

**LEGITIMACY AND ROLE OF THE CIVIL SOCIETY IN PROMOTING CONSTITUTIONALISM AND DEMOCRATIC GOVERNANCE IN NIGERIA: CHALLENGES AND PROSPECTS\***

**Abstract**

*In the past, the role of the civil society in Nigeria did not loom large. Today, civil society organizations have mushroomed with rapidity, carrying out activities that impact positively on the promotion of constitutionalism and democratic governance in Nigeria. As it stands, the civil society have become formidable group carrying out roles that cannot be dispensed with as active partners with government in the democratization process. It cannot therefore be gainsaid, that without the role of the civil society as a third force, the needed catalyst or pressure for government to deliver on its constitutional mandate would have been missing with negative impact on democratic consolidation and the socio-economic development of the country. However, the effectiveness of the civil society groups in carrying out their objectives have been hampered by a number of challenges, while government very often perceives their activities as anti-government and therefore should be controlled. Against the above background, using doctrinal methodology and relying on the social contract theory, the article analysed the role of civil society groups and found that some of their challenges include poor funding, lack of proper organisation and coordination, lack of cooperation from government, corruption, lack of adequate knowledge of their rights and responsibilities, greed, etcetera. The article concluded by advancing the recognition of the legitimacy and role of the civil society groups and suggested measures that could make them more effective in promoting constitutionalism and democratic governance in Nigeria.*

**Keywords:** Civil Society; Constitutionalism; Democratic Governance; Social Contract

**1. Introduction**

It cannot be overstated, that government is a necessary phenomenon for the members of a political society to realize their legitimate aspirations in a secure and ordered environment. Hence government is instituted by the people and for their own benefit with government officials as servants of the people. Unfortunately, it is common knowledge that because of the capricious nature of human beings, government officials can use governmental powers abusively and oppressively in pursuit of parochial or selfish agenda, to the detriment of the people's interests. The above fact underscores the essence of the constitutional limitations imposed on the powers of government. Hence as said by Fellman, 'the touchstone of constitutionalism is the concept of limited government under a higher law',<sup>1</sup> without which rule of law and democratic governance cannot be effectively consolidated. It is also common knowledge that the constitutional limitations against the abuse of governmental powers will remain gobbledygook where the democratic institutions established by the constitution to check the abuse of power and enforce constitutionalism and the rule of law are too weak or ineffective in carrying out their mandate. This can be caused by sundry factors including deliberate incapacitation and corruption. Against the above background, the role of stakeholders in the Nigerian project particularly the various civil society groups as non-state actors become crucial. In this connection, the civil society which did not attract so much attention in the past have now come to be recognized by governments worldwide as veritable active non-state participants in the promotion of constitutionalism and democratic governance. These bodies promote good governance by voluntarily taking up the responsibility of whistle blowing and mounting aggressive pressure on government and its institutions to observe the principles of accountability, transparency, rule of law and human rights of the citizens in carrying out their activities. They also carry out various activities which impact positively on the welfare of the citizens including social services to the vulnerable, economic empowerment, humanitarian services, promotion of political participation and economic activities.

However, as voluntary and self-funding organizations, the effectiveness of the civil society groups in carrying out their objectives, have been hampered by a number of challenges. These challenges include poor funding, lack of proper organization and coordination, lack of cooperation from government, corruption, lack of adequate awareness of their rights and responsibilities, greed, etcetera. On the other hand, government very often perceives their activities as anti-government, opposition inspired, ill-motivated and therefore, should be controlled. Sometimes attempts have been made by government to make laws controlling the activities of the civil society which have always been met with stiff resistance from the pro-democracy and civil society groups in defense of their legitimacy to exist as a third force and carry out their objectives.

The article argues, that the existence and role of the civil society have constitutional backing and must be recognized by government as an independent third force that serve as a vibrant social intermediary between the state, business and family. It provides the oil that lubricates the relationship between the government, business outfits and the people though sometimes regarded as a thorn in the flesh of government officials. Thus, without vibrant and active civil societies operating side by side in a fledgling democracy, impunity and corruption will remain unchecked and constitutionalism

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<sup>1</sup>David Fellman, available at <https://www.legalserviceindia.com/legal/article-4939-constitution-constitutionalism-and-constitutional-morality-in-india.html> (accessed 18 August 2023).

and democratic governance will accordingly remain imperiled. In analysing the role of the civil society groups in the promotion of constitutionalism and democratic governance as highlighted above, the article is structured in sections as follows: section 1 is this introduction; section 2 deals with the relevant conceptual explanations; section 3 examines the legal bases for the activities of the civil society; section 4 examines the role of civil society in the promotion of constitutionalism and democratic governance in Nigeria; and section 5 which is the closing remarks concludes the article with suggestions on how the civil society can be made more vibrant and effective in promoting constitutionalism and democratic governance in Nigeria.

## **2. Conceptual Explanations**

### **Civil Society**

Civil Society can be described as an all-encompassing, amorphous but identifiable group operating in the socio-political environment with various objectives. Civil society in concrete terms simply denotes the sphere of action that lies between the state and society that is made up of civic groups, civil society organizations, and non-governmental organizations. These various groups work to represent and promote certain special interests or raise public awareness of civic duties and political rights. Civil society provides ways for people to help society through volunteerism.<sup>2</sup> Basically, the civil society groups in carrying out their functions act as a link between the state and its society. This is understandable in that the government is incapable of solving all the problems of its citizens, since there are needs that the state is unable or unwilling to meet. Therefore, civil society steps in and provides necessary aid such as food distribution, medical services, legal advice, and disaster reliefs and so on. In addition, they provide ways to mediate between different, sometimes contradictory, interests that arise in the public arena. Furthermore, they provide the ordinary citizens the platform to volunteer and help their communities.<sup>3</sup> Civil societies can consist of small or large civic groups or clubs like civic groups like the Rotarians and the Optimist Club that promote service to the community. Some operate within the community or national space while others are large non-governmental organizations like the Red Cross and the UNICEF which are referred to as General Civil Societies, whose activities go beyond the state.

At this juncture, it is apposite to note that the terms, non-governmental organization (NGO) and civil society organization (CSO) are very often used interchangeably when describing civil society activity. Technically, NGOs are a subset of the more general CSOs. NGOs are typically issue-driven non-profit organizations that provide services at the domestic or international level, like Amnesty International. CSOs, however, include organizations like local civic groups or churches that do not meet the legal definition of an NGO.<sup>4</sup> In any case, civil society comprises organizations that are not associated with government—including schools and universities, advocacy groups, professional associations, religious, cultural institutions, gender, civic or community-based associations and various others playing multiple and diverse roles characterized by common interests, voluntariness and autonomy. Thus, civil society can be described as the space or arena in which social movements are organized to represent diverse and sometimes contradictory social interests. In this way, it acts as an arena where different interests compete, compromise, and find solutions before legislation or arbitration becomes necessary. Characteristically, civil society consists of non-state institutions, a plethora of organizations and institutions outside the state, market and family, organized as a voluntary and autonomous association in pursuit of common interest.<sup>5</sup>

### **Constitutionalism**

Although, constitutionalism as a concept is nebulous and highly contested, yet, it remains highly venerated.<sup>6</sup> Constitutionalism can be described as ‘a compound of ideas, attitudes, and patterns of behavior elaborating the principle that the authority of government derives from and is limited by a body of fundamental law’.<sup>7</sup> The whole essence is to impose limitations on the powers of government and to ensure that government officials are bound to observe both the limitations on power and the procedures which are set out in the nation’s constitution in the performance of their constitutional duties, thereby constraining impunity. In the apt statement of McIlwain, ‘constitutionalism is the antitheses of arbitrary rule. Its opposite is despotic government, a government of will instead of law’.<sup>8</sup> Expanding on the idea of limited government, Rosenfeld explains that constitutionalism is basically ‘a three-faceted concept’ which requires

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<sup>2</sup><https://study.com/academy/lesson/what-is-a-civil-society-definition-examples.html>, (accessed 12 August 2023).

<sup>3</sup>As above.

<sup>4</sup>As above.

<sup>5</sup><https://civilpanda.com/civil-society/> (accessed 25 August 2023).

<sup>6</sup>OE Nwebo ‘Constitutionalism and Democratic Consolidation in Nigeria: The Challenges of Democratic Legitimacy and Plurality’, Inaugural Lecture delivered on February 16, at Imo State University Auditorium. P 12.

<sup>7</sup>Don E Fehrenbacher, *Constitutions and Constitutionalism in the Slaveholding South* (university of Georgia Press, 1989), p 1. See also n 1 above.

<sup>8</sup>CH McIlwain *Constitutionalism Ancient and Modern* (1947) pp 21-22.

imposing limits on governmental powers, adherence to the rule of law, and the protection of human rights.<sup>9</sup> It proclaims the prevalence of the rule of law by subjecting government officials to the limitations of a higher law in the exercise of governmental powers. According to de Smith,<sup>10</sup> constitutionalism is practiced in a country where the government is genuinely accountable to an entity or organ distinct from itself, where elections are freely held on a wide franchise at frequent intervals, where political groups are free to organize in opposition to the government in office and where there are effective legal guarantees of fundamental civil liberties enforced by an independent judiciary. Individual civil liberties are indeed the very essence of a constitutional government.<sup>11</sup>

Therefore, constitutionalism must be based on constitutions that are not merely programmatic shams or ornamental documents that could be easily manipulated by politicians, but rather documents that can promote respect for the rule of law and democracy.<sup>12</sup> Such constitution must contain a minimum set of core values and a well-defined process and inbuilt procedural mechanisms to hold government accountable.<sup>13</sup> These minimum set of core values or core elements of constitutionalism include: entrenched fundamental rights; separation of powers; independent judiciary; supremacy of the constitution; judicial review of executive and legislative actions; civilian control of all security forces including the army and the police; free press; and strong democratic institutions that can hold government and its agents accountable.<sup>14</sup> The implication of the foregoing is that a constitution, especially a written one, must contain the above core elements for constitutionalism to exist.

### **Democratic Governance**

To begin with, it must be recognized that the concept of 'democratic governance' comprehends the ideas of both 'democracy' and 'governance'. Therefore, for a better understanding of the democratic governance concept, it is considered apposite to commence with an explanation of the concepts of 'democracy' on the one hand and 'governance' on the other. In discussing the idea of democracy, it must be emphasized, that it has been taken for granted that democracy is a universally accepted way of life but without a universally accepted definition.<sup>15</sup> Hence, the concept has been variously defined and explained depending on one's context, circumstance or ideological inclination. In all these, it is presented as a form of government in which the power to govern is derived from the people either by direct referendum (direct democracy) or by means of elected representatives of the people (representative democracy). Without going into the etymology or various meanings of democracy, we adopt the popularly accepted definition of democracy as 'government of the people by the people and for the people'.<sup>16</sup> From the above definition, it is apparent that the epicenter of democracy is 'the people', to whom sovereignty belongs and from whom government should derive all its powers and authority to govern. Therefore, their participation in the democratic process is imperative, if they have to determine their political destiny by themselves. Thus, the hallmark of a true democracy is rule by the consent of the people, which must be determined by their affirmative votes in a free, fair and credible election in accordance with the constitution of a country, which in itself, must have been a product of a democratic process. To this extent, democracy is critical to the understanding and promotion of democratic governance. Governance like other concepts in the social sciences has no precise connotation. Alkali<sup>17</sup> conceptualized governance as the exercise of political power to manage public affairs. He points out that governance borders on such issues as rule of law, accountability and transparency, development-oriented leadership, freedom of expression and association, responsiveness, responsibility, representativeness, efficiency and effectiveness. He argues that 'accountability and transparency are the hallmark of governance'.

The United Nations Development Program (2004) defines governance as the system of values, policies and institutions by which a society manages its economic, political and social affairs through interactions within and among the state, civil society and private sector. It must be noted, that the concept of governance has various dimensions, including its social, political and economic dimensions. Governance is also operated at every level of human enterprise, be it the household, village, municipality, nation, region or globe. In a nutshell, governance can simply be defined as the process of decision-making and the process by which decisions are implemented (or not implemented) by those in authority. This

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<sup>9</sup>Rosenfeld, M. (1994) 'Modern Constitutionalism as Interplay between Identity and Diversity', in Rosenfeld, M. (Ed) *Constitutionalism, Identity, Difference, and Legitimacy. Theoretical Perspectives*, Durham & London: Duke University Press, pp 27-28.

<sup>10</sup>SA De Smith (1964) *The New Commonwealth and its Constitutions*, p 106.

<sup>11</sup>BO Nwabueze (1973) *Constitutionalism in the Emergent States*, London: C Hurst and Company, in association with Nwamife Publishers, Enugu, P 10.

<sup>12</sup> See Fombad (as above).

<sup>13</sup> As above.

<sup>14</sup>OE Nwebo *Critical Constitutional Issues in Nigeria* Owerri: Versatile Publishers (2011) p 20: L Henkin 'Elements of Constitutionalism' 60 *The Review* (1980) pp 11-22.

<sup>15</sup>OE Nwebo 'Constitutionalism and Democratic Consolidation in Nigeria: The Challenges of Democratic Legitimacy and Plurality', *Op Cit* p 28.

<sup>16</sup>A. Lincoln, in his famous speech called *the Gettysburg Address a 'monumental act'* (19 November 1863). available at: < <http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm> >, (accessed 5 May 2017).

<sup>17</sup>A. Alkali, 'Federalism and democratic governance' (2004). In Saliu, H. A. (Ed.), *Nigeria under Democratic Rule, 1999–2003*, Ibadan: University Press, pp. 45–57.

is why the concept can be used in several contexts such as corporate governance, international governance, national governance and local governance. In this work, the term is generally used in the sense of governance of nation states. In this context, Mo Ibrahim Foundation defines it as the provision of the political, social and economic public goods and services that a citizen has the right to expect from his or her state and that the state has the responsibility to deliver to its citizens.<sup>18</sup>

Based on the concepts of democracy and government as explained above, democratic governance can simply be defined as governance based on fundamental democratic principles that satisfy the developmental needs and aspirations of the members of the society. This is why the concept has been referred to as the key to development.<sup>19</sup> In this sense, democratic governance is a governance system that emanates from a legitimate government that does not act arbitrarily but manages a country's economic and social resources in a transparent, accountable and responsive manner to achieve developmental goals.<sup>20</sup> It implies the democratic use of political, economic and administrative powers at all levels of government to deal appropriately with the problems facing a country. Democratic government is therefore, a government that promotes participation and inclusivity and operates within constitutional constraints at all levels of governance, be it local, state, national or international. Thus, it provides a veritable platform for citizens' participation in governance and accountability of public officials as a foundation for sustainable development.

It is apposite, to emphasize that the concept of democratic governance can be used interchangeably with the concept of 'good governance' to describe the paradigm of an ideal democratic government. An ideal democratic government is a government that is democratic, capable or effective and accordingly able to deliver on its mandate of satisfying the needs of the people. Consequently, the word 'good' in governance connotes the proper exercise of authority, prudent management of resources and respect for the rule of law in accordance to laid-down principles, for the benefit of all in a society. The implication of this assertion is that no nation is likely to experience enhanced development without good governance in place, controlled by the observance of the principles of constitutionalism as the foundation of democracy.

### **Social Contract Theory**

The social contract theory is a philosophical construction which proceeds from the background of the conflict theory of society which postulates that life outside the society was nasty, brutish and short. Hence the social contract by which members of the political society voluntarily surrendered their will to the state under a contractual agreement which allowed the state to command such resources from them as are necessary for its purpose. The most important of these resources are the monopoly of force and taxation. In return, the state will provide the people with protection and other welfare goods and services for their collective enjoyment. The social contract theory was founded in the writings of earliest political philosophers like John Locke, Thomas Hobbes, Immanuel Kant, Jean Jacques Rousseau, among others. By their postulations, the social contract was the origin of the modern state and the law. Based on the logic of the social contract theory, the people instituted the government for their own purposes and therefore, they have a right to demand that the government should govern based on those terms. In the above context, the right of the civil society to act as a watchdog and to keep the people in power on their toes, to ensure that they carry out their constitutional obligations to the people cannot be denied.

### **3. The legitimacy of the Existence and Role of the Civil Society**

This section examines the legal bases for the existence and activities of civil society in Nigeria. The article contends that the existence and the activities of the civil society groups have constitutional backing.<sup>21</sup> To begin with, it is instructive to note, that one of the critical requirements of democracy is the participation of people in the government of the country. This implies that governance in a society is not the sole responsibility of governments and institutions of the government including the legislative, executive and judiciary. The civil society groups as stakeholders in the governance of the country also have a responsibility to participate in governance. Thus, the government and its institutions have joint obligation with the civil society as citizens, to promote good governance especially, in a democratic system of government. This position is supported by the logic of the social contract theory earlier explained, which entitles the citizens to monitor and ensure that government fulfill their obligations to the them under the social pact. Therefore, it is the duty of government and all its organs to ensure the participation of the people in their government in accordance with the provisions of the Constitution.<sup>22</sup> In the same vein, it is also the duty of government to promote or encourage the formation of associations that cut across ethnic, linguistic, religious or other sectional barriers.<sup>23</sup> Acting as a group, civil society provides the platform for voices of the people to be heard, bringing pressure to bear on the elected representatives to provide the democracy dividends in accordance with their duties under the constitution especially, to the poor and

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<sup>18</sup>See [www.moibrahimfoundation.org](http://www.moibrahimfoundation.org)(accessed 18 August 2016).

<sup>19</sup>Democratic Governance-The Key to Development *The Concept of Democracy and Governance*<[https://cuvillier.de/public -file.>](https://cuvillier.de/public-file.) (accessed 2 December 2016).

<sup>20</sup> See the report of the United Nations Development Programme [UNDP], 2004.

<sup>21</sup> Under the Constitution of the Federal Republic of Nigeria 1999 (hereinafter referred to as 'the Constitution').

<sup>22</sup> See Section 14 © of the Constitution.

<sup>23</sup> See Section 15 (3) © of the Constitution.

vulnerable group. They also carry out advocacy role and lobby the appropriate authorities and legislators on specific group demands for change of anti-peoples' policies and laws. To this end, the press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in chapter 11 of the Constitution and uphold the responsibility and accountability of the government to the people.<sup>24</sup> The above is amplified and protected under the right to freedom of expression, including freedom to hold opinions and to receive or impart ideas or information without interference.<sup>25</sup>

The legitimacy of the right of civil societies to exist and function in Nigeria has been put beyond question by the clear provisions of the Constitution on the right to peaceful assembly and association. Thus, 'every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests. The above provision entitles the various civil society organizations, non-governmental organizations, trade unions, professional associations and other interest groups to aggregate and act for the purpose of promoting their interests. It must be noted however, that the right guaranteed under this section is subject to the restrictions and derogations provided for under Section 45 of the constitution.

#### **4. The Role of Civil Society in the Promotion of Constitutionalism and Democratic Governance in Nigeria**

##### **The Development of Civil Society in Nigeria**

It cannot be contested, that civil society existed and functioned in pre-colonial Nigeria. What may be contestable is their nature and the role they played having regard to the various traditional systems which were in some jurisdictions centrally organized and more oligarchic and in others, non-centrally organized and more democratic. It is also a historical fact that colonialism provided the nationalistic consciousness among Africans which in turn culminated to the formation of various associational groups that served as watchdog to the colonial administrations. For instance, in Nigeria, associational groups like the Nigerian Student Association (NAN), Egbe Omo Oduduwa, Jamatu Arewa, Nigeria Trade and Labour Unions, Tin Miners Association of Nigeria, Association of Nigerian Coal Workers, Muslim and Christian (Faith based) organizations helped to stimulate and galvanize collective force that laid the foundation for civil society in Nigeria. With colonialism, new social exchange, modernism and attendant social dislocations provided a new platform of consciousness and agitation which catalyzed the formation of communal, traditional, cultural and the nationalist movements whose roles and gave impetus to the decolonization process. With the granting of independence to Nigeria, a more virile space for the existence of civil society organizations but the efforts of the post-independent leaders were scuttled by Military intervention in Nigerian politics in 1966 and the successive military regimes that were highly dictatorial and averse to civil society group activities. It is also a historical fact that despite military intimidation it was the activities of the few resilient civil society groups that pressured the military to eventually return Nigeria to a democratic rule 1979 though they returned in 1983 thereby terminating the second republic.<sup>26</sup> Though the succeeding military administration under General Buhari was draconian and banned all political parties and associations including public gatherings, jailed some politicians and human activists and stymied press freedom, this did not deter the activities of the civil society groups. General Ibrahim Babangida's regime marked a turning point in the history of civil society movement in Nigeria for some reasons. For instance, Babangida banned all kinds of political or public gatherings, threatened and even imprisoned human rights activists and civil society advocates including members of the Nigerian Labour Congress (NLC), Nigerian Medical Association, (NMA) and Academic Staff Union of Universities (ASUU) for embarking on protests and strikes in pressing for their demands.

It will be recalled, that the annulment of the June 12 1993 presidential election that was described by both local and international observers as the fairest and freest election ever conducted in Nigeria, the civil society organizations organized massive nation-wide protests which almost brought the country to a standstill. The role of vibrant civil society groups particularly, the prodemocracy groups and others challenging the legitimacy of the ING led to the ruling of a federal high court in Lagos that declared the Shonekan Led Interim National Government as illegal. Thereafter, General Sani Abacha who eventually took over power from Shonekon after three months continued with the arrests, imprisonment and violations of human rights of the prodemocracy activists. However, the civil society groups were not deterred as the National Democratic Coalition (NADECO) continued to organize mass protests for the implementation of the transition to democracy culminating in the election of Gen. Olusegun Obasanjo as civilian president under the General Abdulsalam Abubakar's 1999 made military Constitution.

With the return to democratic rule in 1999, civil society organizations started mushrooming. Different categories of CSOs in Nigeria began to take root including primary or primordial groups, secondary associations, grass-root organizations, issue-based groups and Non-governmental Organizations, Primary or primordial groups which are usually socio-cultural, ethnic and religious based. Examples of associations within this class are Afenifere, Ohaneze Ndi Igbo, Arewa

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<sup>24</sup> See Section 22 of the Constitution.

<sup>25</sup> As above, Section 39.

<sup>26</sup> A.O. Ikelegbe, (2013), *State, Civil Society and Sustainable Development in Nigeria*, CEPED Monograph Series, No.7, 34

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Consultative Forum and Ijaw Youth Movement. The secondary or middle level associations are socio-economic, professionally and labour-based groups including the organized private sector associations. Specific examples include Manufacturer Association of Nigeria (MAN), National Association of Nigerian Students (NANS), and Women in Nigeria (WIN), Market Women Association of Nigeria (MWAN), and Women Advancement Forum (WAF). In addition, the numerous professional associations like Nigeria Medical Association, Nigeria Bar Association (NBA), Trade Union Congress (TUC) Nigeria Labour Congress (NIC), Academic Staff Union of Universities (ASUU), and Nigeria Union of Journalists (NUJ) also fall under the secondary or middle level CSOs in Nigeria.<sup>27</sup> Grass-root based CSOs include community-based organizations (CBO), Community Development Association (CDA) and Age grades associations. The other civil society groups include advocacy groups, gender, youth empowerment, environmental groups and human rights associations and innumerable number of NGOs.

### **Civil Societies and the Promotion of Constitutionalism and Democratic Governance**

The brief account of the development of civil society and the role they played during the various epochs show clearly that the role of the various civil society groups promoted constitutionalism and democratic governance in Nigeria. This was quite evident with the role they played in pressing for the return to democratic rule during the period of military rule and in the consolidation of democratic governance under the democratic rule. Thus, civil society is an essential building block of development and national cohesion. In a country blessed with peace and stability, civil society fills the space untouched by government and the private sector. In a fragile and conflict-ridden country, it plays an even more important role of providing services normally the responsibility of the state and business and can lay the foundation for reconciliation. There is no doubt, that the relationship between state and civil society is a complex one. In a constitutional democracy they are, at least in principle, complementary. They cannot be viewed as substitutes for each other, or as dedicated adversaries. Each has its own contribution to make to the well-being of the nation. In particular, they provide the platforms for people to discuss issues of interest, engage and support each other in advancing their concerns. They also monitor the state and the private sector with regard to their policies and actions and hold them accountable, advocating for citizens' rights, and providing alternatives.

Civil society comprises organizations that are not associated with government—including schools and universities, advocacy groups, professional associations, churches, and cultural institutions (business sometimes is covered by the term civil society and sometimes not). Civil society organizations play multiple roles. For instance, they act as a go between with the government and the people, providing necessary information to them and as well, deliver services, especially to the poor and underserved. They defend citizen rights and work to change and uphold social norms and behaviors.<sup>28</sup> Civil society groups promote constitutionalism and democratic governance through their various activities including: voter education, election observation, campaign finance monitoring, election tribunal monitoring, electoral reform advocacy, conflict mitigation, access to justice, public interest litigation, budget tracking, constituency outreaches, as well as research and documentation in thematic areas of democracy and governance. For instance, the civil society sector was involved in all the stages of preparations, voting and collations, declarations of election results. This role was very evident with the popular 'situation Room', which is a coalition of a number local civil society organizations were involved in the minute-by-minute observation and monitoring and analysis of trends and events of the 2015 and 2023 Presidential elections and made their reports public to aid improvement in future elections. Civil society as the third sector with membership across different facets of the society and associational group no doubt represent recipe for good democratic governance. Through advocacy and campaign for good governance and social justice the civil society promote equity, fairness and even development in a plural society like Nigeria, expose corruption, executive recklessness and abuse of public trust.

One of the major challenges of most civil society groups in Nigeria is paucity of fund. As a result, they depend largely on external sources, usually foreign donor agencies to finance their activities. As a result, there is over dependency of Nigeria civil society on external donor agencies with their stringent conditionality and narrow interest. As the common saying of he who pays the piper dictates the tune. Accordingly, the tendency for the groups to promote the interest of the funders rather than the national interest is there. This challenge is compounded by the problem of endemic corruption and poverty in the system, which renders them (especially their leaders) vulnerable to manipulations from foreign interests, opposition's interests and even government's interests that may be in conflict with their original objectives, through financial inducement. Experiences have shown that some of the leaders of trade and labor unions in Nigeria had at critical moments abandoned their responsibilities of sustaining the struggle for or implementation of their demands from government. Sometimes, civil society groups get embroiled in crisis over sharing of booty from their sponsors thereby, creating bad blood, distrust, factions and leadership crisis. It cannot be gainsaid that this type of situation portends grave danger to the maintenance of a viral and vibrant civil society that can deliver on its mandate.

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<sup>27</sup>As above.

<sup>28</sup>See George Ingram, 'Civil society: An essential ingredient of development' <https://www.brookings.edu/articles/civil-society-an-essential-ingredient-of-development/> (accessed 20 August 2023).

Other challenges to the effectiveness of civil societies in carrying out their objectives are lack of adequate education and training required for the management and organization of civil society groups. Some of these groups are led by charlatans who form groups for selfish ends while masquerading as members with noble and patriotic objectives. These groups can be manipulated or used to embarrass or sabotage, or subvert the system, wittingly or unwittingly. For instance, it was alleged that the activities of NGOs were aiding and abating terrorism in the Northeast region.<sup>29</sup> Against the above background, an NGO Bill seeking to among other things, create an NGO Regulatory Commission to regulate the activities of NGOs and Civil Society Organizations was sponsored by Buba Jubrin in 2016, under the 8<sup>th</sup> Assembly. The bill passed second reading at the House and was subsequently referred to the Committee on Civil Society Organisations and Development Partners. The bill was very unpopular and was vehemently opposed by the public, particularly by the pro-democracy and human rights groups who perceived it as an attempt to legalize gagging or clamping down on them.<sup>30</sup> As a result, the bill was abandoned but it resurfaced in 2019 and could not pass second reading. Recently, another bill, sponsored by Sada Soli titled, 'A Bill for an Act to Establish Non-Governmental and Civil Society Organisations Agency for the Promotion of Social Development Activities in Nigeria and for Related Matters,' surfaced in the House of Representatives. It is expected that the bill will suffer the fate of its predecessors.

Admittedly, the Civil Society Organizations cannot be above the law and their activities can be regulated.<sup>31</sup> However it is argued, that it is also a fact that there is already a strong body of laws regulating them in Nigeria. Thus, what the proposed legislation seeks to do is to destroy the rights already guaranteed in our constitution and there are laws to checkmate their excesses. Indeed, there are fears that the proposed law could be an instrument for dictatorship, especially when the bill intends to militarise the civic space and make it impossible for anyone who harbours views different from that of the government to freely express such.<sup>32</sup>

## **5. Conclusion**

This article has advanced the recognition, that civil society organizations in Nigeria have inalienable constitutional right to exist and to carry out their objectives without let or hindrance. Civil society organizations in Nigeria have in no small measure stimulated and promoted the entrenchment of constitutionalism and democratic governance in Nigeria as they could not be silenced under the military era and even more so since the return to democratic rule in 1999. However, the article notes that the activities of the civil society have not been as effective as they should in promoting democratic consolidation due to a number of factors as earlier explained. One of the major challenges earlier identified is funding. In this regard, it is recommended, that in order to ensure that civil society plays more viable and pragmatic role in democratic governance in Nigeria, efforts should be made to ensure proper funding of CSOs to reduce their over dependence on foreign donors often with skewed interests. The article further recommends that there is urgent need for the civil society to be repositioned and reinvigorated to become more active and effective in performing its role in promoting good governance. In this regard, the training and retraining of civil society leaders, advocates, and non-members is highly recommended. This can be achieved by the establishment of institutions, or research institutes within the country where lecturers and civil society experts can teach, mentor, educate impart members and leaders with the necessary skills and understanding of the nitty-gritty and the dynamics of civil society engagements. It is specifically recommended, that the Nigeria Bar Association (NBA) and the Nigeria Union of Journalists (NUJ), as part of the civil society and critical stakeholders in the consolidation of constitutionalism and democratic governance in Nigeria should use their privileged professional position to lead in the struggle for better Nigeria. These professional groups are encouraged to collaborate in appropriate circumstances, escalate issues and render free legal services and media coverage to other civil society groups in order to achieve positive and patriotic goals. Apart from effective monitoring and condemnation of anti-peoples laws, policies, programs and actions, the NBA should embark more in public interest litigation by filing law suits against government where necessary, as a way of driving home their position in the interest of the people.

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<sup>29</sup><https://www.premiumtimesng.com/news/top-news/545337-controversial-ngo-regulations-bill-back-in-house-of-reps.html> (17 April 2024).

<sup>30</sup> As above.

<sup>31</sup> This could be justified in the public interest and for the protection of the rights and freedom of others. See the provisions on the restrictions on and derogation from fundamental rights in Section 45 of the Constitution.

<sup>32</sup> <https://www.thisdaylive.com/index.php/2024/02/16/again-we-say-no-to-the-ngo-regulation-bill> (accessed 17 April 2024).