newly established states the size of a titular



nation was so low that could not reach even the half of the population – like in Bosnia (48%) or Montenegro (43%).

The breakup of the Soviet Union only left 25 million of ethnic Russians outside the border of a newly established Russian Federation. Called by Rogers Brubaker as "accidental Diasporas", the majority of the 25 million population were the descendants of those Russians sent by the central government to the outskirts of the USSR to expand the workforce. Although the size of titular nations in some republics was quite low - only 53% of the whole population in Kazakhstan claimed to be Kazakh, 58% of Latvian population claimed to be Latvians, 65% of Kyrgyz in Kyrgyzstan, and 68% of Estonians in Estonia (CIA fact book, States of Eastern Europe and FSU after 1989). Thus, the process of decolonization within the newly independent states brought along the largest Russian minority group, many of whom decided to move to the territory of the Russian Federation shortly after the USSR collapsed. Many remained in states where they resided and acquired citizenship and went through the process of naturalization. In some states the presence of a large Russian minority led to ethnic tensions and strengthened citizenship rules.

While some countries (like Central Asian republics) automatically accepted all residents as citizens, other states (like the Baltics) tightened up the process. Naturalization requirements, for example, were set for Russian minorities who resided in those republics for several decades prior independence. Russia perceived such policies as a sign of discrimination toward its nationals and even accused Latvia and Estonia of creating "a system of social apartheid" to take revenge on ethnic Russians for the Soviet occupation.

To make ethnic Russians in the near abroad feel secure, Russian Government eased citizenship requirements first for ex-Soviets and then for ethnic Russians residing in post-Soviet countries. A suggestion was made to grant Russian citizenship even to those who already became citizens of successor states. As Rogers Brubaker "predicted" in 1994, such "jurisdictional claims in the near abroad [would] provide a convenient pretext for intervention". In 2008, Russia's passportisation policy gave it a legal right to intervene into the Georgian-South Ossetian War to protect its citizens and to Eastern Ukraine in 2014 (where a part of it – Crimean peninsula – joined the Russian Federation through referendum). Many political experts rushed to claim that the Baltic States could be the next 'target' of Russian protectionism policies as all Estonia and Latvia particularly has concentrated population of Russians and has had difficulties integrating 'inherited' Russian population and



Moscow has long criticized Baltic governments for showing prejudice toward ethnic Russians. But can the kin state's aggression be justified by its right to protect its ethnic minorities abroad, some of whom are the citizens of a foreign country? And how legal is Russia's passportisation tactics?

Minority protection and nationality law

The earliest attention in regard to minority protection can be traced to the 17th century when the main concern was the protection of religious minorities. Minority question was later established in the Treaty of Versailles after the World War I and the League of Nations proclaimed the protection of minorities in Europe. Issues related to protection of national and ethnic minorities emerged later in the 19th century in the aftermath of the WWII with the declaration of the United Nations, drafting of the Article 27 of the Covenant on Civil and Political Rights, and other important treaties regarding protection of Human Rights.

State's sovereign decision on determining their nationals was not always operating without restrictions of International law. In 1921, the Permanent Court of International Justice (PCIJ) played a role in resolving the dispute on Tunis and Morocco Nationality Decrees noting that France's decrees extended extraterritorially and, thus, were restricted.

Further advancement of International Law on matters of nationality resulted in the introduction of the "Convention on Certain Questions Relating to the Conflict of Nationality Laws" (The Hague – 12 April 1930). The very first article of it confirmed the sovereign right of states to decide on whom to consider its nationals – "it is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality". Regarded by many as the father of the modern discipline of international law, Openheim stated in the book of the same name (International Law) that "It is not for International Law but for Municipal Law to determine who is, and who is not, to be considered a subject". The 1992 EU Maastricht treaty "reconfirmed" that the questions of nationality fall within national competence and, thus, the right to determine whether a person "possesses the nationality" of a state is the right and expression of a sovereignty.



Estonian and Latvian citizenships

The Republic of Estonia was first formed in 1918; it became a part of the Soviet Union in 1940 (according to Estonian historians – it was occupied, according to the Russian side – it was being protected from the Nazis); it was taken over by Nazi Germany in 1941 until 1944 when it was "re-conquered" by the Red Army and the rule of the Soviet Union was once again established on the territory of Estonia. In 1990, all three Baltic States claimed independence from the USSR and accepted new Nationality policies. On 26 February 1992, the Supreme Council of the Republic of Estonia returned the Citizenship Act of 1938 where *ius sanguinis* became the main principle for granting citizenship. Thus, only those who were citizens of Estonia before Soviet occupation in 1940, including their descendants, could become the citizens automatically while all others (colonial settlers) were obliged to go through the process of naturalization. Exclusionary policies were widely supported within Estonia mainly because the number of non-Estonians drastically increased particularly after 1940 (from 10% in 1940 to 38.5% in 1989). Such restrictive measures made many non-Estonians stateless and thus kept them from 1992 Parliamentary elections when elected Parliament became 100 per cent Estonian.

After international "recommendations" from the OSCE, the Council of Europe and the EU, a new Citizenship Act was ratified in 1995 and introduced new conditions for naturalization – five years of residence, test on the Estonian Language, Estonian Constitution and the Citizenship Act. The biggest debate developed around the law prohibiting the issue of citizenship to children born on the territory of Estonia to stateless parents. The violation of the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child was resolved in four years only when an amendment to the Citizenship Act was ratified.

The number of stateless residents dropped from 32 in 1992 to 9 per cent in 2008, especially when Estonia joined the EU in 2004 and had to launch an integration program for non-Estonians. At the same time, population censuses of 1989 and 2000 showed that (in eleven years) 29 per cent of non-Estonians acquired Estonian citizenship while 14 per cent became Russian citizens. Yet 116,000 people remained stateless by the end of 2007.

Because the majority of non-citizen population were and are ethnic Russians, the concern of the Russian Federation was indeed predictable. After being admitted to the European Union, nationality policies of Estonia were left approved. And while the EU basically stopped assigning recommendations, the issue of Russian minority became the political agenda of the



Russian Federation. The situation became worse in 2007 when Estonian government ordered the dismantling of a Soviet war memorial (known as the Bronze Soldier) two weeks before the celebration of the Victory Day. Russian Embassy in Tallinn reported that applications for Russian citizenship doubled between 2007 and 2008.

The situation within Latvia and the adoption of the Citizenship Law were rather similar to the one in neighbouring Estonia – the citizenship is based on *ius sanguinis* principle and was granted to those who were Latvian nationals on 17 June 1940 and their descendants together with those who resided and were nationals of other states but submitted an expatriation permit. Thus, ethnic Russians, or Soviet occupants and their descendants, were excluded but offered to naturalize. The requirements for naturalization are: permanent residence in Latvia for at least five years (since 1990), knowledge of the Latvian language, the Constitution, the anthem and the history of Latvia, legal source of income.

Since Latvia joined the EU, the number of naturalized persons per year considerably increased. According to Naturalisation Board, over 16,000 people naturalized in 2004 (near 20,000 in 2005 and 16,439 in 2006). The number of non-citizens, however, still remains high - over 365,000 people in 2008. At the same time, the number of non-citizens is not an indicator as their position in Latvia is not really a disadvantaged one. Non-citizens are granted with a special passport which indicates their belonging to the state and thus gives a right to return; besides internal recognition, non-citizen passport is recognized by the EU and allows a visa-free travel within the Union (Regulation 1932/2006/EC).

However, strict citizenship regulation is not the only concern of Russian speaking minorities in both states. Educational reform in Estonia implies to increase the number of classes in Estonian language and leave Russian language as an option for classes of other languages. According to official authorities and the Ministry of Education, such reform would only increase the integration of Russian speaking minorities and their future prospects of finding a job in Estonia. Thus, Educations Reforms aimed at completely revising the language of instruction in Latvia by 2004 and in Estonia by 2007.

External responses: Russia and the EU

Since the collapse of the Soviet Union, the issue of Russian minorities and Russian diaspora as a whole became the political agenda of the Russian Federation who recognizes the territory



of the former Soviet Union as the area of special interest and mandates for Russia. Russia became widely described as conducting an imperialist project of expanding the nation (particularly through passportisation and compatriots policies). In 1999, the Law on Compatriots Living Abroad was adopted to support former citizens, descendants of citizens of the Russian Empire of 1917, and former USSR citizens who reside outside Russia in their repatriation. In July 2010, the meaning of the term "compatriots" was amended to only Russian citizens and ethnic Russians residing outside Russia.

Since 2008, Russia also simplified entry regulations for former Soviet citizens residing in Latvia and Estonia without any citizenship. To cross the border without any visa they only need to have a valid document – a non-citizen passport or an alien passport. Such privileges were broadly criticized by both states as could suspend the naturalization process. According to the Naturalisation Board, the number of naturalized people decreased from almost 17,000 in 2006 to nearly 7,000 in 2007 and only 3,000 in 2008 (which could also be associated with the introduction of resettlement program of compatriots initiated by Russia in the middle of 2006).

While Russia tries to promote its protection mission in the Baltic States, the question arises - why isn't European Union deals with the cases of discrimination as both states are part of the EU. First, to become the members of the European Union, both countries had to meet the Copenhagen criteria's on minority policies and as was indicated earlier, recommendations on a reduction of stateless population were presented.

Conclusion

Since the adoption of the Nationality Act in 1992, the attitudes of Estonians/Latvians and Russian population were completely opposite. Baltic approach to the question is broadly historical – their populations decreased during the Soviet Union and, therefore to preserve the nation today, Soviet settlers should be rejected the citizenship. Russian approach to the issue is more legal and supported by the Helsinki Watch which "rejects the argument that all those who came to Estonia after 1940 did so illegally and therefore were never citizens. Their residency was legally established under the applicable law at the time they entered the territory of Estonia. Those who settled in Estonia after 1940 must be treated as individuals, not as instruments of state policy, however reprehensive that policy may have been" (Helsinki



Watch, 1993:14). At the same time, the International Law states it is the decision of every country to determine its nationals. The same law can be used to justify the passportisation policy of Russian Federation and its sovereign right to determine its nationals.

European Union Minorities and Discrimination Survey (EU-MIDIS) revealed that Russian minorities in Estonia were feeling the most discriminated in Europe in 2011 – over 59 per cent claimed to experience discrimination. Current situation regarding Russian minorities and educational reform in Estonia are also indicators of forced assimilation although Naturalization policies were improved and the number of naturalized persons surpassed the number of stateless residents.

Whether a legal basis for intervention would appear, intervention of one government to protect persons in another country should take the form of a diplomatic protection when the rights of citizens or minorities are violated. At the same time, the Law concerning the regulation of nationality can serve as an important extraterritorial function – as a "justification for the intervention of one government to protect persons and property in another country".

Concerns of Estonian and Latvian authorities on granting and expanding political rights of Russian citizens and non-citizens would certainly be used more cautiously. And while Rainer Bauböck was concerned about the rights of external citizens to vote and thus politically participate in the decision making of a kin-state, the case of Ukraine showed that there should be a concern regarding minorities' participation within the state they reside in.

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Interview

Dr. Gábor Kardos, CsC.

Head of the International Law Department of the Faculty of Law of ELTE University Budapest

Luca Varga

Introduction: In June, 2014, the ICRP conducted a comprehensive interview with Dr. Gábor Kardos, CsC, head of the International Law Department of the Faculty of Law of ELTE University Budapest and member of the Committee of Experts of the European Charter for Regional and Minority Languages. Professor Kardos provided very valuable opinions and notions on the topic of the international law context of the Russian intervention in Crimea and Eastern Ukraine as well as the international sanctions against Russia. The ICRP were chiefly interested in his personal but also expert perception of the current Russia-Ukraine relations and the possible consequences of the intervention and the annexation of Crimea. To sum up, the questions focused on three main areas, namely on the violation of international law, the sanctions imposed by the West and the possible solution of the conflict.

Do you think the Russian military presence in Crimea and the territory's accession to Russia is legal under the provisions of international law? Does this military presence supposed to be an aggression or a humanitarian intervention? Can Russia refer to the Crimean residents' right to self-determination? In July the Chatham House organized a roundtable discussion regarding the Ukrainian crisis when the following question occurred: can the Russian intervention in Ukraine and the NATO intervention in Kosovo be compared? What do you think of this parallelism?



The Russian military presence in Crimea is illegal, (although many decades ago Khrushchev's decision to annex the peninsula to Ukraine has been an unfortunate one.) Russia was referring to three international law principles to justify the military intervention in Crimea. The first concept was the protection of citizens living abroad; the second reason was Yanukovych's invitation for Russian intervention and the third one was the Crimean people's right for self-determination.

As for the protection of the citizens living abroad, I would note that some countries – such as the United States, the United Kingdom and Russia – have made a unilateral statement earlier, in which they declared that they considered any attack against their citizens on the territory of another state as an attack against their own country. However, these statements are not necessarily legal under international law. Even assuming that the statements are lawful, it is still questionable whether the dual citizens in Ukraine had been insulted.

The most interesting question is whether the change of government in Ukraine was constitutional or not. (If the change of government is constitutional, the foreign countries do not have any obligations and do not consider whether to maintain diplomatic relations or not. When the government rises to power unconstitutionally, the foreign countries have to make a decision about recognition of the new government. Accordingly, they have the opportunity to recognize the new authority as the legal government of the state. Under the rules of international law this is a political decision. However, some aspects have to be taken into consideration while making this decision, such as whether the new, unconstitutional authority has effective control.) Now the question is whether Yanukovych's replacement was illegal or not. I would say this was made by the Parliament under the people's pressure and the circumstances did not entirely meet the letter and the spirit of the constitution of Ukraine but apparently, the Parliament abducted Yanukovych on its own will. The other aspect is whether Yanukovych exercised authority afterwards. I think he did not because he fled from the country. Even if Yanukovych had exercised effective power afterwards over certain parts of Ukraine and had been replaced unconstitutionally, would he have had the right to call for Russian intervention? According to the Ukrainian constitution such decision cannot be taken without the parliament's consent.

Regarding the self-determination issue, the following question arises: is it applicable only in case of all the people of Ukraine or can it be invoked by a certain population of Ukraine? According to the constitution of Ukraine a national referendum is needed in cases of



secession. Also in international law the whole population living on a given territory is entitled to the right for self-determination. So we can say that the residents in Crimea do not have a separate right for self-determination.

However, it must be added that there is a minority opinion within the international legal scholarship according to which the right for self-determination can be recognised if the rights of a group of people, a section of the population are grossly and systematically violated. Basically it is only a doctrinal concept with very limited support in state practice. It was referred to, for example, by the Supreme Court of Canada inversely in case of Quebec explaining why the French Canadians do not have separate right for self-determination.

Even if we accept that the gross and systematic violations of minority and human rights enough for an ethnic group to gain right for self-determination and moreover we consider that Ukraine violated certain minority rights, primarily regarding the official use Russian language the specific case in Ukraine did not meet the above mentioned high standard for right to self-determination. In Kosovo there was a large scale ethnic oppression that eliminated the Albanian institutions and every feature of autonomy during Milosevic. On the top of all that even in the case of Kosovo, Martti Ahtisaari's Report did not mention any reference to self-determination but simply came to the conclusion that the conflict could only be resolved by secession. So, the breakaway was explained by an argument beyond international law.

The Russian presence in Crimea cannot be considered as a humanitarian intervention either, because it might be legal only in case of gross and systematic violations of human rights. Moreover it is rather dubious whether humanitarian intervention may be exercised unilaterally.

Did Russia violate the General Assembly Resolutions 2625 or 3314 by its military presence?

Either we have a look at United Nations General Assembly Resolution 3314 about the definition of aggression or the Resolution 2625 about the principles of friendly relations we will be definitely led to the conclusion, Russia violated the above mentioned rules in case of Crimea. Here I would note that the actions in Eastern Ukraine cannot necessarily be regarded also an aggression, because the International Court of Justice put the standard high already in the *Nicaragua case* in this regard...



The Russian actions mean a severe intervention to the internal affairs of Ukraine. Nevertheless these actions do not necessarily reach the level which we would regard as an act of aggression.

How much is the protection of the civil population realized in Eastern Ukraine?

Regarding international law the basic question is whether it is an international or an internal armed conflict. I do not think that it would be an international armed conflict. Thus the humanitarian principles enshrined in common Article 3 of the 1949 Geneva Conventions and the rules of the Additional Protocol II 1977 should be applied. (Ukraine ratified the Additional Protocol II.) However, serious incidents have occurred, the most obvious example is the crashed Malaysian airplane. The civil population is in great danger due to human rights violations.

In 1994, Ukraine gave up the nuclear weapons inherited from the Soviet Union, while Russia – along with the United Sates and the United Kingdom – committed itself to maintain Ukraine's territorial integrity and sovereignty in return. Based on this fact as well as the international law, is the referendum in the Crimea acceptable?

Well, it has a significance regarding that it is one of the agreements in which Russia recognized Ukraine's borders including the Crimea. There were four such treaties. We need to have a look at the referendum from this perspective. Apparently Russia was not acting in good faith.

How will Ukraine's rights change regarding the oil transportation and development in the Black Sea after the Crimea's joining to Russia?

At the time of territorial change, there is a change in all dimensions of the territory. Indisputably there was a *de facto* change. Thus the hydrocarbon fields in the continental shelf will be explored by Russia. It is a separate issue that most countries do not recognize Crimea as a part of the Russian Federation. It must be added, that the sanctions of the European Union also took effect in this region, and consequently no foreign direct investment can made



by EU-members. If oil and natural gas exploration begun, Russia would try to sell it to the West, but those products would be still the subjects to embargo. It is a sensitive issue indeed. Firstly, technically thinking, you cannot know exactly the oil's place of origin. And moreover, the EU members' energy supply is dependent on Russia. For these reasons the EU would be very cautious if it wants to be involved in the conflict even indirectly.

Similarly to this situation, the United Sates did not recognise the annexation of the Baltic republics by the Soviet Union during 1940–1991, Washington could signify this policy symbolically when the members of the US administration did not accept invitations for the summits held in Riga, Vilnius or Tallinn. I do not know what the future brings but I think there will be no symbolic recognition even the parties get over this conflict.

How will Crimea's annexation to Russia affect the principle of territorial settlement globally?

On the one hand we can conclude that the willingness for secession has to be prevented and where the situation of the minority is problematic and questionable, territorial autonomy has to be provided in order to prevent secession. On the other hand we can be led to the opposite conclusion – though, they did have autonomy but they wanted more sovereignty than they were granted hence the region seceded. The settlement of interstate territorial disputes is one of the most sensitive issues. There is no state that would willingly give up even one square centimetre of its territory. We can find almost no precedent: after the Second World War the Western powers wanted to annex Schleswig-Holstein – two historical duchies of Germany – to Denmark, but the Danish government did not agree on this, due to a reasonable cause. Copenhagen was aware of Germany will remain a regional power while Denmark will not be again as it was in the 18th century. So the loss of consent seemed to be a rational decision, which is hard to make, since the national grandeur is a symbol of political power. This restrains the states from supporting the idea of territorial settlement, even if the maintenance of the status quo leads to internal conflicts – as we can see in many cases.

How does the international community have to react to the violent change of borders?

The international community cannot recognize the violent change of borders. This principle appeared between the two world wars when the members of the League of Nations were not



willing to accept the Japanese occupation of Manchuria. That was the Stimson Doctrine proposed by the US Secretary of State. Eventually the Charter of the United Nations in 1945 declared the general prohibition of use of force.

The European Union has made a statement recently that any kind of Russian military intervention would be considered as the violation of international law – even if the Russian Federation is referring to humanitarian reasons. Is it the violation of the international law under any circumstances indeed?

That statement relies on the current international perception of humanitarian intervention. According to this tenet, humanitarian intervention cannot be exercised without UN Security Council authorisation.

What can be stated here as criticism is that earlier these states or some of them had launched military action against Yugoslavia in 1999, also without authorisation of the Security Council. Those countries tried to justify that humanitarian intervention (although they did not call it as an intervention) also by arguing to avoid humanitarian catastrophe in Kosovo. This can be interpreted as contradictory, since we know there is no humanitarian catastrophe in Ukraine right now.

Humanitarian principles are violated due to the belligerents – both the insurgents and the Armed Forces of Ukraine. The parties to the conflict do not duly respect humanitarian rules during their military operations nevertheless no genocide or crimes against humanity has taken place.

According to the international law, what kind of sanctions can the UN or the EU apply against Russia?

The UN cannot and will not apply any sanctions, since the decision of the Security Council would be necessary and Russia would veto even to put the issue on the agenda. It happened earlier that the General Assembly emerged as the leading UN body regarding Korea when the Soviet Union was absent from the Security Council, but the circumstances are different nowadays. The General Assembly alone could act if Russia is permanently absent from



Security Council meetings. Moscow will barely do so; therefore no UN sanction resolution is expected to be adopted.

The main question is whether the sanctions applied by the EU and the US are internationally legal or not. This is so because it is the Council's jurisdiction to adopt such sanctions. Putin supposedly had this in his mind when he said these sanctions were illegitimate. However, the prohibition of use of force is a fundamental international law principle that not only affects the assaulted country but the international community as well. If we accept that these kinds of actions have to be adopted by a centralised body such as the Security Council, Putin was right. But there is a different opinion according to which the Security Council is paralysed, thus sanctions should be adopted on a decentralised way. Presumably the United States and the European Union share this view, saying this is the reason they have to use assorted economic and political sanctions.

Similar or stricter sanctions during the 20th century seemed to be failed after all – due to different reasons. In some cases several members of the international community do not adhere to the sanctions, or in other cases the country being under embargo could predict and calculate the sanctions thereby mitigating the impact of the restrictions. During the past decades the Security Council has established a practice which aims that the political leadership should be sanctioned instead of the public. According to this concept the public is the hostage of the political leadership. For that reason the adoption of so-called *smart sanctions* is preferred. Many of the restrictions against Russia are such sanctions; however other types of coercive measures were also imposed such as the suspension of NATO-Russia political cooperation, omitted invitations to summits, imposition of entry bans, freezing of bank accounts and so on. Some people regard these measures peanuts, but others believe they deliver proper political message, mainly because the recent slowdown of Russian economy could worsen due to the investment restrictions. I cannot take a stand on this.

It is certain that without exemption every sanction is self-punitive, especially when it comes to economic relations. I think this is also the case here because Russia made counter-sanctions roughly equivalent to those the West had adopted against Russia. Although Russian distributors may import goods from outside the European Union or Russian companies registered in Belarus may import products from the EU and ship to Russia since Belarus is not affected by the sanctions. Therefore the key objective of the restrictions is the political message which I think has been delivered explicitly.



We cannot expect that the sanctions will make Russia leave everything behind immediately giving up the Crimea, and it is also unlikely that Moscow would apply a merely new policy regarding Eastern Ukraine. If we look beyond international law and consider political motivations, it is clear that the region will not be annexed to Russia. Moscow's aim is – as the Russian Foreign Minister said euphemistically recently – to help Ukraine to reach a settlement which recognises the rights of minorities without violating the territorial integrity of Ukraine. It is not easy to judge whether Russia's political interest regarding Eastern Ukraine is to achieve a resolution or not. One may think that Putin's aim is to maintain the tensions restraining Ukraine's momentum towards the West. However it can be also argued that Moscow prefers a settlement for the conflict in order to consolidate territorial control in the previously annexed Crimea.

What kind of solutions does the international law provide to settle this conflict?

In this case it could be the federalisation of Ukraine. The eastern part of the country might get broad autonomous rights whereas the residents accept this settlement. In this regard the central government has to accept that its authority would be limited due to territorial autonomy and the region would establish special relations with Russia, which are *de facto* established already. This could happen without any formal change in the borders. I would like to emphasise that this resolution is political of political nature reaching beyond international law, since international law has no tools to force any state to transform its system of government with more autonomy for the diverse regions. Such decision can be made under the constitution by domestic political powers.

In the same time Ukraine now refrains from violating minority rights and started to make legislations in line with general standards in cooperation with the Council of Europe. However, these international standards do not include the right to autonomy. If we look at the international treaties concerning minority rights, they do not contain any reference to territorial autonomy. Therefore the solution is beyond international law. Only if there is a settlement confirmed in an international treaty, it can be rendered legitimate by the international law. This would significantly decrease the tensions, however it would not lead to formal recognition of Crimea's annexation by Russia. The Eastern region will then still have a special status. To conclude, the Russian-Western relations may improve after the resolution of



the conflict in Eastern Ukraine, however it does not mean that the territory occupied by Russia will ever receive formal and official recognition.

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The role of civil society in promoting and sustaining democracy in Nigeria

Makmis Mark Dakyyen - Samuel Mahanan Dang

Abstract: Modern liberal democracy and its values are constructed on the basis of the plural nature of society. For the multiple numbers of such individuals and groups to be accommodated, it aspires that their maximum participation and/or representation is assured or allowed. As a result, the increasing presence and role of Civil Society Organizations (CSOs) amidst other interest groups in modern democracy and political thinking depicts a phenomenon in political development that has drawn the attention of scholars in analysing the extent to which they shape the trend of political events, contrary to the erstwhile thought that nation-building and development in general could only be fostered by the state. This paper, without downplaying the importance of the state in fostering political development, argues that for Nigeria, the task of standing and remaining on its democratic feet is an imperative to be achieved and the role of the civil society is cardinal, if nation-building and the attainment of other national aspirations such as the Vision 2020:20 would be a reality.

Keywords: Civil society (organizations), democracy, nation-building, Non-Governmental Organizations (NGOs)

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Introduction

Several years after Nigeria's independence, the challenge of nation-building and overall development at various fronts of national life has remained unattainable task due to innumerable factors that have beset her. Of particular concern has being the inability to evolve democracy to the level of its guiding tenets and sustainability. The bane has been hinged on the numerous years of colonial conquer and dominance, the onslaught of military despotic regimes and invariably the failure of the political class and other segments of the society to fashion the desired path of nation-building and national development. Largely therefore, a political class which draws its economic life-blood from the subversion of the national economy for private gains has often remained unchecked by a helpless citizenry pushed to the brinks of despondency, growing cynicism and apathy. To aggravate these predicaments, ethno-religious conflicts have constantly also posed a threat to the corporate existence of the Nigerian state and its still fragile liberal democratic experiment. The extent to which the Nigerian government resolves these challenges, in Imade's view (2010) will determine whether Nigeria's fledgling democracy is transient or sustainable and, more importantly, whether Nigeria disintegrates or reconfigures itself as a nation-state. But more importantly is the challenge posed to nation-building especially the attainment of such objectives as the Vision 2020:20.

In this paper, the role of civil society in promoting and sustaining Nigeria's fledgling democracy is the central thesis. It probes the idea of what agitates the progression of Nigeria as a democratic state aside the role of its basic agents and institutions by posing the research questions: What is civil society and do they exist in the Nigerian sense? Do civil society organizations in Nigeria play any role in promoting and sustaining democracy? How is this task achieved, if they do, in the face of a complex history of ethnic and religious divisiveness, coupled with apprehensive military and civilian regimes described as "an adversarial atmosphere of stalled structures" by Bradley (2005)? What have been the reason(s) for the repeated faltered attempts to sustain and consolidate democratic government in Nigeria?

Relying on a methodology that critically examines the roles of numerous civil society organizations in this process, the paper is premised on the argument that a vibrant civil society coupled with civility and social capital are the basic building blocks for democratic survival as mere elections alone do not secure democracy but require the civil society among other catalysts and agitators of the process. Moreover, it is further proposed in this analysis that a



vibrant civil society can champion government reforms such as the vision 2020:20, confront corruption, advocate respect for human rights, promote and defend democratic processes and institutions, alongside the state and overall nation-building. To achieve this objective and for the sake of brevity, this paper has been segmented in seven parts beginning with the introduction, theoretical examination of the subject matter of civil society, its features and democracy, tracing the origins of civil society broadly and situating it within the Nigerian context, its role in the democratic project in Nigeria, its challenges and the way forward proffered with the conclusion drawn.

Conceptual/theoretical framework

The civil society

The underlying theoretical and practical application of the idea of civil society is that it is an evolving one in response to environmental, technological and the current globalization world order. Thus, its definition is sometimes constrained by institutional norms of a particular political, economic system (Bradley, 2005). This often creates ambiguities in defining the concept but Diamond's (2005) idea is quite informing: To him civil society connotes: The realm of organized social life that is voluntary, self-generating, self-supporting, autonomous from the state, and bound by the legal order or set of shared roles... it involves citizens acting collectively in a public sphere to express their interest, passions and ideas, exchange ideas, exchange information, achieve mutual goals, make demands on the state, and hold state officials accountable. It is an intermediary entity, standing between the private sphere and state.

This broad postulation no doubt captures the crux of social action, shared interest and activity required of civil society to stand in the vacuum the state sometimes creates in failing to fulfill its essential welfare to the citizenry. This certainly informs the basis of it also been seen as embracing the "totality of voluntary, civic and social organizations and institutions that form the basis of a functioning society as opposed to the force-backed structures of a state (regardless of that state's political system and commercial institutions of the market)" (Wikipedia, 2010). It is apt to link this to the multiple interests that exists within a society which often cannot be completely guaranteed by the state and it takes the functional role of



the civil society to meet these yearnings or as observed by Mattu (cited in Kohteh, n.d.), "a rich social fabric formed by a multiplicity of territorially- and functionally-based units".

Within these conceptions, manifold social movements as civil society include a broad spectrum of institutions like the academia, (e.g. ASUP, ASUU), activist groups, professional associations, the media, charities, militia, civic groups, clubs, community-based organizations, cooperatives, cultural groups, NGOs, environmental groups, religious organizations, trade unions, voluntary associations, women's groups etc. They usually constitute themselves in an assemble of arrangement so that they can express themselves and advance their collective or common interests. This accounts for its class-related structure but no doubt depicts the essential reality of its complementary yet often contradictory role to the state, mobilized as a process of class struggle in a society. The sum total of these connected ideas is perhaps elaborately captured in the London School of Economics Centre for Civil Society's conclusion that civil society is:

The arena of uncovered collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, through a practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions trade, self-help groups, social movements, business associations, coalitions and advocacy groups.

It can therefore be drawn that characteristically, civil society organizations have offered the plausible potential for mobilizing an array of individuals and groups for popular participation, particularly in widening the democratic space in a society. A look at some of these features would suffice.



Features of the civil society

In a bid to understand why the concept of civil society is vital for sustaining Nigeria's nascent democracy, its common characteristics that work in that direction are worth examining. According to Diamond (cited in Kukah, 1999), the following are it basic features:

- An organized civil society serves as a check against the excesses of government, human rights violation, and abuse on the rule of law, monitors of the application of constitutional provisions.
- ii. Increases the participation and the skills of all various segments of society and instils a sense of tolerance, thrift, hard work, moderation, compromise among the various competing parties in the society.
- iii. It serves as an alternative to political parties and can offer a refuge for those who are shut out from their rights due to non-membership of given political parties.
- iv. It serves to enhance the bargaining power of interest groups and provides inclusive mechanism for them.
- v. It has a role in mitigating the excesses of fundamentalist extremists and maximalists who tend to have a very narrow view of life in the context of either/or. It thus also provides other alternatives for negotiations within a multifaceted society.
- vi. It can serve as recruiting ground for, and the training of prospective members of the political or economic classes to enhance the availability of participants in government. In effect it is a leadership recruitment field.

From the foregoing features, there is no gain saying that civil society forms the bedrock of democracy in a society and even though it is seen to have been considerably weakened and politicized in many post-independent African states (Konted, n.d.) or even as unorganized (Kukah, 1999); its being an effective check to state power in most of those countries has been significant and acknowledged over the years. It also implies that civil society can best be understood and analysed within a historical perspective which also shapes its implication for democratic growth, sustenance and the extent to which this has been achieved as examined in details in a later section.



The theory of democracy

From classical Athenian democracy to its modern liberal form, democracy has gained divergent theoretical explanations but maintains the key theme of a government emerging from the people that give it legitimacy and sovereignty. The feasibility of this within the African society has however been held suspect due its elitist demand for incorporation (Ake, 2000) described in Nkrumah's "seek ye the political kingdom and every other thing shall be added unto thee". The discussion in this direction is however to understand the meaning of democracy especially within the African and/or Nigerian context.

Derived from the idea of popular government by the ancient Greeks, democracy referred to "rule by the people" that gives the insight of peoples equality, their natural rights and sovereignty that was defined by direct and active participation of citizens in the affairs of the state. This has evolved to the modern liberal democratic construct of representation through periodic elections and other forms of citizens' participation. But despite the dominance of this model of democracy, theoretical Marxist perspectives, assuming the proletariat socialist democracy exist alongside what Gauba (2003) describes as elitist, pluralist and participatory theories.

In all these the fundamental elements of democracy are embedded in the ideals, institutions and processes of governance that allows the broad mass of the people to choose their leaders and guarantees them a broad range of civic rights (Enemou, 2000), incorporating social and economic upliftment of the masses. Thus, Ake (2000) puts it to mean a notion of: "government by the consent of the governed, formal political equality, inalienable human rights including the right to political participation, accountability of power to the governed and the rule of law".

Again, notwithstanding the contestations about the theoretical foundations of democracy, democracy thrives in a historical and cultural milieu that requires an outcome of the interaction of all groups which make claims upon or express interest about a particular issue. Thus, in Enemou's view (2000), the imperative of the operational conditions of democracy is the desirability of it by the people who should "strive and sacrifice to attain it" and citing Heater, it also implies possessing political responsibility. With the emergence of the democratic wave in Africa and the world at large in the 1990s, the task of overturning autocratic regimes meant a coordinated action of citizens, through networks such as the civil society to promote and sustain it gaining a lot of impetus. For Nigeria this has been more



compelling considering her role and status in Africa, the relatively fragile nature of her young democratic institutions and other challenges such as accountability, electoral reforms and the current stride at achieving vision 2020:20. This no doubt requires concerted action of all groups and individuals.

The civil society-democracy nexus: a review of related literature

The complementarity of the civil society to the state has generated a lot of academic interest and literature on political development. According to Imade (2010), as increasing attention is paid to democratization, human rights, popular participation, regime stability, transparency, accountability, probity, privatization, and reducing the size of the state, the important role of civil society can no longer be ignored. He notes that the growing universal consensus on the relevance of civil society to the survival of democracy can be traced to phenomena ranging from the decline of the Western welfare state to the transformation of the former Soviet bloc to resistance against authoritarian regimes in the developing world.

The Wikipedia (2010), tracing the origins of the literature on relations between civil society and democratic political society to have their roots in early liberal writings like those of Alexis de Tocqueville and 20th century theorists like Gabriel Almond and Sidney Verba, who identified the role of political culture in a democratic order as vital, presents this situation more clearly thus:

...the political element of many voluntary organizations facilitates better awareness and a more informed citizenry, who make better voting choices, participate in politics, and hold government more accountable as a result. The statutes of these organizations have often been considered micro-constitutions because they accustom participants to the formalities of democratic decision making. More recently, Robert D. Putnam has argued that even non-political organizations in civil society are vital for democracy. This is because they build social capital, trust and shared values, which are transferred into the political sphere and help to hold society together, facilitating an understanding of the interconnectedness of society and interests within it.

In this connection too, Konteh (n.d.) in justifying the position of civil society, observes Mattu's concept of civil society as a "a rich social fabric formed by a multiplicity of territorially- and functionally-based units increasingly linked to the dissolution of



authoritarianism and the establishment of political democracy. He argues that this has a dual implication of first allowing individual units within civil society to determine their collective interest's independently of the states, thereby making for the representation of all sectors by lessening the dominance of the interests of the elite. Moreover, he notes, because the units of civil society are self-created, they provide the basis of political democracy. On the other hand, he posits that this also creates a causal relationship of the state and civil society where he the "dual dynamic of resistance inclusion" illustrates that political democracy is often the product rather than the cause of civil society. And though autonomous, they are not detached from the state and so seek inclusion into national political structures but set limits on each other. In his words, as a result of this process, "ultimately, competition among self-constituted, democratically minded identities in pursuit of common interest allows for the dispersion of political power. Thus, the stability of democratic regimes is enhanced by strong civil societies whose components struggled for democracy".

The totality of this thinking certainly creates the idea that civil society should be regarded as constituting the total of civic and social organizations or institutions that form the bedrock of a functioning democracy as it advocates and takes action primarily for social development and public interest.

Corroborating this argument, Harbeson (1994) contends that civil society is synonymous with society's conception of optimal normative bases of governance and societal organizations and hence represents the blueprint and design for the structure of the state. Similarly, Gersham's (2000) conclusion that civil society refers to the networks of citizens' organizations independent of the state that promotes civic engagement in countries trying to consolidate democracy encapsulates the fact that even in more established democracies, it is also understood to mean the independent "third sector" that mediates between citizens and both the political and economic sectors in each country, especially considering the present global world order. Thus, its strength is visible when it represents the interest of society against an authoritarian state; and often, it may adopt orderly, peaceful or process of non-violence but may be confrontational that demands citizen activism.

The connecting element of these issues underscores the fact that building a democratic state is the task that civil society cannot perform alone but should remain the principal instrument working in concert with societal institutions and related groups. This is more apparent for an emerging fragile democracy like Nigeria that is beset by corruption, is prone to power abuse



and electoral vices, among other maladies. Ekeh (1992), Bratton (1994), Azarya (1994), Young (1994), Kukah (1999) have made extensive studies that radiate around the African and Nigerian experience of these issues.

Origin of civil society

Classical European conceptions to the current global order

It is instructive to begin here by observing that a common theme running through the history of western political philosophy is the idea that civil society consists of those processes that define the purposes and rules of government and its societal foundations i.e., the processes of state formation and reformation (Harbeson, 1994). From its classical historical dimension, civil society was used as a synonym for the good society, and seen as indistinguishable from the state e.g. Socrates' idea of "dialectic" to Plato's just society of common good of practice of civic virtues of wisdom, courage moderation and justice and Aristotle who saw the state (polis) as an "association of associations" that enable citizens to share in the virtuous task of ruling and being ruled in the political community (Wikipedia, 2010). The Roman's societas civilis introduced by Cicero also buttressed the idea of having a good society, with no distinction between the state and society.

The Treaty of Westphalia became a watershed in creating the sovereign states system based on territoriality that resulted in a period of absolutism in monarchical Europe until the mid-eighteenth century to the enlightenment period which challenged the concept of divine rights of the monarchy. Thus, philosophers of the time such as John Locke and Thomas Hobbes theorized forging a social contract in society on the one hand limiting the power of the state and a powerful society on the other that can help humans design their political order. Their ideas were an affront on the existing order of their days, particularly the idea of divine rights, prescribing rather a willful contractual role of those in authority holding power in trust for the society to avoid anarchy. The French Revolution reflected similar political thinking to overcome the conditions of that time too.

However, Hegel, Marx and Gramsci all appeared to later expound that the idea centres around serving the interest of individual rights, interest and private property that strengthens the hegemonic role of capitalism holding the structures of domination. The civil society is therefore seen existing to secure the stability of capitalism and is an intrinsic part of it.



At its post-modern history the civil society is conceived as having been developed through the 1980s in political opposition in former Soviet block East European countries to authoritarian socialist regime types. By the 1990s it became a strategic action to construct an alternative social and world order (Wikipedia, 2010) championed by NGOs and New Social Movements. It hence became what is described as the *third sector* in such discourse. Similarly, to the multilateral institutions such as the IMF and World Bank, the civil society should be a panacea that replaces the state's service provision and social care especially in the 1990s.But with their single-dose panacea to all third world economic conditions under such aegis, the civil society emerged in such societies as anti-government movements; for example, Kukah (1999) notes that the quest for democracy during the SAP era stimulated a lot of controversy and civil society activities in Nigeria. With the turn of an emerging global world order in the 1990s, civil society became a counter force to globalization, resisting its perceived ills across national boundaries. In a whole, these historical transformations are not ends in themselves as they have systemic outcomes on African/Nigerian evolution of civil society.

The emergence and evolution of the idea of civil society in African/Nigerian political development

Many writers on African political development attest to the lack of the use of civil society in the African context despite its rudimentary semblance in pre-colonial ethnic and voluntary associations considered by some writers of that era. Thus, Ekeh (1992) argues that in picking on this term in the 1980s and 1990s, the discipline of African studies has borrowed directly from trends in international Political Sociology which re-discovered civil society from the usages of western political thought. He notes further that the idea resurfaced to offer new opportunities for the freedom of the individual which contrast with previous or existing authoritarian regimes that limit individual liberty. Coinciding with the collapse of Eastern European state Communism, Africa's post-colonial military and personal rule and the apartheid system led to the civil society being characterized as "efforts and structures that challenge dictatorship and maximize individual freedom in Africa'. (Ekeh, 1992).

Evidently, constructs of the idea in African intellectual discourse relates to what he further describes as the "nature of the individual and state and kinship in African history". He asserts that "slavery and colonialism altered African states and societies and histories, with European colonizers using kinship structures as public institutions, canonized it and used it in political



matters that created them as alternative public institutions. In the final analysis the creation of kinship as an alternative public institution, existing side by side with the formal state" using it for primordial interests emerged. Some of these are socio-cultural and ethnic militia groups, religious institutions, cults and others societies that sprang up. During colonialism, groups such as the Egbe Omo Oduduwa and Jami'ar Mutanen Arewa rose to challenge it.

The African state is also typically weak and even when democratically elected, is characterized by high aberration of the non-adherence to the rule of law. Several democracies in Africa today reflect this and hence the need for the role of the civil society to check the excesses of the state and its institutions. Bratton (1994) opines for example that the contours of civil society are shaped by the social groups and classes that come out openly in favour of political liberation, concluding that in Africa, three broad classes of it exists: the popular classes of self-employed peasants, artisans, and marketers; the working class of unionized employees, and the middle classes of entrepreneurs, administrators and professionals. Such are commonly mobilized for mass actions such as strikes in support of better salaries and working conditions or explicitly political demands for freedom of associations or accountability in the management of public agencies and corporations. In fact, through trade unions, the working class usually enjoys both formidable organization and a leadership capable of mounting a bid for political power. In pot-colonial Nigeria, the activities of civil society groups such as the Nigeria Labour Congress (NLC), Academic Staff Union of Universities (ASUU), Nigerian Union of Journalists (NUJ), Academic Staff Union of Polytechnics (ASUP), Nigerian Medical Association (NMA), Petroleum and Natural Gas Association of Nigeria (PENGASSAN), and National Association of Nigerian Students (NANS) have been a vital component of the struggle for democracy and a better society.

The civil society, promotion and sustenance of democracy in Nigeria

Nigerian democracy like most African countries is very fragile often touted as being experimental. To this end, the quest for civil society in this analysis would then imply the need to lend, support to democratic struggles and structures in Nigeria. Ekeh (1992) attests that:

The quest for unearthing the dynamics of civil society in Africa would be without purpose outside its political relationship with democracy. It is because democracy has a



weak base in Africa that civil society is being promoted as a possible method of reformatting Africa's democratic need. This is in contrast with previous theories urging that strong states would supply Africa's political salvation.

However, it is not enough to state that the mere presence and even further growth of civil society will help the development of democracy in Africa; rather it needs to be found out measures that have enabled the civil society to be mutually engaged in the public arena, lessening the claims of the political space of the public realm. As earlier noted, this takes the form of complementary or even sometimes antagonistic pursuit of such ideals by the civil society.

For Nigeria, the roles of civil society groups in this direction have been copious and there is no doubt that despite its relative weakness and unorganized nature, it has evolved as a veritable instrument that promotes and potentially would continue to be the major agent in sustaining and strengthening democracy. An analysis of some of these antecedents of the civil society can be evaluated from the historical and prevailing stride of political events and developments in Nigeria.

Like all colonized territories, the Nigeria state was a colonial project conceived, nurtured and sustained by violence implying for instance that issues such as taxation completely new to some of the colonized communities had to be resisted. The cases of the exile of King Jaja of Opobo, King Kosoko of Lagos and numerous chiefs who resisted colonial rule attest to this fact. The Abba women's riot represented such agitations against despotic British colonialism, reflecting the role of civil society existence. Young (1994) refers to this when he notes that one may suggest that civil society existed in pre-colonial Africa but was extinguished by the colonial state, maintaining that the existence of pre-colonial states of widely varying scale centralization and ideological basis implies an interactive linkage with societies.

Moreover the incorporation of the newly colonized Nigerian state into the world capitalist economic system entailed a disruption of the spade of indigenous development with communal existence to individualism. The end of colonialism did not abate and has not abated the inherent contradictions in these systems and supports our earlier theoretical standpoint that the civil society itself is a part of the capitalist system, with its inherent contradictions.



Lending support to this line of thought, Kukah's position (1999) is quite insightful. He notes that "in colonial Africa, four projects were considered to be most urgent: the process of state-building, Africa's economic development, modernization and democracy" with huge capital implications in the pursuit of these project culminating in the "loss of freedoms, deprivation of productive energies of citizens they were now channelled into the needs of the state", introduction of primitive accumulation, compulsory adoption of new societal moral systems, attitudes and ways of life, incorporating into power hierarchies etc. Citing Ake, he maintains the view that such changes result in "orientational upheaval, widespread anomie and insecurity especially among those who see themselves as losers by its discontinuities, disorientation and ruptures frantic identity affirmations render people edgy, aggressive and available for mobilization into extremist social movements". These have generated a lot of conflict against the state by associations, communities and organizations.

The post-colonial Nigerian state therefore became a strong dictatorial military one for control of state resources, forging hegemony along ethnic identities. In fact, the early struggle of immediate post-independent ethnic minorities against the dominant tripod construction of the Nigerian state on the three major ethnic groups (Yoruba, Hausa and Igbo) were vehemently suppressed by the state.

Till today, the expression of such groups in the Niger Delta and in the Middle Belt regions of Nigeria reflect agitations for freedom over the dominance, exclusion and tyranny of the majority often visible in the suppression of the movement even within a democracy. Even the contestations about *zoning* the presidency reflect group interests that are largely primordial in such power equations in Nigeria.

Furthermore, Kukah (1999) has argued that the economic situations during the Structural Adjustment Programme (SAP) was a part of the Babangida democratization process that vented out a lot of controversy and civil society activities. With subversion of the programme, SAP led to unprecedented corruption in the polity with the final collapse of the transition programme. All these were opposed by civil society groups and individuals that emerged. In Kukah's word, "the upsurge of human rights work in Nigeria coincided with the failure of the economic and social fabric of society as a result of the failure of SAP noting that anti-SAP riots of 1988, 1990 and 1999 were spearheaded by the Civil Liberties Organization (CLO) founded in 1986 by Mr. Olisa Agbakoba, student union bodies led by NANS, ASUU, NBA, Trade Union Congress, the Nigerian Labour Congress then led by Ali Chiroma etc. All made



remarkable achievements in trying to assert the rights of Nigerians including the role played during the anti-fuel hike prices between 1986–1988. It can then be concluded that such associations' operations are additive and have contributed to the generalized definitions of personal freedom and individual liberty (Ekeh, 1992:208) that civil society represent.

However it can only be useful and instructive to understand and agree with Kukah (1999) that the discussion about civil society can take place mainly within the larger picture and context of the struggle for democracy and its attendant attributes since the civil society and authoritarian regimes are strange bed fellows or what he terms important enemies of civil society. The Nigerian state and people became casualties of many years of military despots who used the instruments of coercion to suppress the civil society. Through their draconian laws, press freedom was curtailed; labour activities and students' unionism were proscribed with many human rights activists caught in the vortex of the high-handed military use of power. The Buhari, Babangida and Abacha regimes had notoriety for the suppression of the civil society at various forms. The academia was not spared. University lecturers in ABU Zaria, Universities of Ibadan, Calabar, Port Harcourt and Jos became what Kukah (1999) terms "hotbeds of very informed Marxist radicalism in the 80s" and were becoming a threat to the ruling political elites. As a result most of them known to be associated with the left were harassed or detained and "were accused of not teaching what they were paid to teach". This led to a lot of migration by some of them or the brain-drain phenomenon. These do not only demonstrate the threat of subjugation of the civil society by Nigerian despots but the role such groups played in standing against the suffocating affront of authoritarianism.

Another obvious demonstration of the courage of the civil society in the face authoritarianism is notable during the failed democratic transitions in Nigeria. A significant case in point was the annulment if June 12 Presidential election believed to be the freest and fairest in post-independent Nigeria's political history. Aside the Nigerian Civil War, it is said to have tested the unity and resilience of Nigeria (Kukah, 1999:107). But it is the role of the civil society such annulments precipitated that is our point of departure: it saw an amalgamation of civil society groups confronting the Interim National Government (ING) and later the Abacha regime. The intellectual class especially ASUU vehemently confronted the regime. Nigerian human rights groups formed a coalition under the aegis of an organization, the Campaign for Democracy led by late Dr. Beko Kuti and Chima Ubani its Secretary-General with the aim of overthrowing the ING and install a democratically selected government headed Chief by



Chief Abiola but due to internal wrangling, it ruptured leading to another coalition, NADECO, consisting of seasoned politicians, the military and bureaucracy who stood for the restoration of the June 12 mandate and against Abacha's self-succession bid. Many were incarcerated; some left Nigeria into exile and others like Alfred Rewane and Mrs. Kudirat Abiola, paid the price with their lives and 'hostile' media houses were closed down. By 1995, this situation worsened with the arrest, trial and sentencing of 40 Nigerians including Olusegun Obasanjo on charges of complicity in an illegal coup against Abacha, followed by the hanging of Ken Saro Wiwa and eight other Ogoni activists (Akinboye and Anifowose, 1999). This was condemned the world ever, including the suspension of Nigeria from the Commonwealth and limited sanctions imposed on Nigeria by the USA, Britain and the EU.

By 1997, the United Action for Democracy (UAD) was also formed as an amalgam of a civil society groups with the aim of ending military rule and enthronement of a people's democracy, creation of political education to empower people in the defense of fundamental human rights and demand unconditional release of political prisoners (Kukah, 1999:263). With similar roles coming from the CLO and Afronet, an African human rights organization led by Olisa Agbakoba, the civil society groups were relentless in the fight against military despotism. For example, the UAD organized a rally in Lagos opposed to Daniel Kalu's Youth Earnestly Ask for Abacha (YEAA)/ National Council of Youth Associations in Nigeria (NCYAN) coalition's two million man march in Abuja. The fall out was arrest of democracy activists like Chief Bala Ige for disrupting pro-Abacha rally organized by Lamidi Adedibu and Arisekola in Ibadan. But for the death of Abacha, he might have succeeded himself as a military- turned civilian president despite the agitations by these groups and individuals.

However, what was remarkable and indisputable was the upsurge and commitment of these movements to confront authoritarianism despite their limitations. This in O'Donnell and Schmitters view (cited in Bratton, 1994) are known as the "popular upsurge" which implies an ephemeral activist coalition through which various social classes momentarily suspend divergent interests in favour of the common goal of removing an incumbent regime. Thus the emergence and mobilization of such multi class alliance demonstrated an affront at promoting and trying to sustain the values of democracy in Nigeria.

It is however not right to say these efforts were ends in themselves with the emergence of civil democratic rule in Nigeria by 1999. As observed by Gersham (2000):



Significantly, the process of transition initiated by civil society, once it culminates in the downfall of autocracy, demands that the role of civil society itself be transformed. Instead of working in opposition to the state, groups representing civil society have to help fashion a democratic state that is responsive to popular needs and attitudes. Their task in the post-breakthrough period is neither to subvert the state nor to defend it uncritically, but to monitor its performance and insist on its accountability and transparency. Civil society must also encourage citizen activism in solving practical problems, foster tolerance and inclusiveness, and begin the difficult process of bringing social reality and respect for rights into line with the new democratic aspirations and values.

Therefore, sustaining democracy in Nigeria since 1999 has been a lot of the dynamic role of civil society groups. From impacting on electoral reforms, legislative issues and outright condemnation of tyrannical tendencies in a democracy, the polity has attained some level of relative democratic stability. Even though affronts on democracy by groups such as the militant Odua People's Congress, MEND, the Boko Haram religious upheavals etc., there is an increased role of the articulation of ideas by more organized civil society groups to the extent that they consolidate and help in institutionalizing the democratic space. Obasanjo's failed 'third term' bid through a constitutional amendment process, was but for civil society resistance that swayed or influenced the options of the National Assembly. Similarly, the recent political statement of a power vacuum created by Yar'adua's sickness saw the civil society making demands and pressures that resulted in a resolution of the problem by the National Assembly's use of the its doctrine of necessity. The Save Nigeria Group (SNG), NBA, NLC, NUJ, the academia and other groups were instrumental in shaping the activities of government. In fact, the much applauded removal of Professor Maurice Iwu was a feat of civil society pressure while the appointment of Professor Attahiru Jega as INEC Chairman has not just been informed by his past antecedents as ASUU President, but his acceptance among the civil society groups. It is hoped that his experiences and the support expected from Nigerians will lead to credible elections by 2011. And with the right leadership (which has been our development bane), the attainment of Vision 2020:20 and other broad nationbuilding projects at large may be possible.

Similarly, the sustained role of election monitoring by the civil society has largely been a response to the challenges of the Nigerian electoral milieu. Under the auspices of the Transition Monitoring Group (TMG), a coalition of civil society groups interested in promoting and sustaining democracy, the 2003 and 2007 elections were under their watchful



eyes as observers, with most of them noting the shortcomings of the process in their reports. The Electoral Reform Network (ERN), the Catholic Church's Justice, Development and Peace Commission (JDPC) and the Muslim League for Accountability have been involved in ensuring that credible, free and fair elections are conducted in Nigeria.

The organized labour under the umbrella body, Nigeria Labour Congress (NLC) and its corollary associations have also been actively involved in pro-democracy movement activities in Nigeria. Ihonvbere (1997) affirms that workers' role have been relied upon by political parties, human rights and pro-democracy movements, acknowledging them as the "popular communities and constituencies which determine the dynamics of politics and shape the overall character of the transition from forms of authoritarianism to multiparty systems". PENGASSON, TUC, NUPENG, ASUP, ASUU etc. have spearheaded the clamour for good and acceptable electoral practices, better management of resources and general participation in governance by the citizenry.

It is essential to admit the significant the activist elements of the civil society in Nigeria have mostly been shaped and influenced by a crop of professionals and intellectuals who believe in human rights, equal opportunity and democracy and who, by virtue of these values, according to Ake (2000) so grossly neglected in post-colonial Africa have always been outsiders to power such as the indefatigable late Chief Gani Fawehinmi (SAN), Femi Falana, Late Bala Usman, Tai Solarin, Beko Ransome-Kuti, Balarabe Musa, Prof. Wole Soyinka, Pastor Tunde Bakare and a host of others. Their dogged clamour and supports have been relentless in ensuring institutional liberal democracy via multi-party elections accountability and the rule of law in securing rights, overcoming economic and political marginalization, exploitation and empowering those who are weak and making public policy responsive to social needs (Ake, 2000). All these are components that support democracy and nation building.

Challenges of civil society in the promotion and sustenance of democracy in Nigeria

The civil society's quest for the promotion and sustenance of democracy in Africa and particularly in Nigeria have been misconstrued as reference to sources of resistance to the domain of social life. With this, it is understandable that they have been a target of hostility by authorities through their activities and struggles. As a result, the environmental and other



factors have been key challenges to the role of civil society organizations in achieving their objectives among which are:

- Then politicization and weakening of the civil society: Many civil society groups in Nigeria have faced this problem through patronage or repression, making it easier to suffocate democracy. To some civil society leaders, the offer of lucrative jobs in government (especially labour union leaders) have resulted in what Konteh (n.d.) describes as silencing the dissenting voices, paving way for autocratic and dictatorial regimes. This was most prevalent during the military dictatorship in Nigeria. Kukah (1999) corroborates and depicts this phenomenon as "co-option, incorporation and rejection" empirically revealing that some key members of the Campaign for Democracy "had sold out by reaching to Abacha in the search for a solution to the problem of the annulled election". This did not only rupture the organization but demonstrated the compromise that may arise in a politicized and divided civil society. The politisation and paralysis of the National Association of Nigeria (NANS) and the National Youth Council of Nigeria (NYCN) are typical examples of bodies that used to lend a strong voice to the civil society in the cause of democracy and justice.
- Lack of clear-cut objectives, experience and organizational discipline: According to Kukah (1999), many civil society movements in Nigeria emerged without any experience in the "art of the dynamics and organizational discipline" required of them resulting in disunity among the groups. He provides the reasons to this in the internal contradiction of their emergence which was without clarity of purpose and objective, making it an "all-comers job" that was uncoordinated.
- Related to this is **the ideological war among the civil society ideologues** where the radicals perceive it as an arena to challenge the status quo and build new alternatives, while the neo-liberals situate it as an avenue to remedy the ills brought to the fore by what Edwards (2009) describes as "marked failures" in order to be engaged in service provision not for profit. He contends that such result to a "mania for business metrics, commercial revenue generation and induced competition between civil society groups supposedly designed to deliver better results" rather than concentrate on specific contentious societal issues of governance and public good.
- **Funding** is another great challenge to the civil society in Nigeria. Largely motivated and funded by international donor organizations and countries, they are not designed to clearly undertake a locally designed democratic initiative for the Nigerian society.



Kukah (1999) links this to their apparent urban-based location and suspicious inability to garner local and internal economic support. To Edwards (2009), this brings to bare the problem of accountability and transparency the civil society is often faced with.

- Ethno-religious and other forms of conflicts have been a great challenge to civil society organizations in finding lasting solutions to them within a democracy. Often fanned by the embers of poverty and unemployment, youth become ready tools for unmitigated conflicts that threaten Nigeria's democracy and corporate existence. Linked to this is the challenge of educating the citizenry from its growing apathy to democratic and governance issues due to the pervasive divide between those in power and the citizenry which must be bridged.
- The challenge of a globalized world system no doubt impinges the role of the Nigerian civil society in promoting and sustaining democracy. The challenge confronting civil society within this view according to Gershman (2000) is to develop new forms of international collaboration that will enable ordinary citizens to defend their interests and identities in the face of powerful global forces that often seem beyond anyone's ability to control. It can be right to say the civil society currently lacks the capacity to meet this challenge due to the numerous factors even affecting it locally.

Faced with these challenges, the civil society in Nigeria requires options for it to deepen the task of ensuring democracy is promoted and sustained.

Alternative futures for the civil society in Nigeria's democratic development

In Nigeria like other emerging democracies, the requirements for democratic development today go beyond the institutional arrangements of it as a country but rather by having in place what Linz and Stephan (cited in Gershman, 2000) refer to as "the five arenas of a consolidated democracy": civil society, political society, the rule of law, the state apparatus and economic society that must complement and re-enforce each other. For the civil society to achieve these in furtherance of promoting and sustaining Nigeria's nascent democracy for nation building, the following would be relevant practical options for the civil society:

• The civil society in Nigeria needs to sustain its advocacy for supra-national laws to control tyranny by political leaders in the areas of human rights, fights against



corruption, money laundering, popular participation in governance and the search for free and fair elections in Nigeria.

- For the civil society in Nigeria, the struggle to promote and sustain democracy for nation-building should be independent and consistent to the extent that can be configured to enhance its capacity for independent action in the midst of its operational and organizational challenges.
- To be able to maintain such independence and struggle, the civil society should be able to garner adequate independent resources and "profound moral commitment and emotional allegiance" (Diamond, 1990) from the citizens. This will secure its action and provide leveraged support from the populace, especially when the civil society observes the democratic and other values it professes in its internal operation.
- Civil society activists in Nigeria need to form alliances and networks through three fronts Gershman (2000) prescribes as: "cross-sectoral-domestic alliances, international civil society network and developing regional and global, cross-sectoral networks". Through this kind of partnership, civil society and other democratic forces and institutions as the media, political parties, trade unionists, intellectuals, etc., can be empowered by new advocacy techniques and political networking to fight corruption, election rigging, helping eliminate discrimination, human rights abuses etc. that are antithetical to democratic values and nation-building at large.
- Generally, it is advocated that the Nigerian state should be in a position to guarantee
 minimum economic subsistence to its citizens if democracy can be achieved and
 sustained. This can ensure pluralistic participation by the citizenry and prevent
 extreme inequalities that engender conflicts, political thuggery and other forms of
 vices tearing the fabric of Nigeria apart.
- To create the desired sense of common humanity, justice, human rights and other
 values democracy represents and champion, the civil society need to mobilize
 Nigerians for social change to the grassroots rather than their urban-based elitist and
 mass approach to the concerns of the society. Through this, adequate awareness,
 transformation and mass civic action can be anticipated.
- The civil society in Nigeria need to have limited and specific objectives that are not
 parochial but rather focused on social challenges such as democratic transition, fight
 against corruption and injustice etc. to provide the scope and focus for clear-cut
 activities in such areas.



Conclusion

The contemporary world view of political democratic development and nation-building incorporates vital values and multiple numbers of actors that are instrumental for change in a society and in analysing such developments. In Nigeria, the civil society encapsulates this reality and reflects the notion of collective action towards achieving shared values of the society. In serving as a "counter hegemonic social movement" against authoritarianism, it has been instrumental to regime transition in Nigeria and a vehicle that has helped in securing, promoting and sustaining Nigeria's nascent democracy amidst the turbulence of the socio-political milieu. Mostly championed by professionals such as the academics, lawyers, labour, doctors and other segments of society, the outcome of civil society activities in Nigeria have demonstrated efforts of creating a just democratic society where citizens' rights are fought for, accountability by public officials is demanded, electoral reforms are necessary and nation-building is the objective. This will help in filling the vacuum the state has created and spells the essential component of the civil society.

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