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## **Elections and Electoral Tribunal in Nigeria**

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### **Abstract**

*This paper examines the Nigeria's electoral process and the recent decisions by the electoral tribunals. The Study adopts content analysis as its methodology. The major thrust of the paper is to investigate the extent to which the abysmal failure of the country's electoral system has affected democracy in Nigeria, as well as the efforts of the electoral tribunals to remedy the situation. The paper argues that Nigeria's electoral process has been characterized by agitation, consternation and fiasco which has coerced many observers to query if Nigeria will ever succeed in conducting credible elections in future. It further argues that the members of the electoral tribunals that were expected to be the last hope of the common man compromised at various times in the discharge of their duties, particularly in the 2007 general elections. This ugly trend therefore raises yet another question in the country's preparedness to correct her past electoral woes. The paper however concludes that, it is only when the stakeholders are determined to shun acts capable of truncating the electoral process and the quest for consolidation of democracy that Nigeria would achieve the desired socio-economic development.*

## **Introduction**

Election is the process of choosing a person or a group of people for a political position through the instrumentality of voting. It is an indispensable attribute of democracy in every well-intentioned society. This position perhaps explains why Vanguard, February 13, 2009 states that:

Free and fair elections are the cornerstone of every democracy and primary mechanism for exercising the principles of sovereignty of the people. Through such elections, citizens participate in the governance of their country, by choosing those who govern in the quest for development.

The above comment in *Vanguard* has raised yet another critical question in the Nigeria's electoral history since its corporate existence as a sovereign state. Thus, to what extent has Nigeria conducted elections devoid of consternations, fraud and agitation since independence? To what extent has the country's electoral system permitted the citizens to participate and freely choose those to represent them at various levels; ward, local, state and national? To what extent has this process ushered in the desired socio-economic and political development to the Nigerian state?

These questions are raised against the background of the fact that Nigeria's experience with democratic elections since independence has been rather mixed. Available evidence shows that no election conducted in Nigeria since independence has been completely free of charges of irregularities, electoral malpractices, violence and various degrees of disruption (Duru & Nwagboso, 2005). This ugly scenario has continued to cascade the country's effort-cum drive to development. It is therefore, unrealistic to think that the above view is popular among members of the elite class in Nigeria who are the beneficiaries of the prevailing deformed democracy. This is because, other countries in South East Asia who started the democratic process at the same time with us have left us far behind.

Thus, the 1979, 1983 and 1993 federal election were alleged to be characterized by various forms of malpractices (Duru, 1994). It was alleged that the citizens were not only denied of their constitutional rights to vote, but were also imposed with candidates who could hardly win elections in their families not to talk of exalted positions they found themselves. Also the

1999, 2003 and 2007 general elections were replica of previous elections in the annals of the electoral history of Nigeria.

According to Tosanwumi (2009), the 2003 and 2007 general elections were classic cases of electoral malpractices and in spite of the numerous reversal of the declared results, INEC'S boss, Prof. Maurice Iwu comically told us that USA needed to learn from him how to conduct elections after senator Barracks Obama was elected. This suggests that the Nigeria's electoral woes cannot be blamed on a single party. The electoral body, the political parties, the politicians, security agents and the civil society contribute in one way or the other to the electoral quagmires of Nigeria.

The need to right the wrong of the country's electoral process necessitated the establishment of electoral tribunals. Electoral tribunal is a type of court with the authority to deal with problems arising from the conduct of elections. Such tribunal is expected both in principle and in practice to be comprised of impeccable judges with the responsibility of investigating what actually transpired during the elections. Such tribunal is usually comprises of five (5) members. The Justices Uwais-led Electoral Reform Committee reduced it to three (3). This is to enable the members take sound decisions in case of disagreement among them.

Section 140 (1) of Electoral Act, 2006 underscores the imperative for election tribunal and the procedure for questioning the return of a candidate as duly elected after election. This section states as follows:

No election and return at an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this Act referred to as an "election petition") presented to the competent tribunal or court in accordance with the provisions of the constitution of this Act....

Accordingly, section 140 (2a, and b), of this Act clarified what a tribunal or court means, its meaning in the case of presidential elections as well as other elections in Nigeria. It further stated in section 140 (3) that such tribunal shall be constituted not later than 14 days after the election. This explains why the former president, Chief Olusgun Obasanjo shortly after the announcement of the 2007 presidential election in favour of Alhaji Umaru Yar'Adua by INEC declared that the burden of the claims that may arise from the conduct of the

2007 election rests squarely on the judiciary. Thus, Obasanjo's speech underscores the import of the judiciary (electoral tribunal) in addressing critical problems bordering on the conduct of election in Nigeria.

This paper examines critically the extent to which electoral tribunal has carried out this lofty function in promoting the Nigeria's democracy. It further seeks to investigate if the electoral tribunals have followed the laid down judicial procedures coupled with the doctrine of justice and fairness in the adjudication of electoral matters in Nigeria. The paper argues that most of the reversal of the declared results by the tribunals seemed to be based purely on personality clash among the judges that were charged with the responsibility of correcting the abysmal failures of Nigeria's electoral process. It also argues that the judges that found themselves in the tribunals' 'pulpits' were angels that may shun the acceptance of gratification to uphold or upturn declared results against the wishes of the electorates. These are against the backdrop of numerous allegations of bribery levelled against the members of tribunal in various states across the country, particularly in 2007.

### **Electoral Tribunal and Democracy In Nigeria**

Electoral tribunal is a mechanism fashioned to address the seemingly perceived deformities of the Nigeria's chequered electoral process. It is strategic in the quest to strengthening the country's democracy. How to achieve this important objective has continued to attract comments and criticisms from political observers and analysts in Nigeria.

Before the 2007 elections, electoral tribunals had been existing in the political history of Nigeria. Whether those tribunals nullified any election, ousted political office holders from office or called for a re-run election in Nigeria, is yet another big question to be answered by the judiciary and the political class. Before the inauguration of the tribunals investigating allegations of election malpractices in 2007, previous tribunals that adjudicated electoral cases of 1979, 1999 and 2003 contributed immensely to the decay of the country's democracy. The members of those tribunals were not only corrupt, but unfit to correct the perceived anomalies in the Nigeria's electoral process.

Thus, this ugly trend affected the citizens' participation in the Nigeria's electoral process and led to the collapse of various democratic institutions in the country. It even became a culture for those who never won elections not only to be declared winners but be allowed to served out their stolen

mandates through the delay tactics of the tribunals. This situation adversely affected the morale of the electorates and the survival of democracy in Nigeria.

This ugly scenario continued to cascade the electoral system of Nigeria until the recent but feeble attempts by the 2007 electoral tribunals, whose performances have raised critical questions among Nigerians over the capability of election tribunals in correcting errors in the country's electoral process.

Thus, there is a correlation between the decisions of election tribunal and sustenance or survival of democracy in Nigeria. Regrettably, democracy which the actions or inactions of the election tribunal affect is viewed differently by various individuals and scholars. Macpherson (1972) averred that:

Democracy used to be a bad world. Everybody who was anybody knew that democracy in its original sense of rule by the people or government in accordance with the will of the bulk of the people, would be a bad thing – fatal to individual freedom and to all the graces of civilized living.

... then, within fifty years, democracy became a good thing ... it is clear that the real world of democracy has changed.

The foregoing analysis suggests that the meaning of democracy varies from one individual to another. It also implies that its application in most modern societies could be misconstrued thereby resulting in politico and economic backwardness in the state. Democracy has become an ambiguous thing with different meanings – even apparently opposite meanings (Macpherson, 1972:2).

A precise definition of democracy is not an easy task. As a dynamic entity, it has acquired many different meanings over the course of time largely due to the dynamics of society, and the different interpretations by scholars of the consequences of the changes for democracy (Dinney, 2006). Thus, it is a political system in which different groups are legally entitled to compete for power and in which institution power holders are elected by the people and are responsible for the people (Dinney, 2006 P. 24). The most famous definition of democracy was that of Abraham Lincoln, who defined

democracy as the government of the people by the people and for the people (salami, 1992).

What those definitions show is that for a country to be democratic and achieve rapid socio-economic development capable of improving the living conditions of her citizens, the enthronement of democracy and good governance should be sacrosanct. The quest to achieve this important national assignment starts from the drive to improve the country's electoral process. This process is no doubt, perceived to be an abysmal failure in most third world social formations, Nigeria inclusive. It is within the trajectory of this position that the role of election tribunal becomes pertinent.

The election tribunal should act as a policeman, standing on the 'electoral road', ensure that the electoral body (INEC), political parties and their candidates, the security agents as well as the electorates carryout/participate in the elections according to the laid down rules and regulations as stipulated by the country Constitution and Electoral Act. It is the responsibility of the tribunal to investigate matters arising from this crucial activity. Hence, we argue that the behaviours and decisions of the members of the tribunal can truncate or strengthen democracy in Nigeria.

A cursory look at most reversal of declared results by the tribunals in Nigeria has sent gitters to the country's electoral system. To some Nigerians, the tribunals have performed creditably, while others perceived their activities as intra-personal war and personality clashes among members of the judiciary. The governorship and legislative tribunals in Abia, Bayelsa, Enugu, Adamawa, Ondo, Ekiti, Kogi and Edo states nullified elections of state governors and some members of house of assembly in these states. Also, elections of some members of House of Representatives and Senate were nullified. These nullifications were on the grounds of electoral malpractices; that a candidate did not score the majority of valid votes cast at the election, that the candidate was not qualified to contest election in the first place, that the election was invalid by reason of corrupt practices at the time of the election etc (Electoral Act, 2006: A70).

In the case of Abia State, the lower tribunal nullified the governorship election on the grounds that the governor and his deputy were not qualified to stand for election, and that they did not resign their previous political appointments thirty days before election as stipulated by the Electoral Act, 2006. The Governor challenged the verdict at the Appeal Court sitting in

Port Harcourt, River State. The Appellant Court quashed the decisions of the lower courts on February 11, 2009.

According to Onoyume, etal (2009), the Chairman of the Appeal Court, Justice Saka Ibiyeye resolved the ten issues raised from the grounds of appeal in favour of the Governor of Abia State. In his words:

I resolve all the ten issues raised from the grounds of appeal in favour of the 1<sup>st</sup> and second appellants. The 1<sup>st</sup> and 2<sup>nd</sup> appellants are returned as governor and deputy governor of Abia State... relying on provisions of the constitution, the court held that Theodore Orji was not a public servant at the time he contested for the governorship election... (Vanguard, February 13, 2009:5).

The decision of this appeal court may have sent yet another wrong signal in the minds of well-meaning Abians (the electorates), who actually knew what transpired in their state before, during and after the 2007 election. More furious on the judgement was its contradiction with relevant section of the 1999 constitution. In fact, it violates section 12 (I.g and h) of the 1999 constitution. However, there is no rationale in the country's democratic experimnet for chief of staff to the governor and commissioners in the state not to vacate their offices thirty days before contesting election in Nigeria. Consequently, the decision of these judges is capable of setting wrong judicial precedence in the country's journey toward credible election.

In Bayelsa and Enugu states, the lower tribunal nullified the elections of Governors Timipre Sylva and Sullivan Chime. The decisions of the lower tribunal were based on the fact that the elections of these governors contradicted relevant sections of the 2006 Electoral Act. Hence, the decisions of the lower tribunal were challenged by the governors in the Court of Appeal sitting in Port Harcourt and Enugu. The appeal Court quashed the decisions of the lower tribunal and ordered for re-run elections in Bayelsa and Enugu State.

In Adamawa, Sokoto and Kogi, the tribunals also called for re-run elections in view of glaring electoral irregularities and fraud perpetrated by the ruling Peoples Democratic Party in these state. The results of the re-run elections were in favour of the ousted governors.

In Edo State, the lower tribunal ousted Prof. Oserheimen Osunbor of the PDP from office and ordered for the immediate swearing in of Comrade Adams Oshiomhole of Action Congress (AC). The decision of the lower tribunal was informed by the fact that the petitioner – Comrade Oshiomhole scored the highest member of valid votes in the April 14 gubernatorial election in Edo State, consequently, Prof. Osunbor appealed against the judgment. His appeal was dismissed by the appellat Court for lack of merit. The same thing was applicable to the Labour party candidate in Ondo State, Dr. Olu Segun Miniko, who triumphed at both the lower tribunal and appeal court against the PDP candidate, Dr. Agagu.

The above analysis paints the picture of the legal scheming by the judiciary in the strive to correct the anomalies in the nation's electoral history. The truth of the matter is that the citizens of this country are yet to embrace the activities of this 'electoral watchdog' with two hands. This is succinct because, the judiciary according to most Nigerians seems to have enriched itself through this avenue implicit in the insistence and adherence of the Yar'Adua's administration on the rule of law.

### **INEC, Political Parties and Survival of Democracy in Nigeria**

In Nigeria, the body with statutory responsibility to conduct credible election is the Independent National Electoral Commission (INEC). In the political and electoral history of Nigeria, this body has bore several names with funny acronyms such as Federal Electoral Commission (FEDECO), National Electoral Commission (NEC), National Electoral Commission of Nigeria (NECON), and Independent National Electoral Commission (INEC). These nomenclatures notwithstanding, the critical function of this body is to conduct free and fair election in Nigeria.

Political Party on the other hand is an organization of individuals, a large majority of whom have broad similar idea about the nature and functions of government pursue broadly similar ideology and organize themselves to obtain political power and control governmental machinery with all its advantages and responsibilities, and in the overall interest of the state (Eminue, 2001).

The activities of INEC and political parties have far-reaching impact on the triumphal of democracy in Nigeria. As political institutions and democratic structures, their performances during elections in Nigeria go a long way to measure the efficacy of the Nigerian state to better the lots of her citizens. As



Powell (1982) aptly puts it, a nation's social and economic environment, its political institutions and organizations, and the beliefs and strategies of its political leaders help shape political performance.

These two institutions may likely have contributed to the electoral woes of Nigeria. Thus, the INEC has been accused of registering political parties without ideologies and do not cut across ethnic boundaries. This devastating trend may have coerced Tosanwumi (2009:39) to rhetorically query:

What manner of democracy do we say we practice when political parties lack ideological base? How do the people relate with political parties and make choices during elections? Today the PDP has no ideological colouration, just as the AC, ANPP and other parties; they are amorphous contraptions carrying on as hustlers in the land of anything goes (Vanguard, January 2, 2009: 39)

Historically, the political parties that were registered prior to independence were regionally based. The parties were National Council of Nigeria and Cameroon (N.C.N.C) led by Dr. Nnamdi Azikiwe of the Eastern region, the Northern Peoples Congress (N.P.C) led by Sir Ahmadu Bello, the Saruana of Sokoto of the Northern region, and the Action Group (AG.), led by Chief Obafemi Awolowo of the Western region (Otoghagua, 2007). These regionally based political parties had political philosophies that reflected their respective regional beliefs and culture. Thus, they did not have national outlook. In spite of this, they were registered by the electoral body instituted during that period.

This situation was responsible for the 1963 census crisis, 1964 general election crisis and the 1966 military incursion into the body politic of the country. The Nigeria's electoral system was bastardized from the onset by the political class and this has continued to cascade the country's drive to development.

Thus, the registration of fifty (50) political parties by the INEC could be a step towards curbing the menace of ethnicity in Nigeria's electoral process. The extent to which this objective has been achieved by the INEC has raised another big question among Nigerians. In spite of this, more political organizations have applied for registration as political parties ahead of the 2011 general elections.

As ojeme (2000) incisively noted:

Ahead of the 2011 general elections, National Electoral Commission (INEC) said it has so far received applications from 27 political associations to be registered as political parties.

The registration of more political parties according to political cannot address the perennial problems inflicting Nigeria's electoral system. This is clearly because, the Nigerian state is faced with different institutional and systemic challenges which the INEC alone can not address (Akinrefon et al, 2009).

The political parties and their leaders are cut in the web of the systemic deformities of the country's electoral system. In fact, political parties and their unsatisfactory conducts aggravate the problems confronting Nigeria's election system. As politics is often referred to as a game, there must be a winner and a loser in every election. Unfortunately, our politicians are yet to embrace this "golden political rule". In Nigeria, politics is viewed as a do or die affair. This makes the system very tense during elections.

Similarly, political parties have often been accused of nominating unqualified candidates for elections. Party primaries most times are based on consensus and compromise. This, no doubt, kills internal democracy in Nigeria. Also, political parties are accused of sponsoring violence and further lure electoral officials to accept bribes and gratifications to falsify results. This party explains why Kalu (2009) rhetorically asked; Is Iwu really to be blamed? This questioned according to him was posed against the backdrop of incessant allegations leveled against the INEC chairman, Prof. Maurice Iwu, over the conduct of the 2007 elections. Therefore, Kalu threw his weight on the INEC boss that he was not in the states, local government, ward levels, as well as polling centres where political parties connived with the security agents and INEC staff to doctor and rig elections. According to Kalu, Iwu only announced the results forwarded to him from the polling centres across the country. (Kalu, 2009:15).

The above view has been supported by some Nigerians and members of the National Assembly particularly the senate. Some members of the senate recently passed a vote of confidence on the INEC boss on the conduct of the 2007 election, against the calls from many quarters for his resignation or removal. Further, some Nigerians have blamed of the country's electoral woes to the political parties and their surrogates. Umoru (2009) asserts that

“our political parties lack conscience, content and courage”. He painted this picture when he admonished the members of the National Assembly to emulate their America counterparts. He further averred that:

... Other lessons Nigerian political class and the nation can learn from US experience include courage, ability to organize, mobilize, sacrifice and possessing staying power ability... in Nigeria, there is still the absence of national dream and national goals ... Nigeria is still far behind from seeing the Obama’s election as a paradigm (Vanguard, Tuesday 10, 2009 P. 40).

Therefore, the activities of the INEC and political parties have direct bearing on the survival of democracy in Nigeria. The country cannot be said to be democratic when some actors like INEC and political parties are constantly alleged to be involved in nefarious acts. Such acts are capable of truncating the country’s drive to credible electoral. This is capable of whittling down citizens’ participation in the democratic and electoral process of the country.

### **Conclusion**

The challenges of conducting credible elections in Nigeria as well as the expectations of Nigerians on the election tribunals are increasingly generating great concern at international, national and local levels. As countries around the world reform their electoral process in order to correct the systemic deformities of their “democratic engines”, Nigeria has followed suit through the constitution of justices Uwais-led Electoral Reform Committee that submitted its report.

Thus, the reformation of the country’s electoral system was seen as veritable avenue of checking fraudulent practices among the electoral body, political parties, security agents, government officials and the electorates. This was embraced by well-meaning Nigerians who see the democratic project as indispensable to the country’s socio-economic and political development.

Therefore, the judiciary has significant role to play in the quest to achieve this crucial objective. The election tribunals must shun acts capable of destroying the name of the judiciary. The tribunals should avoid acts capable of affecting adversely the integrity of this institution.

As Nigeria has witnessed the reversal of many results earlier declared by INEC in the 2007 election, it will be out of place for election tribunal to use

such avenues to enrich itself at the expense of Nigerians who desire real change in the electoral system of their country. The citizens have high hope that the learned judges who preside the tribunals should bring their wealth of knowledge to bear in the quest to give the country's democratic project a face-lift. This, therefore, suggests a departure from the anti-democratic activities by all parties involve in this project to the genuine Propagation of democratic ethos and ideals in Nigeria's political environment.

### **Recommendations**

In view of the prevailing challenges of conducting free and fair elections in Nigeria and the expected roles of the tribunal as Vanguard of the country's electoral and democratic system, the following recommendations can provide new vistas for the improvement of Nigeria's electoral system:

- (1) Though the justice Uwais-led electoral Reform Committee was silent on the number of political parties that should be allowed to exist in Nigeria, we recommend a two-party system for the country. This will allow the country and her citizens to fall into two ideological groups as it is the case in USA and Britain we emulate in almost everything we do. The adoption of a two-party system, rather than the current multi-party system will assist the electorates to evaluate critically the performances of the parties and individuals they elected with a view to retain them in the subsequent elections or vote them out as it was the scenario in the recent elections in US and Ghana.
- (2) Political office should not be meant to be lucrative to the holders. It should be seen as service to the people as it is the case in liberal democracies. This will reduce the incidence of election tuggary and unnecessary manipulations by parties and their candidates during elections in Nigeria.
- (3) Political office-holders should be meant to be totally accountable to the people they represent. There should be a law to checkmate poor implementation of constituency projects by legislative office-holders in Nigeria. This will enable the real beneficiaries of these projects reap democratic dividends.
- (4) Nigerians should support president Yar'Adua's call for the removal of immunity clause from the constitution, which shield the President, Vice President, Governors and their Deputies from

prosecution. This will drastically reduce problems of kleptocracy among these categories of political office-holders, which adversely affect the growth and development of democracy in Nigeria.

- (5) INEC should come up with another strategy and strong guidelines for the conduct of the 2011 elections, distinct from those of the 1999, 2003 and 2007. As an umpire, it should borrow leaf from electoral bodies in Britain, US, South Africa and Ghana for successful conduct of the 2011 election.
- (6) The National Judicial Council should properly investigate bribery allegations against the tribunals' and appeal court judges that handled electoral cases of the 2007. Appropriate sanctions should be awarded to those found guilty. This will not only serve as a deterrent to others in the subsequent elections, but also re-enforces the confidence of the people on the judiciary as the last hope of the common man.
- (7) In subsequent elections, the decisions of the tribunals and courts in controversial cases such as those of Abia, Anambra, Rivers and Kogi should be subjected to referendum. This will enable the electorates decide electoral matters based on their choice of candidates as well as letting the world know which candidate actually secured the mandates of the people.
- (8) The electorates in Nigeria should as a matter of urgency understand that their votes count. They should "open their eyes" and perceive the need to come out on the election day to vote and also defend their votes against the activities of 'fixers and riggers'

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