

# Confluence JOURNAL

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## THE 1999 CONSTITUTION AND ELECTORAL REFORMS: QUO VADIZ

### I. INTRODUCTION

Government in every democracy derives its powers from the people and that sacred nexus is made manifest in the electoral system. It is from this people-propelled transfer of power that democracy as a form of government evolved. The 1999 Constitution<sup>1</sup> has been characterized with problems and controversies right from the moment of its release in May 1999. It tells a lie about itself when it proclaims as follows:

WE THE PEOPLE OF the Federal Republic of Nigeria;... DO  
HEREBY MAKE, ENACT, AND GIVE TO OURSELVES the  
following Constitution:<sup>2</sup>

As probably every enlightened Nigerian knows, we the people of the Federal Republic of Nigeria did not make, enact or give ourselves the 1999 Constitution. A few persons selected by the military junta<sup>3</sup> collected some views, collated them and wrote a report. The then Military Government thereafter, made, enacted and gave to their Nigerian "subjects", the Constitution. The document was in fact – hidden away from Nigerians, until a few days before the hand-over date of 29<sup>th</sup> May 1999<sup>4</sup>. Thus the present group of political rulers did not know what their functions and powers were to be long after they were elected to perform those duties and to exercise those powers. This applied not only to the Executive and Legislative arms of Government, but also to the Judiciary<sup>5</sup>, the third arm of government. Just as the elected legislators were unaware of the legislative lists and the comparative powers of the states and the centre. The whole transmission programme was for the politicians, judges and the civil populace, a sheer leap in the dark.

It will be re-called that the 1979 Constitution was promulgated into law on 21<sup>st</sup> September 1978, before the ban on political parties was lifted, and more than one year before the civilian government took office. Commenting on the declaration in the 1999 Constitution that Nigerians made, enacted and gave the Constitution to themselves, Chief Rotimi Williams, a great Constitutional lawyer and Chairman of the Drafting Committee of the 1979 Constitution declared that the document had told a lie about itself, and was therefore a forgery<sup>6</sup>. Another commentator regarded the false declaration as epitomizing the fraud and corruption in Nigerian public life<sup>7</sup>.

Although, the 1979, 1989 and 1995 Constitutions contained the same false declaration, the degree of culpability in those cases is lower because the drafts and texts of those Constitutions were prepared by the representatives of the people, after

\* Lecturer, Department of Business Law, Faculty of Law, University of Ilorin, Ilorin Kwara State, Nigeria. Email- [madekilekun@yahoo.com](mailto:madekilekun@yahoo.com). 08061696375.

<sup>1</sup> The Constitution of The Federal Republic of Nigeria 1999 CAP.C23

<sup>2</sup> See the preamble to the 1999 Constitution of the Federal Republic of Nigeria.

<sup>3</sup> The Federal Military Government constituted a 50-man panel headed by Justice Niki Tobi to collate the views of Nigerians before the Constitution was promulgated in 1999

<sup>4</sup> Aike & Oluyede: *Cases and Materials on Constitutional Law in Nigeria*, p.23

<sup>5</sup> I.E. Sagay: *A Legacy for Posterity: The work of the Supreme Court (1980-1988)*, Nigerian Law Publications Ltd. 1988, p.8, et seq.

<sup>6</sup> See Richard Akinola's Guardians of Justice, an article written in the Sunday Concord Magazine of January 19, 1997, pages M1, M4 & M5.

<sup>7</sup> Fundamental Legal Issues in Nigeria: Essays in Honour of Andrew Obaseki (Rtd) Edited by Wole Owaboye, N.L.R.E.D.P. series No. 1. P. 281

vigorous, acrimonious and indeed, at times, tense debates that threatened the continued existence of the Country as one State. It should be noted that although there was voter apathy in the election into the 1994 Constitutional Conference coupled with an undemocratically high number of Government appointees (one quarter), the debates were never-the-less thorough, and genuine and the outcome was in many aspects far superior to the 1999 Constitution<sup>8</sup>.

## II. THE CONCEPTS OF DEMOCRACY AND ELECTIONS

The word 'Democracy' has its remote origin from the Greek word *democratia* meaning "the rule by the people". The impression this conveys is a form of government where the people directly take decisions by themselves without representation as in the Greek City states or indirectly by representation as we have in most states of the world.<sup>9</sup> The concept of democratic society also encompasses a society in which the wishes of the majority of their representatives become law (where they so desire), taking careful note of, and sometimes acceding also to the wishes of the minority.

There is an inextricable link between elections and democracy. Although only a part of a wider process, elections are, no doubt, "*a critical part of the democratic process*"<sup>10</sup>. Where a country, such as Nigeria, has been unable to conduct successive and successful elections, its democratic credentials, therefore, cannot but be subjected to serious qualifications. Elections do serve many useful purposes for democratic transition and consolidation. Generally, elections give the mass of the people opportunities to have a say in *who* (personnel) governs them and *how* (policies) they are governed. As a means of giving accountability to citizens<sup>11</sup>, elections are a constant reminder to public office holders of the limited nature of modern government.

In an increasingly globalized world, elections facilitate orderly and smooth transfer of power with minimum disturbance for system persistence and maintenance. More than any other factor, perhaps, elections enhance participatory democracy and contribute to the effectiveness of the political system in attaining societal goals and objectives.

Elections are primarily a contest among groups, mainly political parties. It is the existence of such groups, organized and operated along democratic traditions, that gives meaning to the electoral process as the cornerstone of democratic politics.

Electoral and party systems are, hence, necessarily intertwined as both are designed to facilitate peaceful and orderly transfer of political power.<sup>12</sup> Party politics within a democratic setting are, indeed, "intrinsic electoral politics". Developments affecting the electoral system of any country are therefore bound to reflect one way or the other on the party system, and vice versa. For a party system to further the goal of democratic consolidation through free and fair elections, it must be conducive to the promotion of democratic culture among the leading gladiators.

Accordingly, any program of electoral reform designed to further the goal of democratic transition or consolidation must take cognizance of the significant role of these key participants in the democratic process. This often requires a level of control

<sup>8</sup> See Sagay, I.E.: *The 1999 Constitution and Nigeria's Federalism* in *Burning Issues in the 1999 Constitution*. Pp 38 – 40 published by NBA Ikeja Branch 2000

<sup>9</sup> Wahab O.Egbewole; *Nigerian Judiciary and Consolidation of Democracy: Analysis of Election Petitions*, in footprint of an icon essay in honour and selected judgements of an incorruptible Judge, Olarinde, Akinlabi (editors), at Pg 69.

<sup>10</sup> Peter Woll, ed., *American Government: Readings and Cases*, 6th ed. (Boston: Little, Brown & Co., 1978), 26.

<sup>11</sup> Howard Handelman, *The Challenge of Third World Development*. 3rd ed. (Pearson Education, Inc. 2003), 11

<sup>12</sup> Richard J. Payne and Jamal R. Nassar, *Politics and Culture in the Developing World: The Impact of Globalization*. 2nd ed. (New York: Pearson/Longman, 2006), 211

by some form of rules and regulations defining the framework of permissible behaviour as far as elections are concerned. This is important since the activities of such parties, the rules and patterns of their engagement of government, as well as their relationships and behaviour do have significant consequences for the electoral system in particular and the political system in general.<sup>13</sup>

In particular cases of the emerging democracies, Nigeria inclusive, the general oligarchic tendencies in party organization and operation are coupled with weak internal structure, lack of programmed ideological orientations, regional/sectional origins and loyalties, and lack of adequate resource base.<sup>14</sup>

Accordingly, they, unlike their counterparts of the advanced democracies, are yet to transform into veritable instruments for the conduct of credible inter-party electoral contests.

In the same vein, elections in the new or emerging democracies of Africa have not produced, in a uniform manner, outcomes that are exact replica of the experiences of the developed western democracies. This brings into focus the significance of contextual characteristics of the environment as critical factors in the design and reform of electoral systems. Accordingly, in the study of elections, as in the study of other aspects of politics generally, attention is paid to some ecological factors that shape electoral politics.

These factors, including the social, economic, cultural, psychological, and, indeed, the legal regimes, shape and are shaped by the patterns and outcomes of electoral politics. These historical conditions, mainly structural, institutional or legal, may assist in explaining the wide gulf in outcomes produced by "democratic" elections in different settings. In the specific situation of Nigeria, such contextual issues that underlie the inability to conduct successful elections include, but are not limited to, ethnic and religious intolerance and suspicions, undue militarization of (transition) politics, lack of independence of the electoral umpire, parochial foundations of political parties and their lack of distinct ideological orientations, monetization of politics amidst mass poverty, widespread illiteracy among the voting population, unemployment particularly among the youths, and violence.<sup>15</sup>

Justice Pats-Acholonu JSC (as he then was) gave the following advice on the conduct of future elections in Nigeria;

'To ensure the non- repeal of what happened in some parts of the country in 2003, there must be massive education of the electoral officers who will take part in future elections..... There must be de-emphasis on money. It is important to demonstrate to the citizenry what incalculable harm corruption has done in this country so that at election time, they should learn to shun people who try to buy their votes. More importantly our security men should have a series of workshops to learn that their allegiance is to the constitution and should learn what the police in the developed nations do.

<sup>13</sup> See, generally, Larry Diamond and Richard Gunther, *Political Parties and Democracy* (Baltimore, MD: John Hopkins, 2001).

<sup>14</sup> R. A. Akindede and S.N. Varma, "The Problems and Prospects of National Parties in Nigeria," *The African Review*, IV:3 (1974); Ayodele Aderinwale and Niyi Alabi, (eds). *Democratization of African Parliaments and Political Parties Proceedings of an International Conference Organized by the Africa Leadership Forum, 13-15 July, Gaborone, Botswana. (Washington: World Bank Institute), 1998*

<sup>15</sup> See Mojeed Alabi: *Electoral Reforms and Democratic Consolidation in Nigeria: the Electoral Act 2006* retrieved from [http://www.personal.ccu.hu/PolSciJournal/6\\_Alabi.pdf](http://www.personal.ccu.hu/PolSciJournal/6_Alabi.pdf) on the 18th August 2009

Politics in Nigeria should not be a do or die affair. Anyone without a profession except politics must have nothing to do with politics in whatever form. Above all, let budding politicians leave jobless people who now turn into thugs as supporters alone, so that more harm will not be done to the electoral processes.”<sup>16</sup>

### III. LIABILITIES OF FLAWED ELECTIONS

When elections are, significantly flawed, however, most of the democratic benefits turn into deficits, or even threats to the survival of democracy. When the public faces repeated episodes of election rigging, political violence, and disorderly administration, their fundamental trust in the institutions and processes of electoral rule may rapidly dissipate<sup>17</sup>.

The most obvious liability of troubled elections is that political choices are foreclosed. As a consequence, many voters come to believe that their political will is being unjustly denied. The taint of misconduct in a controversial election can reduce confidence in the process and cast a shadow on the legitimacy of the ruling party or the winning candidate.

Without genuine political competition, in which there is a realistic chance that power can change hands according to the will of the voters, the simplest premise of democracy is denied.

If elections are not fair and transparent, citizens lose personal confidence in their political influence<sup>18</sup>. The sense of political efficacy among the citizenry of which we have spoken can quickly turn to frustration. Citizens are unlikely to invest their hopes and aspirations in the political process if they believe that outcomes are pre-ordained, and their voice does not matter. When the public becomes disillusioned by a flawed electoral process, they are likely to withdraw into apathy or cynicism, sometimes becoming aggravated and militant. These attitudes are unhealthy for the development of a democratic political culture, and can easily create opportunities for non-democratic elements to exercise influence. Along with the general disaffection among the public, we should take special note of the grievances among minority communities.

In every plural society, there are some groups who believe they are marginalized by the political establishment, neglected by government, and excluded from meaningful participation. When democratic governance offers regular channels for expression and choice, minorities are still inclined to accept the political system as the best option for advancing their interests, even if they are not able to attain their full aspirations. In circumstances where electoral choice is compromised, however, their sense of exclusion increases, and aggrieved minorities may become more confrontational in their approaches to politics. Some groups may even turn their back on the political system or seek to part ways with the national community. In the most extreme situations, election flaws can ultimately challenge the integrity of the nation.

In fact there are many groups, and not just cultural minorities, who may be frustrated by a closed political process. Economic interest groups, religious communities, supporters of political parties, or members of particular communities may come to believe that their opportunities are thwarted by a political system that is not truly inclusive. In these circumstances, groups with differing interests may be less

<sup>16</sup>See The Dictum of Pats-Acholonu in *Buhari Vs Obasanjo*(2005)13 NWLR(P1 941) 300 301 Paras 11-C.

<sup>17</sup>‘Do The Votes Count?’, [Abuja, Transition Monitoring Group, 2003] 3.  
[http://ec.europa.eu/comm/external\\_relations\\_human\\_rights/cu\\_election\\_ass\\_observ/nigeria/preliminary\\_statement\\_23\\_04](http://ec.europa.eu/comm/external_relations_human_rights/cu_election_ass_observ/nigeria/preliminary_statement_23_04)

<sup>18</sup>Sam Egwu: *The Context and Lessons of the 2003 Elections in Nigeria*; in *Perspectives on the 2003 Elections in Nigeria* Edited by Isaac Olawale Albert, Derrick Marco and Victor Adetula.

willing to take the path of negotiation, conciliation, and compromise afforded by a democratic process. Instead, the political climate is poisoned by growing antagonism and polarization among groups, which sometimes bursts into open conflict.

A flawed process of elections also tends to shed light on the shortcomings of government performance. As I have noted, democratic citizens around the world often separate the person from the system: they can make keen distinctions between the performance of leaders, and the possibilities of a democratic regime. When large segments of the public believe that they cannot hold leaders to account, or vote new personalities into government, they are likely to become increasingly discouraged by a poor economy, persistent corruption, crime, insecurity, or ineffective governance. Instead of seeing the possibilities for improving national problems with various leaders over the long term, citizens may come to view these problems as insurmountable. The democratic regime may lose basic legitimacy. The public may become indifferent to anti-democratic challenges, or they may come to accept non-democratic political alternatives.

#### IV. THE AREAS OF REFORMS IN THE NIGERIAN ELECTORAL SYSTEM

Our present 1999 Constitution is now agreed by an overwhelming number of Nigerians to be unsuitable for the kind of diverse country that we are. It is the product of thirty five years of military rule, exhibiting all the unitary features of such a military rule, in antithetical opposition to a truly federal structure. The 2006 Electoral Act also needs reform.

I do not intend to go into the nitty-gritty of the reforms needed for our electoral process since serious discussions are presently ongoing in the country. None-the-less the following reforms may be considered:

- 1) **Reform of the Political Culture:** Presently the Nigerian political culture is one of dereliction in the political norms, ideas and practices. It is self serving, money-oriented and corruption riddled. A reform of the status quo is surely needed. Such reform will have to take the form of an in-depth re-orientation of the electoral values and beliefs of the citizenry. I therefore recommend an intensive re-orientation of the mindset of the electorate. Unlike what was in existence in the past; such an orientation should commence early with inclusion into the curricular of academic education at primary schools and continue through to the tertiary institutions; this can be done alongside a partnership with the religious institutions to imbibe such values into their congregation.
- 2) **Establishing a Constitutional Right to Participation in Government:** The constitutional right of the people to participate in the democratic process should be enhanced to further increase the participation in the everyday running of their government. The following are recommended:
  - The right to vote and be voted for should be expressly included in Chapter 4 of the Constitution as a fundamental human right of the every Nigerian above 18 years. This would make the right to participate in government a constitutional one, consequent would be the increase in participation in governance of a greater spread of Nigerians and also a right of enforcement by such Nigerians.
- 3) **Reform of INEC:** The general consensus is that INEC as presently constituted cannot operate Nigeria's electoral system creditably. The Commission is lacking in capacity, impartiality, expertise and independence. This has to be addressed. The qualification, appointment, composition, tenure and funding of members of the Commission should be reviewed to ensure competence and independence. In general, INEC should be unbundled to reflect the following:

- Independence of INEC must be ensured and the sole appointing authority of the President must be reviewed.
  - There should be adequate and continuous training of INEC staff. The ad-hoc staff of the Commission should be non-partisan.
  - All funds accruable to INEC should be charged to the consolidated account of the Federation without the interference of the Federal Government.
  - Any provisions that implicitly or explicitly require members of INEC to be political party members should be expunged from Nigeria's laws.
  - INEC should be restricted to conducting elections. The National Bureau of Statistics should be charged with registration and maintenance of the voters' register. Another specialized agency should be created to oversee the activities of political parties and political campaign matters. The rationale for this proposition is to ensure efficiency, professionalism and independence. The present position where one mistake from INEC corrupts the whole system can be avoided if these agencies are reasonably autonomous but complementary to each other.
  - Adequate and timely preparation must be made with respect to election materials and the conduct of election. The fire brigade approach adopted by INEC in the last dispensation is condemned and it is submitted that preparation for next election should start at least three years before the general election.
- 4) **Conduct of Election Not Later than Six Months before the Expiration of the Incumbent's Tenure:** Section 20 of the Electoral Act states that INEC shall fix the date for all the elections. Thus, the following addition is suggested to Section 20 of the Act: "(1)...provided that such date shall not be later than 6 months before the expiration of the incumbent's tenure. (2) Subsection 1 above is without prejudice to the right of the commission to fix the date for by-elections where one becomes necessary".
- The idea here is to ensure that the judicial certification processes are concluded well before the inauguration of a new government.<sup>19</sup>

## V. CONCLUSION

Although comprehensive and seemingly all-embracing, the Electoral Act 2006 is inadequate as a magic wand solution to the several maladies of the Nigerian Electoral System. The identified loop-holes are capable of being exploited to subvert popular will by any government that is bent on manipulating the electoral process. The experiences of the 2007 elections seem to suggest a more fundamental overhaul of the entire electoral systems as a looming imperative if Nigeria must consolidate its nascent democracy. Reform of the electoral laws is, no doubt, an indispensable part of the process. At times, however, provisions of the electoral laws may look like treating the symptoms rather than the causes of the diseases. More studies are needed to explore the factors that have rendered the laws largely ineffective.

The independence and integrity of the electoral umpire is crucial for effective implementation of electoral reforms in Nigeria. Any positive step along this line may require an amendment to the constitution itself. Beyond constitutional amendment, however, gladiators of the political system must be prepared to commit themselves to the democratic ethos. Whatever the remedial changes, electoral laws, rules and regulations are not self-executed. The effectiveness of laws in moderating the challenges of electoral competition requires the cooperation and alertness of all the

<sup>19</sup> See also the Pronouncement of Omokri JCA In Ngige Vs Obi (2006)14 NWLR (Pt 999) Pg 241 Paras D-G.

stakeholders – the government, the electoral commission, the political parties, the candidates, the electorate, the civil society and the press, each of which must cultivate the right attitudes to make democracy work by ensuring that the game of politics is played according to the rules.

The call for the right attitude towards politics brings to the fore the role of the human factor in the electoral system. The crucial issue here is the attitudes and perceptions of the individual towards elections in particular and politics in general.