

THE ANT, THE CHAMELEON AND THE PRECIPICE:  
THE NIGERIAN STATE STRUCTURE AND THE SLOPES OF  
THE 2023 GENERAL ELECTIONS<sup>1</sup>

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*“Alagemo t’o n se jeeje, iku n pa”*

*(Even the tender chameleon falls victim of death)*

*- A Yoruba proverb*

## INTRODUCTION

My Lords, both spiritual and temporal, I am not sure of my disposition at the moment with respect to the present assignment. While I may be excited to come into the academia to pontificate before these cultivated minds and celebrated faculties, I do not think the topic of the day excites me much in so far as the experiments in the past have not proved us to be qualified to be regarded as a worthy part of the civilised humanity. Our history of killings, maiming, bloodletting and gnashing of teeth in what otherwise is a simple experiment of change of guards in civilised climes, constitutes a shameful blot on our claim to be ‘giant of Africa’.

It is not disputable that we are the most populous nation of black people all over the world<sup>2</sup>. Such numerical number and diversity, which ought to be strength, have become an albatross in view of the cataclysmic state of our affairs. Our elections have been a package of charade and our conduct has left much to be desired when it comes to how we elect our leaders. The quality of our leaders has not been better than the process by which they emerge. This implies that since the processes that gives birth to these supposed leaders are warped, nothing good can be the by-product. In many cases, our political

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<sup>1</sup> Being text of the 2022 Distinguished Lecture delivered by Dr. Muiz Adeyemi Banire, SAN, Principal and Founding Partner, M. A. Banire & Associates at the College of Management & Social Sciences, Fountain University, Osogbo on Wednesday the 30<sup>th</sup> day of March, 2022.

<sup>2</sup> <https://www.worldatlas.com/articles/the-10-most-populated-countries-in-africa.html> accessed on 11/03/22 at about 3.37 pm.

leaders evidence mediocrity to the world and bask in the satisfaction of self-aggrandizement and the impunity of power capture. This is best captured by Prof Attahiru Jega few days ago<sup>3</sup> when he opined, “There is an African saying that “ a wise cat that cares about tomorrow does not eat a pregnant mouse’. In Nigeria, our already very fat cats strive to eat all the mice without discrimination or regard for tomorrow”.

Hence, to be called upon at this juncture by the College of Management and Social Sciences of this great university to deliver a paper on the theme: *The Nigerian State Structure and the 2023 Elections* at a time when there is so much that is wrong with our state structure, ranging from insecurity to worsening economic situations, political sabre-rattling and perversion of state institution, is most challenging to me.

However, in addressing the subject matter of this discourse, we shall approach it under the following sub-heads: Part I shall look into meaning and effect of elections on democratic governance. Part II shall address a brief history of electioneering or democratic practice in Nigeria. In Part III, we shall consider the challenges preventing smooth transition in Nigeria while in Part IV, we shall devote substantial efforts to judicial interventions in guaranteeing electoral justice in Nigeria. Part V shall review the present efforts of the National Assembly in birthing a democratic government come 2023 while we shall draw conclusions and solutions in Part VI of the paper.

#### PART I: MEANING AND EFFECT OF ELECTIONS ON DEMOCRATIC GOVERNANCE

It is important to make conceptual clarifications of certain terminologies, particularly, the words “election” and “structure” so that we can appreciate the context in which this paper is being

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<sup>3</sup> Chairman’s opening remark presented at the University of Lagos Muslim Alumni Association (UMA) Annual Pre-Ramadan Lecture, March 27, 2022, held at University of Lagos, Akoka.

addressed.

### *Election*

The word ‘election’ takes the centre stage of our discussions here today and it has been defined as the

“3. The process of selecting a person to occupy an office (usu. a public office), membership, award, or other title of status...”.<sup>4</sup>

Crush<sup>5</sup>, in an accurate statement endorsed by Odusote defined the electoral process as:

“the most powerful lever of political engineering for conflict resolution ... it determines how votes translate into seats in the legislature... and thereby determining many aspects of the functioning of democracy: what the parties look like, who is represented and by whom, and ultimately who govern.”

On the other and from the judicial perspective, the word “election” has been defined by the Supreme Court of Nigeria in *Abubakar v. Yar’Adua*<sup>6</sup> as “...a process spanning a period of time and comprises a series of actions from registration of voters to polling.” In *Igodo v. Owulo*<sup>7</sup>, the court defined election in its proper sense as not referring “to the act of voting in polling units or wards alone. Rather, it refers to the whole process of election, constituting accreditation, voting, collation, recording of all relevant Independent National Electoral Commission (INEC) form and declaration.”

The implication of the above is that election is a process that goes beyond mere voting. It includes both pre- and post-voting activities

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<sup>4</sup> Black’s Law Dictionary, 10<sup>th</sup> Edition, 631.

<sup>5</sup> J Crush, “Electoral Systems and Stability in Divided Societies”, published at e-international relations, <http://www.e-ir.info/2013/05/10/electoral-systems-and-stability-in-divided-societies>.

<sup>6</sup> [2008] 19 NWLR (Pt. 1120) 1 at 70. See also *Oke v. Mimiko* (2013) LPELR-21368(SC), *Lemachi & Anor. v. INEC & Ors.* (2019) LPELR-48928(CA) Per Lokulo-Sodipe, J.C.A (Pp. 20-21 paras. D)

<sup>7</sup> [1999] 5 NWLR (Pt. 601) 70 at 78 - 79 paras H - A.

by which an electoral process comes to have a meaning and making the vote count. This process is integrated into our political life as a nation by the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (hereinafter referred to as “the Constitution”) which stipulates that “The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution.”<sup>8</sup> Sequel to this, several provisions of the Constitution make it mandatory that filling political offices recognised by the Constitution shall be by elections organised by the appropriate bodies.<sup>9</sup>

As regards the effect of voting on the democratic process, this can be summarised in the words of Benjamin Ginsberg<sup>10</sup> as follows:

“First, democratic elections socialize political activity. Voting is not a natural or spontaneous phenomenon. It is an institutionalized and routinized form of mass political involvement... Elections transform what might otherwise consist of sporadic, citizen-initiated acts into a routine public function... Elections make how, when, where, and which citizens take part in political life a question of public policy rather than simply a matter of individual choice... At the same time, however, elections help to preserve governments’ stability by containing and channelling away potentially more disruptive or dangerous forms of mass political activity.

Second, elections institutionalize mass influence in political life.”

By this, Ginsberg means that while elections might not be the only means of influencing governments to heed peoples’ views and meet their demands as popular uprisings can as well achieve the same, it is

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<sup>8</sup> See Section 2(1) of the Constitution.

<sup>9</sup> See, for example, Sections 7(1)(4), 65, 66, 71, 76, 77, 78, 94, 106, 107, 116, 118, 131, 132, 134 of the Constitution.

<sup>10</sup> *The Consequences of Consent: Elections, Citizens Control and Popular Acquiescence*, Addison-Wesley Publishing Company, 1982, pp. 6 - 7.

clear that elections have constituted a means by which autocratic regimes have considered listening to the yearnings of the masses. The fear of rejection, in those climes where votes count, at the polls has been a strong factor in steering the course of public administration.

The third influence identified by Ginsberg is that elections institutionalize access to political power<sup>11</sup>. It is certain that elections have been utilized by those out of power to displace those in whose control the means of governance have been earlier placed. Elections, therefore, guarantee a smooth transition from one leadership to another without the bloodshed that accompanies coups and violent uprising.

The fourth effect of election as an institution is that it bolsters the state's power and authority as it increases popular support for political leaders and the regime itself.<sup>12</sup> It is on the basis of the above that the author concluded that election has been the most important governmental innovation of the modern era. In the words of Chidi Anselm Odinkalu, "Elections matter because they are the moment and mechanism through which the people express their preference for whom they wish to be governed by and under what programme in exercise of these human rights."<sup>13</sup> In the further assessment of the author, Odinkalu sees elections (in form of democracy) as "...the human and institutional mechanics of quantities" and that "Three processes are essential to the effective functioning of a democracy" which are "the processes of:

- (a) legitimating public power (elections);
- (b) quantifying the demographic coverage/composition of the country (census); and

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<sup>11</sup> Ibid @ page 7.

<sup>12</sup> Ibid.

<sup>13</sup> Chidi Anselm Odinkalu, "Towards Credible, Peaceful and Participatory Elections: Moving Nigeria's Democracy Forward" published at [https://www.academia.edu/39806723/Towards\\_Credible\\_Peaceful\\_and\\_Participatory\\_Elections\\_Moving\\_Nigerias\\_Democracy\\_Forward](https://www.academia.edu/39806723/Towards_Credible_Peaceful_and_Participatory_Elections_Moving_Nigerias_Democracy_Forward) at page 3 and accessed on 21/03/2022 at about 2.18 pm.

(c) estimating and distributing the commonwealth (public accounts, including revenues and appropriations).”

The electoral process, has been argued to be the pillar of democracy because it gives effect to the right to govern by consent.<sup>14</sup> Furthermore, Crush<sup>15</sup> stated that

“... the electoral system is the gateway to power in a democracy. It can be manipulated to foster accommodative behaviour by ensuring that groups are included in the political process by decreasing the incidence of zero-sum outcomes... Furthermore, by changing the incentives available to those seeking election, electoral rules can make some types of behaviour more politically rewarding than others, making it possible to incentivise inclusiveness and moderation... Thus, the electoral system is fundamental to the political culture in a society... While getting this right is only one part of the quest for stability, getting it wrong can make stability impossible.”

However, as beautiful as the views about democracy or elections expressed above are, the negative aspect of elections is that while elections are useful in effecting peaceful transition from one government to another, it is not an assurance of electing good leaders as the decision of the majority may be influenced by a lot of sentiments devoid of practical considerations for good governance. The scenario above is not better exemplified than in the case of Nigeria with the various leadership changes that we have effected.

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<sup>14</sup> Dr Abiodun Odusote, “Nigerian Democracy and Electoral Process since Amalgamation: Lessons from a Turbulent Past” published at [https://www.academia.edu/8833577/Nigerian\\_Democracy\\_and\\_Electoral\\_Process\\_since\\_Amalgamation\\_Lessons\\_from\\_a\\_Turbulent\\_Past\\_](https://www.academia.edu/8833577/Nigerian_Democracy_and_Electoral_Process_since_Amalgamation_Lessons_from_a_Turbulent_Past_) and accessed on 21/03/2021 at about 6.10 pm. See also Dennis-Nwatu, Electoral Process and Democracy in Nigeria.

<sup>15</sup> J Crush, “Electoral Systems and Stability in Divided Societies”, published at e-international relations, <http://www.e-ir.info/2013/05/10/electoral-systems-and-stability-in-divided-societies>.

## *Structure*

The word “structure” is quite important in our discourse of today. Lexical definitions, just like in the cases of the other terms considered above, have given us some perspectives into the meaning that can be ascribed to the word. Thus, according to the New Webster’s Dictionary, the word “structure” is defined as

Something (e.g. a building or an organism) made of parts fitted or joined together. The essential supporting portion of this (e.g. the framework of steel girders supporting a building). The way in which constituent parts are fitted or joined together, or arranged to give something its peculiar or character, plant structure, the structure of the society.

The Oxford Advanced Learner’s Dictionary defines the word as

“The way which parts of something are connected together, arranged or organized; a particular arrangement of parts. A thing that is made of several parts especially a building. The state of being well organized or planned with all the parts linked together; a careful plan. To arrange or organize something into a system or pattern.”

Inferable from the definitions given above is the reality that the ‘structure’ referred to in this engagement relates to the ways and manner in which the constituent parts of Nigeria are put together, whether organized or planned. I have refrained from wholesomely adopting any of the definitions offered by the authors, bearing in mind the caveat of Niki Tobi, JSC, of blessed memory in the case of *Olafisoye v FRN* [2004] 4 NWLR (Pt. 864) 580 @647, para E when His Lordship said:

“..... Definitions are definitions because they reflect the idiosyncrasies, inclinations, prejudices, slants and emotions of the person offering them. While a definer of a word may pretend to be impartial and unbiased, the final product of his definition will, in a number of situations, be a victim of partiality and bias”.

Our thesis, stemming from all the above, is that the country called “Nigeria” is not in a good state for reasons quite obvious to all but seemingly intractable. Hence the enquiry as to whether it is the people that inhibit the country’s growth or the structure. Without extensively delving into the intricacies of the structure which could constitute a thesis on its own, let me say that the manner of our amalgamation, coupled with the structure of governance, policies and institutions we adopt, remains a challenge to the development of the nation on its own. However, for the purpose of today’s engagement, we shall concentrate on the upcoming elections. The essence of the inquisition being to discover factors necessary to be put in place towards rejuvenating the dysfunctional country before the 2023 elections which are supposed to be a redeeming event for the country. Arising even from the topic, there is the presumption that the country is unhealthy but with no clear diagnosis capable of providing prognosis. This accounts for the various policy experimentations in the country with no desirable accomplishment.

In this exercise, I equally will not claim to have the antidote to the various ailments afflicting the nation but will only attempt to lay before you some of my thoughts for further interrogations. Now with the conviction that Nigeria is not too distant from a failed nation; with insecurity ravaging all parts of the country, unemployment figures soaring daily, the value of the currency and by extension, the purchasing power dwindling, infrastructure collapsing, health care in a state of comatose, quality education vanishing, food security endangered, justice on the run, even morals and value eclipsing, it is certain that we have more than enough to bargain with. With 2023 around the corner, the emergence of good leadership seems to be the only way forward. Is the present structure capable of birthing that? This is the fulcrum of the next ensuing discussion.

#### ELECTIONEERING HISTORY IN NIGERIA

Elections in Nigeria historically can be traced to the 1922 Nigeria

(Legislative Council) Order in Council popularly referred to as the Clifford Constitution by which elections were held into three seats allocated to Lagos and one seat allocated to Calabar.<sup>16</sup> The Legislative Council only had power to legislate for the southern protectorate and Lagos but not over the northern protectorate. This Constitution was criticised for not consulting the people and largely composed of white officials. It did not take long before it paved way for another Constitution in 1946 otherwise known as Richardson Constitution. It is the first Constitution to define Nigeria in regional terms which was considered to be “the reverse or antithesis of amalgamation effected by the British Government in 1914”.<sup>17</sup> It was done without much consultation with the people and, therefore, attracted a lot of criticisms.

The new expanded Legislative Council under the 1946 Constitution had a total of 44 members only 4 of whom were elected with 3 representing Lagos while 1 represented Calabar as a big commercial city.<sup>18</sup> All the other members were nominees and delegates chosen from the native autonomous authorities spread across the country. The Houses of Assembly at the various Regions were equally made of nominees of the authorities and not elected members or representatives of the people.

By 1950-51 when a new Constitution known as ‘MacPherson Constitution’ came into being, the country was already moving towards federalism as elections were held on regional basis in which three major political parties, identified along regional lines, actually participated. These were National Council of Nigeria and the Cameroons (NCNC), Northern People’s Congress (NPC) and Action Group (AG). The elections were largely free and fair but the allegation of cross-carpeting that trailed it in the Western House of Assembly

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<sup>16</sup> Alabi, M. O. A., *Constitutionalism in Nigeria: Politics and Law in an Emerging African Democracy*, John Archers (Publishers) 2022, page 90.

<sup>17</sup> Sir Udo Udoma, *History and the Law of the Constitution of Nigeria*, Malthouse Press Limited, 1994, p. 87.

<sup>18</sup> Ibid @ page 90.

introduced a new word into our political lexicon.<sup>19</sup> The history behind this was well captured in another paper titled “Revisiting Awo’s Imprisonment”.

The 1954 general elections was also contested on the same pattern of regional interests and by which regionalism was much more consolidated. Characterised as a crisis of succession, according to Johnson O. Olaniyi<sup>20</sup>

The Federal Election of 1954 was the second manifestation of succession crises in Nigeria. The crisis came about as a result of the regionalization of Nigerian politics. Prior to that period, the nature of Nigerian Politics did not take the form of ethnic chauvinism. However, the Lyttleton Constitution of 1954 which conferred Regional Legislative Power on Regional Assemblies and which created the offices of Governor and Premier, served as an eye-opener on the perquisites of political office to the politicians. It made them to be conscious of their affinity to their cradles. Consequently, the outcomes of October 1954 Federal Election reflected ethnic voting pattern.”

This was followed by the 1959 general elections which had a lot of acrimony as to its conduct. With the federal government formed under the NPC in alliance with the NCNC, the AG was in the opposition and it did not take long before the dreaded descent began with the 1962 operation wet-e in the Western Region. The 1964 general elections were trailed with a lot of allegations of rigging, violence and brigandage. The ground was set for a Nigeria where elections were meant to be conducted like a warfare and it was this state of affairs that led to the first 13 years of military interregnum.

Another political dispensation came around in 1979 Second Republic

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<sup>19</sup> Ibid @ 112 - 114.

<sup>20</sup> “Nigerian Political Elites and Succession Crises in the Fourth Republic: A Study of the 2007 Governorship Elections” published at [https://www.academia.edu/25795645/Nigerian\\_Political\\_Elites\\_and\\_Succession\\_Crises\\_in\\_the\\_Fourth\\_Republic\\_A\\_Study\\_of\\_the\\_2007\\_Governorship\\_Elections](https://www.academia.edu/25795645/Nigerian_Political_Elites_and_Succession_Crises_in_the_Fourth_Republic_A_Study_of_the_2007_Governorship_Elections) and accessed on 22/03/2022.

which was not devoid of allegations of rigging which saw the military regime of Olusegun Obasanjo handing over to the civilian government of Alhaji Shehu Shagari whose political party, National Party of Nigeria controlled much of the northern parts of the country while the Unity Party of Nigeria held sway in the Western parts of the country. The Eastern States of the country were under the firm grip of Nigeria People's Party under Dr. Nnamdi Azikiwe.

It was disastrously a scene of bloodbath in 1983 when general elections were characterised by rigging, violence and electoral manipulations. It was much of a big relief, therefore, when the military took over on the 31<sup>st</sup> day of December, 1983 and held onto power till the 29<sup>th</sup> day of May, 1999 when the government of President Olusegun Obasanjo came into power in an election largely alleged to be dominated by rigging and gave birth to a round of election petitions. Cases like *Egolum v. Obasanjo*<sup>21</sup>, *Falae v. Obasanjo (No) 1*<sup>22</sup> and *No. 2*<sup>23</sup> etc, came to grace the pages of our law reports. In between this period, Nigeria passed through one of the most turbulent electoral crises when in 1993 the June 12 presidential election was annulled by the military government of President Ibrahim Babangida, an event which snowballed into military change of baton, a dictatorial phase that the country can never forget.

By 2003, electoral manipulation in Nigeria had become a blot on our democratic garb the outcome of which saw not less than 500 election petitions filed across the country.<sup>24</sup> The crescendo seemed to be reached in 2007 when the then newly elected President Musa Yar'Adua, the beneficiary of the electoral process widely adjudged in the history of electioneering in Nigeria to be most corrupt,

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<sup>21</sup> [1999] 4 NWLR (Pt. 611) p. 423.

<sup>22</sup> (1999) LPELR-6584(CA).

<sup>23</sup> (1999) LPELR-6585(CA).

<sup>24</sup> See "Nigerian Political Elites and Succession Crises in the Fourth Republic: A Study of the 2007 Governorship Elections" published at [https://www.academia.edu/25795645/Nigerian\\_Political\\_Elites\\_and\\_Succession\\_Crises\\_in\\_the\\_Fourth\\_Republic\\_A\\_Study\\_of\\_the\\_2007\\_Governorship\\_Elections](https://www.academia.edu/25795645/Nigerian_Political_Elites_and_Succession_Crises_in_the_Fourth_Republic_A_Study_of_the_2007_Governorship_Elections) and accessed on 22/03/2022 @ page 293.

subsequently inaugurated the Honourable Justice Muhammadu Lawal Uwais-headed Electoral Reform Committee to make recommendations on electoral reforms in the country.<sup>25</sup> It is doubtful if the recommendations of the Committee have received much recognition from the various governments that have ruled in the country just as the recent efforts too.<sup>26</sup>

While cases like the gubernatorial elections in Osun State<sup>27</sup>, Ondo State<sup>28</sup>, Ekiti State<sup>29</sup>, Edo State<sup>30</sup> and Anambra State<sup>31</sup> could be said to have received some form of electoral justice in which the popular mandates of the people, as expressed in the elections, were retrieved, it is certain that in many States of the Federation, electoral heists could not be remedied and the mass of the people had to contend with beneficiaries of electoral roguery until their tenures lasted.

It is on record that not much improvement was recorded in terms of electoral probity in 2011 when another electoral season came by. However, the 2015 elections may be adjudged to be largely free and fair which probably made the presidential election not to be challenged in court. This feat did not repeat itself in 2019 as the results of the elections became a tug of war between the PDP presidential candidate, Alhaji Atiku Abubakar and President Muhammadu Buhari. Recent developments do not, however, seem to prove that our politicians have really learnt much. It is important, at

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<sup>25</sup> Femi Gbajabiamila, *Getting Our Reform Priorities Right: A Critical Appraisal of the Various Reforms Introduced by the Government of President Musa Yar'Adua.* See also Professor Oyelowo Oyewo, "Electoral Reforms: Imperative for Participatory Democracy in Nigeria."

<sup>26</sup> See Professor Oyelowo Oyewo, "Electoral Reforms: Imperative for Participatory Democracy in Nigeria."

<sup>27</sup> See Ajibola Basiru & Kunle Adegoke, *The Return of Oranmiyan - The Legal Battles to Reclaim Aregbesola's Mandate*, 2011. See also *Aregbesola v. Oyinlola* [2009] 14 NWLR, C.A 429 @ 478 and 479.

<sup>28</sup> See *Agagu v. Mimiko* (2009) LPELR-21149(CA).

<sup>29</sup> *Oni v. Fayemi* (2007) LPELR-8700(CA).

<sup>30</sup> *INEC V. Oshiomhole* (2009) 4 NWLR (Pt. 1132) 607 at 662 paras. A - D.

<sup>31</sup> *Ngige v. Obi* (2006) LPELR-12920(CA).

this stage, to consider the factors responsible for this unfortunate situation in which the country has found itself for many decades since independence.

### PART III: CHALLENGES TO SMOOTH TRANSITION IN NIGERIA

Elections in Nigeria, as we have earlier said, have always been characterised by rigging, violence, manipulations, bloodshed and hijack. The causes of this can be located in the principal characters which we are going to discuss under the following sub-heads. Thus, I am going to discuss the challenges confronting us and preventing us from attaining free and fair elections from the human elements and not merely an aggregate of acts they carried out. We fail sociologically to tackle the problems confronting society when we isolate acts being perpetrated rather than locate problems in the individuals or collectives perpetrating those atrocities. It is in this regard that I address the impediments bedevilling our qualitative democratic evolution in the perspectives below:

#### *a. Godfathers and Absence of Internal Democracy in Political Parties*

The importance of internal democracy within political parties cannot be over-emphasised. This is a desideratum to electing good leaders as unpopular candidates foisted on the masses by a popular party is the beginning of poor governance. That is why in Section 228 of the Constitution, the National Assembly is vested with the power to “by law provide

- a) guidelines and rules to ensure internal democracy within political parties, including making laws for the conduct of party primaries, party congresses and party conventions;...”

Political parties in Nigeria are the only constitutionally recognized vessels for vying for political offices. This shows the rationale behind the continuous struggle that goes on in the various political parties when it comes to nomination of candidates and election of party executives. There is no alternative for the aspirants than this as our Constitution does not recognise other platforms for vying for political

offices. Strangely, when these agitations take place, they should and must not be mistaken for interest in good governance of the country but simply struggle for power among some ignoble gladiators. The most virulent periods in the various political parties are usually during the election of the members of the executive arm of the party that will conduct the party primaries to nominate candidates to contest the general elections, and actually during the conduct of the party primaries to nominate such candidates.

Thus, as the law stands today, an aspirant must inevitably be a member of a political party to enable him contest an election as it is only an organisation registered as a political party that can canvass for votes in Nigeria.<sup>32</sup> The political parties in Nigeria are registered by the Independent National Electoral Commission (INEC) and only these licensed political organizations can sponsor candidates for election and canvass for votes. It is consequent upon this constraint of the political space that in-fighting becomes the order of the day in the various political parties. As such, it is no news that irregularities and improprieties permeate the management and operation of the various political parties. In recent times, the trend is the hijack of the political parties by a few powerful ones within the parties, largely due to their financial influence and coercive powers. This clique today constitutes themselves into a cabal that is notoriously known as godfathers who terrorize and oppress the vulnerable party members. It is in order to tame their influence that a lot of ordinarily needless statutory interventions were made, particularly through the Electoral Act, Regulations and Guidelines.

The situation in the various political parties has degenerated so badly that hardly can a stranger to the clique make any headway in any political party without worshiping these idols. This brings to mind the dictum of a noble Justice of the Supreme Court, the Honourable Justice Sylvester Ngwuta, JSC (of blessed memory) who once said in the case of *C.P.C. v. Ombugadu*<sup>33</sup>,

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<sup>32</sup> See Sections 66 and 221 of the Constitution as an example.

<sup>33</sup> [2013] 18, NWLR, (Part 1385), p. 66 @ 1292 p.- 130, paras F-E.

“...It is apparent that a few powerful elements therein hijack the parties and arrogated to themselves right to sell elective and appointive positions to the party member who can afford same....There is popular saying that politics is a dirty game. I do not share this view. It is the players who are dirty and they inflict their filth on their members and, by implication, on the society. Politicians must learn to play the game of politics in strict compliance with its rules of organized society.”

This great admonition has been more honoured in breach than observance by these unscrupulous set of people alluded to by My Noble Lord. It is these recklessness and ignominy by the politicians in the political parties that have led to the call for independent candidacy. In two previous exercises in the constitutional amendment process, the National Assembly passed the draft bill enabling independent candidacy through constitutional amendment but the ‘bold’ efforts were thwarted by the Governors through their States’ Houses of Assembly. Hence, till date, no progress has been made in that regard. Now, coming to political party primaries which is the means through which nominations of parties’ candidates are made, by the Electoral Acts of 2010 and 2022, there are three modes of determining party standard bearers. The first of the modes is what is known as direct primary which involves the participation of all the registered members of the party in the choice of the political party’s candidates. The second option is tagged ‘indirect primaries’ and it is a process in which delegates who were elected by the registered members of a political party, determine the party’s candidates. In other words, the registered members, at a congress elected delegates who will ultimately elect the party candidates. It is a sort of electoral college system. It is instructive to note that the delegates to finally elect the candidates must be elected for that singular purpose. Hence, the practice of using members of the executive or delegates elected for other purposes contravenes the political party’s constitution and therefore unlawful. Summarily, therefore, indirect primary is a two-tier process as opposed to the direct mode that is singular. The final

choice of the political party in the nomination process is what is dubbed 'consensus'. This is a process that involves all the relevant stakeholders in the political party, sitting together as a body and conceding the ticket by amicable resolution to a particular candidate. It is instructive to note that it cannot be said to be a consensus where there is divergence, even if it be only one. In most of the political parties' constitutions, even where there is consensus, affirmation of the process through the congress or convention will still be required. It must be noted that in all of these, particularly the direct and indirect modes, credible membership register is indispensable. This, woefully, is lacking in most of these political parties and gives room to the manipulation of the process. That explains why a candidate will, at the primary, score an amazing figure and at the general election score a ridiculously low figure. The recent Anambra State APC governorship primary election in which the APC candidate scored more 240,000 votes only to score less than 40,000 in the main election is quite appalling and revealing. It shows the fraud by which such primary election was characterised.

Political parties, in the hands of a few political leaders, have made it impossible to produce qualitative candidates who can effectively represent the people. When poor candidates are thrown up through unpopular processes, it is certain that leaders who emerge through such unpopular procedure can never feel accountable to the people but rather to the godfathers who facilitated their imposition. Such candidate who cannot emerge from a free and fair primary election cannot be expected to win a free and fair election and the next thing is for godfathers to also impose such an aberration on the masses by way of rigging of the general elections.

We must also realise that absence of internal democracy within political parties is the beginning of lack of internal cohesion. Members of a political party on whom party leaders or candidates are imposed are bound to protest and this has resulted in deluge of court cases. It is such practice that led to internal implosion within PDP which paved way for APC to win presidential election in 2015. The same

cankermouth has eaten deep into the fabrics of APC and many other political parties now and may signal the end of the party.

The courts have nullified so many nominations of candidates who were products imposition and destruction of internal democracy within parties. While nomination of candidates used to be seen as an internal affair of a political party, the enactment of Section 87(9) of the Electoral Act, 2010 changed the dynamics and courts of law have been exercising jurisdiction in nomination cases. We can refer to a host of cases in this regard.<sup>34</sup> According to Kekere-Ekun, JSC in *Mato v. Hembe*,

“This case, in my view is a clear example of the mischief sought to be tackled by Section 87(9) of the Electoral Act, 2010 as amended. While it is true that the Courts will not interfere in the internal affairs of a political party nor its choice of candidate, Section 87(9) of the Electoral Act ensures that in making their choice of candidate for elective office political parties do not stray beyond the confines of the Electoral Act or their own electoral guidelines. The section seeks to curb the impunity with which political parties hitherto acted without regard to the democratic norms they profess to practice. As stated by my learned brother in the lead judgment, this Court in a plethora of cases has asserted the fact that political parties must obey their own constitutions and guidelines and where necessary (as provided by law) the Courts will intervene and wield the big stick to prevent arbitrariness. The only way our democratic dispensation can work effectively is where every aspirant for political office, who is qualified to contest an election, is given an even playing field. The failure of internal democracy within our political parties right from the grassroots level eventually leads to instability in the entire political system. The failure of internal democracy is one of the reasons why the Courts' dockets are congested with pre-election disputes. In *Ugwu Vs Ararume* (2007) 12 NWLR (Pt. 1048) 376 @

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<sup>34</sup> *Mato v. Hembe* (2017) LPELR-42765(SC).

514 D-E, this Court per Mahmud Mohammed, JSC (as he then was) admonished:

"My lords, if we want to instill sanity into our human affairs, if we want to entrench unpolluted democracy in our body polity, the naked truth must permeate through the blood, nerve and brain of each and everyone of us. Although credit may not always have its rightful place in politics, we should try to blend the two so as to attain a fair, just and egalitarian society where no one is oppressed. Let us call a spade a spade!"

See also: Uzodinma Vs Izunaso (No.2) (2011) 17 NWLR (Pt. 1275) 30 @ 60 C-E: C.P.C. Vs Lado (2011) 14 NWLR (Pt. 1266) 40 @ 91-92 D-G." Per KEKERE-EKUN, J.S.C. (Pp. 50-52 paras. C)

From the foregoing, further comments on importance of internal democracy is definitely superfluous. It is obvious that the party members, expectedly, are to play a significant and crucial role in the nomination of candidates. Again, sadly, this is hardly so. And this takes us to the next impediment to having free and fair elections in Nigeria; the unconscious electorate.

#### *b. The Unconscious Electorate*

I did a review of the problem of the ignorant and unconscious electorate in one of my writings at the back page of The Sun newspapers in which I said that the rationale behind the publication was essentially to expose the fraud and iniquities perpetrated by politicians on the people, wittingly and unwittingly aided by the electorate through their actions and inactions, with a view to remedying them before the next general elections; the 2023 elections. The class of Nigerians called the electorate is the most difficult and critical to the Nigerian democratic experiment. You wonder who they are? The electorate are the Nigerians who are

eligible to cast votes in each successive general election. They are presumably those citizens of Nigeria that have satisfied the constitutional requirements of competence to vote and have presented themselves for registration as potential voters. What this implies is that regardless of their competence to vote constitutionally, where the eligible voters fail, neglect and refuse to register to vote, they will be unable to exercise any franchise. Thus, strictly speaking, only those that met the two conditions of eligibility and registration constitute the Nigerian electorate. Unfortunately, many who are qualified to vote have refused to register to vote and many who are registered to vote would decide not to vote or vote for wrong reasons.

That means that for the purpose of our discourse, I shall be principally concerned with these equally material classes of Nigerians essential to the electoral process. In this category are those that registered to vote but failed, refused or neglected to vote; and those that are eligible to register to vote but failed to register and consequentially are unable to vote. These two categories of citizens affect the success or otherwise of the electoral process. The former two categories are simply those who unscrupulously and, at times, unwittingly impose on us the bad leaders we live with in Nigeria. If Nigeria fails, these set of people contribute substantially to it. They are here with us in this hall. They belong to the elite and the academia as well.

As at the 11<sup>th</sup> day of March, 2019, the electorate population in Nigeria was estimated to be about 84,004,084 which represented 49.78% of the 200,962,417 estimated population of Nigerians. Majority of the electorate, however, fail to exercise their franchise, thereby availing the politicians the opportunity to manipulate the process. For instance, in the last presidential election, only about thirty five percent of the eligible voters participated in the eventual election of the president. Ditto in the last gubernatorial election of Anambra State, only 10.38 percent of the electorate voted. This mirrors the contemporary performance across all elections in Nigeria. The Chairman of the Independent National Electoral Commission (INEC),

Professor Mahmood Yakubu, recently in 2021 deplored this unfortunate scenario when he said that voter turnout across Nigeria hovered around 30 to 35 per cent of registered voters in the last two electoral cycles. According to the INEC Chairman,

“While a few elections had higher percentages, some recent by-elections recorded as low as 8.3 per cent voter turnout in urban a constituency of over 1.2 million registered voters located in the nation’s most densely populated city. This unfavourably compares to the average voter turnout of 65-70 per cent in other countries, even in the West Africa region.”<sup>35</sup>

This performance, in terms of apathy, continues to dwindle in the country. The danger of a registered voter not exercising his franchise is the aiding and abetting of electoral rigging. Politicians capitalize on this lacuna to utilize their votes by way of illegal proxy to vote on behalf of such electorate. This encourages also ballot stuffing as well as altering of electoral outcomes. I, therefore, plead with you as a voter to ensure the utilization of your franchise by actually voting at elections. Your failure to vote would not only attract proxy voting, but enable the manipulation of the results. This is the first crucial aspect of my admonition as the election season is around the corner in 2023 while this year, 2022, dictates the eventual direction. So, it is crucial that you, the electorate, troop out and encourage others that are eligible but have not registered to proceed to do same in the forthcoming elections to forestall these vices.

Again, as per those who actually exercised their franchises, statistics and experience have shown that the bulk are from the vulnerable class, particularly those that are ignorant of why they are voting, much less knowing why they are voting for a particular candidate. They know not anything about the respective contesting political parties and their candidates. They simply vote on the basis of parochialism. Ask why they voted for a particular party or candidate, you will get responses such as, “it is our regional political party” or

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<sup>35</sup> <https://www.vanguardngr.com/2021/02/nigeria-voter-turnout-hovers-around-30-35-inec/> accessed on 22/03/2022 at about 5.01 pm.

that, (which majority of our ethnic groups favour) “the candidate is from my tribe or ethnic group”; “the candidate shares religious faith with me or attends my religious center”; “the candidate is an associate of my traditional or religious leader, a family friend or associate”; or “my political or communal leaders directed that we vote for him”.

These are the kinds of comments you get to any such enquiry. At the end of the day, this class of voters constitutes the majority and determines the leadership of the country. You then wonder what all the criteria adopted above by this class have to do with provision of infrastructure, quality education, good health service, employment, security of lives and properties etc. As at date, more than seventy percent of those who actually vote in elections are the vulnerable who cannot differentiate their right from the left. These people are the major pollutants of the system through their actions and inactions and they end up endangering our collective interest as a people. Should you form part of this class, your case is more catastrophic than that of the electorate that fail to exercise their franchise. Therefore, it is imperative that you seek knowledge of the political party/candidate you are voting for, in terms of the latter’s pedigree and competence. This is the only way you can qualitatively utilize your vote. The media and the informed generally owe this class of the electorate the duty of education and enlightenment. We need to assist them in establishing the nexus between their lives and their votes. This is a crucial assignment for the informed, not necessarily the elites. Not all elites are politically informed to the extent of guiding quality exercise of franchise. Some of them are not better than this vulnerable class notwithstanding their high level of education. Hence, we must desist from equating the elites with the informed as being educated is different from being informed. It will be a great error to so do. Therefore, embarking on and participating in this enlightenment process will be a great contribution from the informed people. As hinted above, this is the first area of ineptitude of the electorate which must be remedied to confer credibility on the elections and shield us from fraudulent manipulation by politicians.

The other variant of the vulnerable electorate is those whose freewill is often sapped during elections by the powers that be, the oppressors. They are hardly able to vote their conscience out of fear of the oppressors' intimidation or victimisation. Excellent examples are the market men and women who are usually coerced out of threat of closure of their markets, their means of survival, by the ruling party in government, thereby preventing them from exercising their franchise freely.

Civil servants fall, in some areas, into this category also. Transporters are often threatened along the same line. There are myriads of other vulnerable groups in this circumstance that are under the crushing effect of their oppressors. While appealing to this oppressed class to be more circumspect and ready to sacrifice their immediate comfort for the ultimate goal of good governance, I pray and urge that the strong ones amongst us rise up in their defence. These are the weak and defenceless people that are not only denied their democratic rights of choice but equally endangered in the process. A good illustration are the traders in the class of the market men and women who are usually coerced into, not only registering to vote in their market places, as opposed to their homes or other areas of convenience, but compelled to stay overnight at the markets for the singular purpose of voting for their oppressors, usually the ruling party. In the process of staying in the open air overnight, these market men and women are exposed not only to inclement weather but all manner of flies' bites including mosquito, which make them vulnerable to catching cold, pneumonia, malaria and other ailments. Unfortunately, their oppressors are never available after the election to cater for them, with the ultimate consequential effect of death in some instances. This comes as the aftermath of the deprivation of their democratic right of free choice. Because they need to survive, they succumb to this demand of their oppressors and lose their lives in the process. Who bothers when the market is shut or the recalcitrant trader is evicted? Nobody.

This again is where the relevancy of the civil societies and other

pressure groups comes in; not only in defending the vulnerable groups in the exercise of their freedom of choice but in defending them against strangulation by their oppressors. The society owes them this duty if we desire a credible electoral process. My appeal to this group is also to be willing and ready to be liberated from this shackle. It is certainly not in your interest and that of the society at large that you are continuously deprived the joy of electoral choice.

Another group of the electorate that constitutes danger to the electoral process and, by extension, the society at large are those who consider their votes as merchandise and, therefore, offer them for sale to the highest bidder. They are the vote hawkers who see the votes as products to be disposed of. Beyond voting on the strength of money, they even, at times, sell their permanent voters' cards. This class often forgets that by so doing, they are selling and mortgaging their future and that of their children for paltry sums. The vote hawkers need to evaluate their lives since they started this illicit trade and examine if it has bettered their lives and those of their children. Politicians take advantage of you by giving you a piece of your natural entitlement as democratic dividends in order to enslave you perpetually. Most times, it is your stolen wealth that is recycled to you in crumbs. As aptly captured by Prof Soludo, the Anambra State Governor, in a recent speech titled: THE PURPOSE AND PRICE OF DISRUPTIVE CHANGE, at the graduation ceremony of the School of Politics, Policy and Governance established by Mrs. Obiageli Ezekwesili, on January 29, 2022,

“Politics has become a big business. Appointment or election into public office is seen largely as an opportunity to “eat” rather than a call to selfless service. There is an army of rich (big men) who have never worked or done any productive work in their life and believe that it is their right to expect something for nothing. The tiny, less than one percent elite, have a stranglehold on the public purse, sprinkling occasional crumbs to the citizens as ‘dividends of democracy’. The citizens themselves, either out of helplessness or acquiescence, join the

party, expecting the politicians to dole out pittance out of public treasury as charity. The citizens actually clap for such phantom “charity”. Politicians who refuse to do so are deemed as “stingy” or “wicked”, and the circus goes on.”

To the extent that any politician even offers you such money, to the same extent you must, as electorate, be wary and be on your guard, for whoever wants to serve you would not offer money to enslave you. It certainly implies such person does not have any plan for you and your children. As soon as you collect such sum, expect no democratic dividend until the next four years when you are offered another slice of bread for a cycle of poverty. If, however, you must eat from such dustbin, as I see it, still proceed to vote your conscience and liberate yourself from the shackles of enslavement. You do not have to take such paltry sum offered as sufficient consideration for your eternal impoverishment. You, as the electorate, must not be led by your stomachs but by your brains. The whole essence of stomach infrastructure as a political device is to enslave you in perpetuity. The resultant effect is mass impoverishment which robs you as electorate of your self-worth and commercialization of your votes during the elections. Stomach infrastructure certainly has a short life span of a moment. Detest it in all ways.

Another danger to free and fair elections is the class of electorate who is often employed to foment trouble, kill, maim, snatch ballot boxes, stuff ballot boxes and commit unmentionable atrocities in order to rig elections. For those who offer their services as thugs to rig elections, you must realise that politicians do not use their children as thugs for elections. While their children are in the comfort of Ivy League schools acquiring quality certificates to equip them for the future to dominate your children in perpetuity, you are here terrorizing your fellow citizens in order to enthrone a conscienceless ruler on your own people. You have forgotten that where you are killed in the course of rigging elections by rival cult gangs serving your leader’s opponent, your so-called leader will not mourn you beyond a minute and your family are the ones to bear the loss of your

life. Where a politician solicits your service to kill or maim for him to attain a political office, you must realise that such a person is not out for any altruistic service to you and your people.

It is the duty of the electorate to monitor the elections. Your vigilance is, therefore, required on the election day in terms of monitoring the progress of the elections, the entering of results and defending your mandates. At this last level, thugs and other miscreants are used to harass you, the electorate, so that they can mutilate the result sheets and tamper with genuine outcomes of the election. Eternal vigilance is the price of liberty. You must be ready to defend your votes. Again, you as a political thug must also know that you and your children remain where you are due to the act or omission of the politicians. If anybody must be 'harassed', it must be these agents of deformity that have placed you in the ignoble position you are in today.

Most of the political thugs are not only children of the electorate and the masses but they are known to most of us, the electorate. They are not ghosts and neither did they drop from heaven. We need to tame them by challenging them in whatever way possible. Beyond attacking their conscience, lodging anonymous complaints against them where you are not courageous enough to be visible; you can even physically resist them with your numbers. I can tell you without equivocation that they are too negligible in terms of population compared to you, the sane electorate. Remember how they fizzled out during the Endsars protests! That shows the mightiness of our strength where collectively we resolve to challenge them. This is what played out in 2014 in Osun during the governorship election of that year. The masses came out *enmasse* ready to defend their votes. The federal might, with all the soldiers, policemen, men of the Secret Service, aided by political thugs, could not succeed in rigging the election to favour their preferred candidate. Where the people are ready to defend their votes and mandate, no amount of intimidation, threat or actual unleashing of violence can prevail in subverting the collective decision of the people.

Furthermore, and as indicated earlier, absence of a conscious electorate is an impediment to free and fair election. We hardly ask questions. We do not query those who promise us heaven and earth to purloin our votes. It is important, as the electorate, that we acquaint ourselves with the pedigree and competence of the prospective candidates. Apart from taking interest in their profiles, we must organise or find a forum in our community where we can interrogate their competencies. Ask them questions and check their profiles. This is the commencement of a journey to reach a safe and meaningful destination. That forum is the opportunity to demand and agree with them on our expectations; the failure of performance of which could earn them and their families curses.

An ancillary to this is the need for the informed electorate and enlightened voters to help in dissemination of right information to the illiterate and other vulnerable voters. Nigeria is at a crossroads and earnestly yearning for change, the electorate cannot afford to vote out of ignorance, parochial sentiments or sell their votes again. That accounts for the choice of the title of this paper, *The Ant, the Chameleon and the Precipice*. We are tottering at the edge of a precipice. If we fail to regain our balance, we definitely will fall off the edge.

I am sure your suffering has crossed the threshold of resilience. You are already crumbling and awaiting death. As electorate, you need to be vigilant in several areas of the electoral processes. The first is that concerning the registration where rigging of elections starts from. As electorate in our areas, we need to ensure that fictitious names are not included in the register of voters. People also must be active in the verification exercise during the display of the register before elections. Here again we can assist in ensuring the purging of the register of fictitious and duplicated names, or those names featuring on the register but whom we know are deceased or have relocated from the addresses specified against their names.

Beyond voting, please let us remain around the polling booths until the votes are counted and transmitted. This is a veritable way of

guaranteeing that your votes count. It is foolishness to stay away on the pretext that votes don't count. You, as the electorate, can make it count through your vigilance. The other area of focus is the ascertainment of your polling booths prior to the election day. Ensure that your names remain in the register through verification, within the period close to the election day. From my experience, politicians often connive with unscrupulous INEC officials to remove voters' names from the register before the date of the election. This is mostly done in areas of their weaknesses. Don't be surprised, therefore, that your names disappear on the day of the election. This they do in constituencies where they are weak and their electoral fortunes are not promising. It forms part of the manipulative strategy of the politicians. Guard against this as it will be too late on the date of the election to start complaining about your missing names.

Further trick of politicians is to scatter the names in the register on the election day to unimaginable locations, thereby frustrating your effort to locate your polling booth in order to exercise your franchise. This further calls for vigilance on the part of the electorate. At times, it is not accidental that officials and materials arrive polling booths late, it is often orchestrated again by politicians. If it will not be too much of a burden, you can visit the election secretariat, or at worst, wait patiently till they arrive and insist that every available voter on the queue must vote before the officials close.

Of importance to you, the electorate, is the compelling need to collect your cards at the Commission's office prior to the election. Cards do vanish for inexplicable reasons, suggestively due to the nefarious activities of politicians. There is strong suspicion that some corrupt INEC officials do compromise their positions by selling the permanent voter's cards of people to politicians for usage where possible and or deprivation of the potential voters for the opposition. As electorate, you need to watch out on this and insist on collection of your cards. It is after checkmating all the above that you, the electorate, can produce good leaders that the country needs. Where it is as a result of your connivance or stupidity that bad leaders

emerge, you are worse than those wreaking havoc on the populace in the name of bad governance. You only justify the saying that a people receive the kind of leadership they deserve. I am convinced you can do better.

### *c. Partiality of the Electoral Umpire*

The Independent National Electoral Commission (INEC or the Commission) is the body constitutionally saddled with the responsibility of conducting elections into all political offices at all levels of government in the country except the local government elections in the States. It is established as one of the federal executive bodies under Section 153 of the Constitution and its powers are enumerated in Paragraph 15 of the Third Schedule to the Constitution.

The Commission is so named as such due to the compelling necessity for it to be truly independent. It is expected to be an impartial body in the discharge of its responsibilities, this being the reason for the emphasis on the word 'independence' in the description of its nomenclature. Since the Commission cannot act on its own, the impartiality mandated by the name and the Constitution is expected from the officials who populate the establishment. In other words, all staff of the Commission are expected to be independent in the discharge of their responsibilities. This includes even the ad hoc staff recruited for the conduct of elections. The implication of the foregoing is that officials appointed and/or employed in the Commission must exhibit the highest level of integrity. The prerequisite, therefore, demands that proper background check, vetting and profiling of potential officials must be undertaken by the intelligence and anti-corruption agencies. To what extent this is done remains a subject of debate. Suffice, however, to state that if the conducts exhibited by some of the Commission's officials are anything to go by, then it could be concluded that it is either background check is outrightly not done or poorly done.

As commanding and towering as this requirement of impartiality is,

experience over time has shown that the officials of the Commission often betray trust and confidence reposed in them. This is obvious from the recent prosecution and jailing of some of the Commission's staff. In the past, the story has been, at best, that of condemnation of the compromised officials without any prosecution, much less conviction. Names of these several condemned Commission's officials abound but for probable libel action, avoidance of mentioning those names might be a worthy and preferred option since such names are already in the public domain for their inglorious past.

To abridge this seeming gap in the profiling process and remind the appointed and recruited officials of the Commission of this onerous duty, the officials are made to take oaths of office, particularly that bordering on independence and impartiality in the conduct of elections. In spite of all these, do the public at large still believe in the impartiality of the Commission? I think not! Several factors account for this scepticism and lack of confidence in the Commission and by extension, the officials.

The fundamental issue militating and leading to the erosion of public confidence in the Commission is the mode of recruitment of the officials largely. For those that are direct appointees that constitute the management of the Commission, their nominations are made by the same politicians whose affairs are to be regulated by them. By the Constitution of the Federal Republic of Nigeria, 1999 (as amended) they are ultimately appointed by the President of the country who is first and foremost a politician and a member of a political party. The recommendation comes from the President to the Senate, another set of politicians, who purportedly screens the nominees. The impression, at the barest minimum of the public space, is simply that of he who pays the piper dictates the tune. This implies that the appointors ultimately dictate the occurrences in the field of operation of the Commission.

In the past and prior to the constitutional amendment, a person could be qualified to be appointed into the Commission even where he was a member of a political party simply because the constitutional

provision then required such a potential member of the Commission to be qualified as a member of the national legislative house which specified membership of a political party. Such a person, under the current provisions now must not belong to a political party.<sup>36</sup> This is meant to be a safeguard against political bias. The question, however, is, what if in recent past the person had been a member of a political party or an apparent sympathizer of a political party? Would such a person qualify to be nominated and appointed? Well, by the wordings of the Constitution, he cannot be legally disqualified as mischievously decided by the Senate in the recent screening case of Mr. Muideen Olalekan Raheem, the Osun Resident Electoral Commissioner nominee, who was originally nominated for the office. It means where the interpretation is matched with the mischief the provision is meant to forestall, then, such a person cannot and must not be appointed into the Commission. Thus, legally speaking, the fact that you have been a member of a political party in recent past cannot be a stumbling block to the absorption of such a person into the Commission, if at the time of his nomination, he is not a member of a political party. Likewise, being a sympathizer of a political party cannot equally and legally be a disabling factor in the appointment of a person into the Commission, but on a moral ground, it may be a worthy factor in the screening of such a person by the legislators. It must be reckoned that the same Senate that rejected Mr. Olalekan Raheem approved the appointment of Loretta Onochie, a Presidential spokesperson and several others thereafter proven to be politicians. Double standards, you would say!

Thus, due to this corrosive factor of political appointment of the Chairman and Commissioners of the Commission, agitation against the mode of recruitment has led to several profound recommendations by various bodies set up to review the electoral process. Two notable ones in recent past are the Uwais's Commission report and the Ken Nnamani report on electoral reforms which recommended the appointment of the management officials of the Commission by an

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<sup>36</sup> Paragraph 14(2)(a) and (3)(b) of the Third Schedule to the Constitution.

independent body such as the National Judicial Council that deals with the appointment, promotion and discipline of judges. This, regrettably, has not seen the light of the day, even by the current administration that set up the last electoral reform committee. It seems to me that as soon as each government settles and appreciates the importance of controlling the Commission, the government jettisons the adoption of the recommendation. Hence, we are still where we are and consequently, the continuous dwindling of voters' turn out in our electoral circles.

This is a major factor heightening voters' apathy in the country to the extent of less than thirty five percent of the electorate electing the President of Nigeria in the last presidential election.

Funding is another factor impairing the efficiency and delivery of the Commission thereby engendering lack of confidence in the Commission. The legislature and the executive use funding to control the independence of INEC. In so far as the legislators and the executives continue to moderate the funding of the Commission, political considerations and influence will remain a clog in the independence of the body. Budgeting and funding of the Commission, in my view, should be purely outside the ambit of politicians. This will implicitly address the challenge of the inadequacy of personnel which is another bane of credible conduct of elections in Nigeria.

Last, but not the least for the purpose of our discussion under this heading, are the twin issues of welfare and security of tenure. The officials of the Commission are certainly not sufficiently motivated to resist mostly the mouth-watering offers from politicians in Nigeria. In the same vein, the security of tenure of the staff needs to be strengthened.

I have gone this far to enthuse us with the Composition of the Commission as well as the militating factors against their expected independence so as to be able to situate my invitations in terms of value changes expected from the Commission's officials, notwithstanding these aberrations. The first area of concern is what the Yorubas capture in the saying that, *ti won ba bi ni, ki a tun 'ra*

*eni bi*. In this context, in spite of the Commission's managerial officials' accident of birth by politicians, they need to be born again on points of societal expectations from them. They need to shake off the political toga that ordinarily accompanies their appointments. It is no news that most times, the Chairman and the Commissioners are nominated, screened and appointed by politicians. That politicians have no bias is to be denying the obvious. Most times, they even invite the nominees with specific entreaties that they have assignments for them. This assignment is, most times, to compromise processes in favour of their political parties or tendencies. This is no news in our climes. My first admonition and appeal to these appointees into the Commission is to remember the oaths they have taken in terms of independence and impartiality. For those with pedigree, they must let this count for something but even if you, as an appointee of the politicians into the Commission lack pedigree, remember your reputation and protect same. Remember always the son of whom you are and if that is insignificant to you, consider being fathers or mothers to some children, and likewise, wife or husband to a man or woman. These are worthwhile considerations in your decision making. Their feelings should matter to the officials. Would they prefer to be paraded for sabotaging the will of the people and to be cursed by the populace? Would they want to be remembered as some officials of the electoral umpire are remembered today for their dastardly acts while in office? Or they want to be a hero like Attahiru Jega? The choice is theirs'..

If all these do not matter, please they should remember that they are occupying the position of trust in which they are not only accountable to the society but to their creator in the hereafter. In case they forget, it is instructive to note that they and their family live in the same society that catastrophe will befall should wrong people be smuggled into public offices due to their action or inaction. Orun ma wo ni, kii se oro enikan (if heavens shall fall, all shall be victims). Even the illicit wealth they derive from their compromises of the electoral process cannot benefit and will not benefit them in a tumultuous and insecure environment. If they allow the resources

to be utilized in the training of the children of the poor to be misappropriated by dubious politicians through their acts, the by-products of this will ultimately endanger them and their family also. Unfortunately, we will all be equally impacted.

Insurgency, terrorism, kidnapping, and other vices threatening the nation and staring all of us in the face must be a constant reminder of the need to do the right thing. It is bad governance of the past that gave birth to all these evils. They could be prevented by ensuring we elect good leaders. Thus, in doing your duty, your honour must continuously count for something. There are so many areas in which they, as officials of the Commission, compromise the integrity of our electoral process. As I have said in the past and am still reiterating, the bedrock of any credible election is the voters' register. The register contains the names of all the eligible voters in the country. Once there is corruption of this register, no credible election can emanate from it. That is why the sanctity of the electoral register must be maintained at all times and the Commission is the custodian of the register of voters which it is mandated to maintain and update regularly.

In Nigeria, however, a lot of times, the compromise of the electoral register is often a routine act by the officials of the Commission. Apart from registration of ineligible voters, particularly persons not of age at the entry point of registration by some officials of the Commission, some unscrupulous officials connive, in not only unjustifiably loading the register with fictitious names, but actively assisting politicians in the removal of names of registered voters considered to be dangerous and inimical to the ambitions of the politicians who are the sponsors of these unscrupulous Commission's officials. This obtains largely in the information technology department of the Commission, and attention needs to be paid to this in the forthcoming elections by stakeholders. It is not unusual to find class names depicting a particular tribe or ethnic group being removed from the register at the instance of politicians. This explains why, on the dates of the elections, some group of registered voters would

suddenly not be able to locate their names again on the register. For the electorate not to fall into this calamity, I call on them to be willing to sacrifice more time in jealously tracking their names during the display of register and snapping pictures of relevant pages. I know it could be inconveniencing but I bet you, it is worth the sacrifice.

However, those officials of the Commission that engage in this atrocity need to search their conscience and remember the damage they are doing to the fortune of the nation and the interest of Nigerians. In as much as I am reluctant and unwilling to place a curse on these saboteurs, I am unable to resist joining issues with them and keeping mute. Hence, kindly pardon my harsh words along the line as I seem to pray on their behalf that they reap the benefits of their investments in these circumstances as the damage they inflict on our nation is incalculable and deserves nothing than this. The curse of the people shall remain on the perpetrators up to their unborn generations.

Again, another fraud perpetrated by these undesirable officials is tampering with the register of voters in such a manner that the names of potential voters in a particular area are planted far away from their allocated polling units so that such names become untraceable on the election date. Those officials involved must be tracked this time around and warned on this type of deliberate incidence carried out on behalf of politicians. This act equally derails the will of the people, and for those officials that engage in this, we can but only pray that God derails their lives too.

I can continue to replicate these vices committed by some officials of the Commission but suffice to plead and advise that those involved should, in the interest of the nation, desist in the next elections. As if the above are insufficient, a good number of the Commission's staff equally compromises internal democracy of the various parties. This ranges from that relating to the election of the party managers, the members of the executive so to say, up to the conduct of the nomination process. Ideally, in the civilized nations of the world, it is unthinkable that political parties will be guided and guarded in

their nomination processes but in Nigeria, as the politicians will never play by the rules, not only is statutory intervention made to command transparency in the process, the courts are empowered where justifiable to intervene. This used to be exclusive traditional domain of the political parties. But in order to ensure credibility of the internal democratic process, the Electoral Act provides for monitoring and supervision of the internal democratic processes of political parties by the Commission. Regrettably, however, this requirement has been more honoured in its breach than observance. Most times, the officials of the Commission actively participate in the sabotage of these internal democratic processes. Not only do they compromise through inaction, manipulation of the outcomes but more often than not, prepare false reports of compliance with the rules due to their compromise by politicians. These myopic officials often forget that the bye-products of their handwork are imposition of incompetent leaders on the system and who in turn deliver bad governance to us. How I wish that they were the victims of the insecurity and other vices emanating from the desk of these 'dealers' foisted on us by the officials. These deranged officials are the ones that engender, through their action and inaction, imposition of bad leaders on the people, exploiting the vulnerability of the electorate. They ought to taste the broth of their hands.

Furthermore, on election days, some of the unpatriotic officials also assist politicians in frustrating the electorate in areas where such politicians feel that they are unpopular by delaying the delivery of voting materials and deployment of polling officials to those areas. That is why, at times, despite the best of efforts of preparation made towards the election, men and materials often arrive some centres unreasonably late in order to frustrate the electorate in those areas and limit the potential votes coming from the areas. Sale of ballot papers to politicians prior to and on the day of the elections, as well as allowing multiple thumbprinting of ballot papers through connivance of greedy officials is not a strange practice in our elections. Again, the culprits in the system know themselves but I must, however, not fail to pungently state that these are perpetrated

on election days largely by the ad hoc staff of the Commission engaged for the conduct of the elections.

The youth corps members that are deployed to carry out electoral duties must appreciate the stress they went through in acquiring education in Nigeria and their potential jobless status are by-products of these indiscretions exhibited by their predecessors who conducted the earlier elections by which delinquent persons were put in offices. They must, therefore, eschew the dastardly practice in their own interest and their children yet unborn. To make the country work requires credible and competent leaders that these ad hoc officials of INEC can help midwife. They should please not mortgage this future for what will certainly not generously last them beyond a month. They must adhere to the oath of office taken by them and be upright in the discharge of their responsibilities. This is the only way we can collectively guarantee a future for the country.

In the areas of qualification of candidates, some officials often aid and abet improprieties. They help in concealment and suppression of information. Please plead with them to give up this game and be part of nation building. In defacement and alteration of result sheets, some of these ad hoc staff are great collaborators of the politicians in this regard. This untoward act must stop. As the Bible says, for what does it profit a man to gain the whole world and lose his own soul? We all need to be contented with God's favour. To do otherwise is to incur the wrath of God and that of our fellow men. Ensure that the outcomes of elections in your units, ward, local governments and so on are properly reflected in the result sheets and the information technology device.

Of interest is also the role these officials play in the dispensation of electoral justice. Most times, they are willing tools in the hands of the politicians to sabotage the cause of justice. You find it difficult to certify documents for people, to give testimony of your actions and inactions, you compromise the truth and render false accounts of events, all these in the name of illicit funds. For how long do they want to live on this illegality? Remember that this ill-gotten wealth

cannot benefit them and their children without the blessings of God and more often than not, they end up with a catastrophic life. Is it really worth it? I do not think so.

The final but certainly not the least and the last area of attention, due to space constraint, is civic education and information dissemination. Under the Electoral Act, civic education of the electorate is part of the brief of the Commission. The Commission, without fear of contradiction, has not fared well in this regard. The worst aspect is that rather than embracing the complimentary roles of other individuals and entities, hostility is their watch word in this respect. Let me recount the experience of a consortium put together under the platform of 'Concerned Professionals' of which I am a member. The body had resolved to compliment the role of the Commission in provision of civic education of the electorate in Lagos State and sought the required information and data from the Commission to actualize this task. Alas, the Commission, in return, only rewarded this gesture by punishment, demanding the sum above seven million naira to release information to work with. This is a body sacrificing the time, energy and resources of its members to assist in the electoral process. How does one rationalize this gesture of the Commission if not simply to interpret same as an act of internal sabotage? Could this response be reasonable in face of the continuous voter's apathy witnessed in our electoral circles? It took the ultimate intervention of Mr Femi Falana to finally get a jaundiced version of information requested, leading eventually to the frustration of the genuine efforts of the patriotic members of the platform. Those of you responsible for this kind of acts should repent and do the right thing. Nobody wants to hijack your job which certainly you cannot execute alone. As things stand, they are practically doing nothing, at best, if I choose to diplomatically and courteously indulge them, they are doing poorly. If this is a deliberate act as it seems to me, they should kindly reappraise and toe the line of honour.

In all that I have said above, financial inducements, leading to compromises plays a significant role and the affected officials of the

Commission needs to have a rethink in the various nefarious roles they play. They need to constantly ask the question, is it worth it? If their welfare package is insufficient and they cannot endure it, or they are unable to resist undue pressure of compromises, they should enjoy their liberty of resignation. This is more honourable than being a saboteur of the electoral process and by extension, good governance in the nation.

#### *d. Problem of Power Grabbers and Conspirators*

Necessary, not just important, players are politicians as far as politics is concerned. Just as you cannot have the practice of medicine without doctors, so also it is impossible to talk about politics without politicians. However, in Nigeria, we do not seem to have politicians any more like we use to see in those glorious days dedicated, cerebral and selfless leaders of Chief Obafemi Awolowo's ilk. What we have today is what I refer to as 'power grabbers and conspirators'.

I must, therefore, start by conceptually distinguishing between professional politicians and professionals in politics which, I believe, is a good point to take off. As stated earlier, participation in politics in Nigeria demands being a member of a political platform by virtue of our constitutional dictate. Without joining a political party, it is impossible for any aspirant to get into a political office in Nigeria to realise his ambition since independent candidature is alien to our Constitution. To this extent, you need to be a politician to contest. This does not imply, however, that you must be a politician to participate in the political process. You can exercise your franchise in the elections without necessarily joining a political party.

However, if you want to influence the candidate of a political party or contest as said earlier, you certainly must become a politician. In the class of these politicians are, however, those who have their vocation and are just interested in good governance of the country and have solely joined to positively impact the system. I used to belong to this type until I realized that even so, I was keeping bad company and was endangered. This class of people, in the political

arena, are those we classify as professionals in politics as opposed to those whose main and only vocation is active politicking, nurtured by survival instincts. These are the professional politicians without any alternative contact address. All that is important to them is populating the political space from time to time under any circumstance. Without politics, they probably will commit suicide. It is this latter class that mainly constitutes the bane of our democracy. Historically, people of substance and high pedigree occupied the centre stage of politics in the past as the political space was dominated by politicians who had what it took to move the nation forward. By this, I meant those who had other vocations and development background. These days, however, all manner of jobless elements and criminals dominate the politics of the country. Current politicians are what the Yoruba refer to as *Ojelu* (looters) as opposed to *Oselu* (politicians). The *Ojelus* are the ones that I refer to here as power grabbers and conspirators. As I address this point, do not take offence but you can imagine where your acts and omissions have placed you in the divide, whether you are an *Oselu* or an *Ojelu*. The *Ojelus* thrive on thuggery, material politicking and manipulation of the electoral and judicial processes. They don't believe in manifestos or any ideology. They lack programs or policies to prosecute should they be availed the opportunity of serving the nation. As remarked above, substantial number of them have no alternative contact addresses but live on politics. That explains their permanent desperation to be in any office at all times. Due to their escapades, the country is what it is today as they must amass wealth at the detriment of the masses, perpetuate poverty to dominate the conscience and consciousness of the people, promote discord among the various peoples in the land in order to prevent cohesion in the national consciousness of the masses. The *Ojelus* deceive themselves that all is well with their souls and try to convince the people that they are the best things to happen to humanity since the departure of Jesus Christ.

On the other hand, are the *Oselus* who know that the current situation

of the country is devastating to national or individual development or progress. They cannot boast of the situation, certainly, they are not proud of it. Unfortunately, amongst the Nigerian politicians, the *Oselus* are not many within the class. There is a huge deficit of this category of politicians in the political parties. The laws, policies, attitudes and idiosyncrasies have made this noble individuals mere vegetables in the political terrain. We certainly need a change of attitude in all ways as we approach the political season in 2022 (as governorship election holds in some States) and 2023 for the general elections all over the country. In my view, the actual and real political year is 2022, not so much of the 2023 general elections.

It is against this background that I was compelled to initiate this year with a letter to the politicians. In the letter, I gave Nigerian politicians the “Code of Hammurabi” as it pertains to politics or what you may call my “Code of Disqualification to Derelict Politicians”. Those who know that they cannot run their homes, much less any office, should please spare us further agonies of misgovernance. These are the people who have never done any business in their lives successfully. Ordinary pure water business they cannot do successfully. When asked what their profession is, they shamelessly enthuse, “I am a politician”. My friend, go and look for job. You should not aspire to run our affairs. Those who do not understand the demands and requirements of good governance should not approach electoral contests. These are the clueless ones that search for appellations such as, ‘Honorable’, ‘Excellency’ to cover their inadequacies.

Those whose morality is challenged must avoid vying for any political office as our values and morals are sufficiently debased already and we do not need them to cremate same for us. Those whose mental stability is questionable must avoid contesting for any political position. Enough of erratic misconducts in our public affairs. Those with health challenges must spare us the gory macabre of the past where leaders govern from infirmaries only for their cronies to take our future and welfare for an open sesame to illicit wealth. Money-

miss-road politicians must search for alternative vocations to engage in rather than politics. Please be guided to invest in other much needed ventures than politics. The country is fatigued of political mercantilism.

For those that are still bent on contesting, however, please do not pollute further our political space with your ill-gotten wealth. In your interest and that of the nation, material politics must end. The time is ripe to eschew parochial politics. Campaign on your strength and capabilities and not on undue sentiments and appeal to mere emotions. It is imperative that politicians must desist from using other people's children as political thugs while their children are ferried abroad to receive baccalaureates. More than ever before, politicians must embrace the fear of God in their conducts, remembering that only God empowers and no one else. They should be ethical and godly in their ways as we approach the primary and general elections. Should any candidate ultimately scale through the contest and eventually be elected, such politician should remember his duty of accountability to the people and God, the giver of power. It is sad that what I am saying here is not new. These admonitions have been made in the past but the *Ojelus* have refused to change.

We must not forget to mention the 'superhuman' of the Nigerian political class; those politicians who behave like God and test the will of God. They are another specie of politicians. They are the godfathers who believe they are God. They are the ones behind whom nobody should be appointed or elected to a political office. The fortunes of others must receive their sanction or endorsement otherwise will be turned to misfortunes. They are the ones who dance on the fresh corpses or graves of their colleagues in the struggle to purloin the seats just vacated by the deceased. They do not think anyone deserves to live but by the mercy of the godfather. They think and behave like mafiosi and arrogate to themselves what God did not endow them with. These people are ones that the masses worship in order to earn an undeserved living. They are wealthier than most States in Nigeria but their sources of income are not traceable to

legitimate efforts. They adorn the political landscape of the nation. They live in palaces beyond human imaginations and yet, they pretend to be lovers of humanity at whose table's crumbs are available for the masses. These are the giant parasites that have suffocated the system. With their type of politics, this nation cannot survive. It is certain that godfathers are a major problem with our politics as they spend their filthy lucre to promote thuggery, impoverish the youth so that their source of supply of political roughnecks can be sustained. They will never advocate genuine development but will forever be enriching their retinue of thugs in order to have those who will snatch and stuff ballot boxes with illicitly thumb-printed ballot papers, kill, maim and intimidate opponents and the people during elections just to impose unpopular candidates

On the other hand, within the subdivide of the *Ojelus* are the less privileged politicians who are on the lower rungs of the political ladder but are in the majority. They are the ones who mobilise for the big *Ojelus* to continue dominating the political space. They believe it is a virtue to be jobless politicians with the entitlement mentality that they must be paid for rendering no economic service to earn a living. They are so optimistic that one day they shall be appointed to hold political offices notwithstanding their competence or lack of knowledge of governance. They are the ones who bad-mouth good and performing office holders who have decided to provide infrastructures with public funds rather than distribute it as a largesse to the members of the party. These people are the small *Ojelus* who claim to be politicians and are encouraged by the big *Ojelus* to continue in their vocation of laziness and parasitic excrescence. They are ever-willing tools in the hands of the big *Ojelus*. More than 1,000 women gathered recently at a party office claiming they were politicians and doing nothing but dance around in the name of politics. They claimed they were endorsing a particular office holder for the second term. These are women young enough to constitute the entire workforce of a local government. They are contributing nothing to the economy of their community but living as parasites on the system. Some of them see politics as an opportunity

to fraternize with men of reckless sexual appetite who market political activities as a cloak to access those women who are in desperate need of money. Some are actual widows while many are widows with “living” husbands. These are women whose husbands are the living dead whose responsibilities only comprise sleeping with women to father children but with no economic contribution to the home. These women call themselves politicians and are passionate about party politics the kind the big *Ojelus* have created for them. They are the prolific inventors of beautiful songs to praise you to high heavens at public gatherings sending you to perpetual slumber and indolence in office while reserving the most acerbic and derogatory lyrics for your real and imaginary enemies.

Worse is an army of young men, agile, strong and able-bodied, who believes that the only way to riches is politics. Once appointed into political offices, they live in pubs, impregnate loose women running beer parlours and, in some instances, put the same women's daughters in the family way at the same time. Only God knows how many women are regretting the day they introduced their young daughters to their political concubines who eventually turn out to be husbands to the young daughters but concubines to the mothers. What an inglorious avenue our so-called politicians have turned politics into! Their cliché of “no morality in politics” has become a national anthem among young followers. Moral depravity has become a virtue in their households of politics that no one bats an eyelid to protect personal interest to the detriment of collective interest.

The women event I referred to was a festival of shame. These men and women are vermin produced by the system, nurtured by the political class to sustain its hold on power. This is the product baked by our politicians. This is the no-value-added service rendered by politicians to our economy. Do we need any soothsayer to tell us that with developments of this nature, the future is bleak for the nation? This obviously shows the emptiness of our politicians’ productivity to the nation. The politicians must therefore be credited with elevating the negative side of politics to an enviable status among the masses.

Young politicians do not see anything wrong with this style of politics as their mentors have been seen as specimens and role models of what successful politicians look like. Politics is now the main focus and vocation among all and sundry in the nation. It appears to be the only surviving industry in the nation as everyone lives on the rentier economy effectively fostered by the government. It is the shortest cut to fame and wealth, no wonder the cost of governance in Nigeria is astronomical, with sizeable portions accompanying the politicians home.

Have you noticed Nigerians in other vocations that ordinarily are enviable, resigning to join politics? Some resign as bank managers and other lucrative jobs to join politics simply because the *Ojelus* among us have made it the best source of survival and reverence. They have seen their predecessors amass wealth within a short time beyond what a life earning can put together. It seems politics is, therefore, the only vocation left for them to consider as there is no such free money in business as guaranteed in our model of politics. Young graduates move into politics directly now aspiring to go to the House of Assembly, become Local Government Chairmen or, worse case, become Councillors. They are not motivated by the passion for good governance but just to be part of the active participants in the pilferage going on. That is why once their ambition of securing the ticket to contest an election is not met in one political party, many do not see any sense in retaining their membership of such a party but rather cross to another to which they would have been lured by some petty funds or promises. This equally explains why the country appears not to have any future again. These are the people that are supposed to be the leaders of tomorrow but are already contaminated by the *Ojelus*. The youth are certainly not blind to the occurrences in the country and tend to emulate their elders who are the *Ojelus*.

### *The Shamelessness of Defection*

The young ones have a lot to copy from the elderly ones. The shameful idea of cross-carpeting has become a common thing. It is in Nigeria that a politician would be elected on the platform of one political

party and the moment he is sworn in, he would defect to the ruling party at the centre in order to curry the favour of the President. That is why the decision of the Federal High Court sacking the Governor, Deputy Governor and the 26 members of the Ebonyi State House of Assembly recently for defecting from Peoples' Democratic Party (PDP) on which they were all elected to All Progressives Congress (APC) is quite commendable. It is true that the decision may not have constitutional provision authorising that a Governor and Deputy Governor shall vacate their seats upon defection, it is an eye-opener that our Constitution requires an amendment in this regard as to make it a ground for the Governor and Deputy Governor to vacate their seats where they defect from the party on which they were elected to another party. We must realise that the decision of the Supreme Court in *Abegunde v. Ondo State House of Assembly*<sup>37</sup> has laid it down that a legislator who defects from his political party to another must lose his seat save where there is a division within the party which occurs at the national level. The same provision is not contained in the Constitution as regards where the President, Vice President, Governor or Deputy Governor defects.

The immorality of abandoning the political party where a person was elected to join another party that probably lost the same election was deplored in *AG Federation v. Abubakar*<sup>38</sup> but it is clear that for this immorality to be checked, it is needed that the court is empowered to declare the seat of an executive vacant where he decamps from the party on which ticket he was elected. The youths of today have been inundated with the immoral practices of the elders and such acts have pervaded the land. While it is true that no specific provision is made in respect of the executives, the constitution does not forbid consequence of such immorality and illegality, more so where there is no room constitutionally for independent candidacy.

Whoever did this to us must be wicked! Whatever the *Ojelus* touch they violate. Even traditional institutions that are meant to be the

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<sup>37</sup> (2015) LPELR-24588(SC)

<sup>38</sup> (2007) LPELR-8995(CA)

custodians of our values, morals and culture have been desecrated. Traditional institutions have been destroyed by the reckless office holders who, as Governors, do not think that the future of the people must be considered above their tenured offices. The process of selecting a king is already hijacked by politicians. They impose derelict elements on communities in the game of preferring a stooge to someone they cannot control. Such individuals on the throne have nothing to offer the people but only to desecrate the throne together with the customs of the people. It is unfortunate that we have bandits in political offices whose sole ambition is to replicate their replicas in all offices. Community development is of no moment to the *Ojelus*. It is preferable to them to have a delinquent in a palace as a King than to have an educated and development-oriented prince whose aspirations for the people may not be in tune with the rentier politics of the *Ojelu* ruling class.

They have travelled to various countries of the world. They should tell us where things are done the way they do things here. They have marketed religion to our people as an opium which has completely intoxicated them. Hence, they reward their political parochialism by sponsoring them on pilgrimage to Mecca, Medina and Jerusalem. They use money meant for building schools, establishing and equipping hospitals, creating jobs, provide security etc. to rather send them on a spiritual journey of no benefit. They return with the confused minds that worship their destroyers. The big *Ojelus* demand 100% loyalty from their worshippers having made them unconscionable paupers and conspirators in the business of mortgaging their future. No wonder they willingly hand over their lives to the politicians to do as they will. It is better for you to kindly reconsider your brand of politics. It is better for them to think of posterity while they still have the opportunity to be penitent. We cannot appreciate your egoistic 'altruism' if they only realise the need for good governance when they are out of office and they consider us idiots that can be fooled again for them to be elected back to power.

### *e. Pervasive State of Insecurity*

Another challenge to peaceful, free and fair election in Nigeria and which challenge is most disturbing, is the general state of insecurity in the land. Aliyu Tanko, a BBC Hausa Editor, has identified five major security threats in Nigeria<sup>39</sup> which he listed as: Jihadism, Clashes between herders and farmers, Banditry and Kidnapping, Separatists' Insurgency and Oil Militants.

North of the Niger is in serious crisis as boko haram dominates the North East while bandits have taken over the whole of the North West down to the North Central. We have heard of cases of bandits having taken over up to about 10 Local Governments in some States in the North Central while the atrocities of boko haram have been intractable for quite a long while.

The sovereign integrity of Nigeria has been put to the crudest test by invading bandits reportedly coming from neighbouring northern countries of Niger Republic<sup>40</sup> and Chad. Nigeria is said to have more than 108 illegal entrance routes into the country from Niger Republic. The poor level of education, coupled with poverty, has contributed immensely to the supply source of the miscreants who have rendered the northern parts of the country a hell. According to a British Broadcasting Corporation (BBC) Report dated November 24, 2020 titled "Nigeria is also losing control of its troubled northwest region"<sup>41</sup> ,

"This month, BBC's Hausa language service, which covers northern Nigeria, reported a remarkable story of 12 Nigerian police officers being kidnapped along the Katsina-Zamfara expressway in the country's northwest region.

It was the latest in a growing list of attacks and kidnappings in

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<sup>39</sup> "Nigeria's Security Crises - Five Different Threats", accessed at <https://www.bbc.com/news/world-africa-57860993> on 24/03/2022.

<sup>40</sup> <https://www.thecable.ng/bandit-routes-how-nigerias-porous-border-with-niger-fuels-attacks-in-north-west> accessed on 24/03/2022.

<sup>41</sup> <https://qz.com/africa/1935821/nigeria-losing-control-of-northwest-region-to-bandit-herdsmen/> accessed on 24/03/2022.

Nigeria’s northwest that have often been underreported in Nigeria’s national media and almost hardly ever covered by international media.”

The above implies that the attacks are not limited to civilians as security men have been victims.<sup>42</sup> It is also the case that the media in Nigeria have under-reported cases of insecurity in the northern parts of the country.<sup>43</sup> The Report further noted:

For the past decade and more, Nigeria has been battling the deadly Islamist terrorist group Boko Haram in an insurgency that has cost up to 30,000 lives and displaced 2.3 million people in and around the northeast region of the country.

The group, which has carried out attacks in the country’s capital Abuja as well as in neighboring countries Chad, Cameroon, and Niger, remains very active in the northeast even after splintering into the Islamic State West Africa Province (ISWAP) and the Jamaa’atul Ahlis Sunnah (JAS), with both carrying out attacks on civilians, aid workers, and the military.

However, for the past five years, the north western part of Nigeria has also become gradually engulfed by violence, with much less media coverage because these attacks have been carried out by groups that have been described locally as “bandits”. These are not Islamist terrorist groups with international affiliations which would more easily capture the imagination of global media....

“The insecurity in the northwest is causing significant problems for farmers. In many areas, they now pay bandits to have access to their farms in order to harvest—with fees often ranging in the hundreds of thousands of naira,” says Ikemesit Effiong, the head of research at SBM Intelligence, a geopolitical consultancy

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<sup>42</sup> ‘Bandits’ kill 10 troops along Niger-Nigeria border’ a report by Aljazeera dated December 31, 2018 and accessed at <https://www.aljazeera.com/news/2018/12/31/bandits-kill-10-troops-along-niger-nigeria-border> on 24/03/2022.

<sup>43</sup> The Punch, “Anger spreads as UN says 110 Borno farmers killed”, 30 November 2020.

based in Lagos. “Even with this quasi-taxation, security is not always guaranteed.”

The above confirms our position expressed above with respect to terrorist organisations taking control of much of the northern parts of the country. Many people have been displaced leading to millions of people living in Internally Displaced Persons’ camps spread in different parts of the country. Life has been hellish in these parts of the country and the North Central has not been paradise either with the attacks of herders on the people of Benue, Nasarawa and Kogi. One then wonders if election is going to be possible in all these areas. According to a report published on the web page of *Strife*<sup>44</sup> titled *The Growing Threat of Armed Banditry in North-West Nigeria*, after summarising the menace that boko haram has constituted itself into in the north eastern States of the country, it concluded as follows:

But while the group is making lives unbearable for the people living in Northeast Nigeria, another organised group referred to as the armed bandits are increasingly making lives difficult for the people living in the Northwest area of Nigeria. Life is no longer sacred in these parts of the country and the overall impact will certainly last for generations. Government is clearly overwhelmed and the citizens helpless....

The report further gave a clear insight into the mode of operation of these bandits as it clearly stated that

“...in the Northwest area of Nigeria particularly in Zamfara, Sokoto, Katsina, Niger, Kaduna and Kebbi States, the activities of Bandits have been particularly worrisome. The activities of these bandits’ ranges from kidnapping to murder, robbery, rape, cattle-rustling, and the likes. Their modus operandi involves maiming and killing their victims when they least expect. Usually, they mobilized themselves through the forests into the neighborhood riding on fast motorcycles especially in the nights

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<sup>44</sup> [https://www.strifeblog.org/2021/01/08/the-growing-threat-of-armed-banditry-in-north-west-nigeria/#\\_ednref1](https://www.strifeblog.org/2021/01/08/the-growing-threat-of-armed-banditry-in-north-west-nigeria/#_ednref1) accessed on 24/03/2022.

and shoot at will. Sometimes in the afternoon, once they were sure there were no security presence of the police or military around, they unleash terror in the communities. This growing threat is claiming victims in hundreds. Several children have been orphaned and women became widows overnight while the issue of food security as well as humanitarian tragedy will further make life unbearable for many Nigerians.”

Statistical figures reported have been quite scary and debilitating. About 1,100 people were said to have been murdered “in the six states of North west Nigeria in 2018, over 2,200 were killed in 2019 and 1,600 killed between January and June 2020”.<sup>45</sup> About 247,000 people had been displaced while their activities alone have led to the production of more than 41,000 refugees. It was reported as at 2021 that in Zamfara alone, more than 8000 people have been killed recklessly by the activities of these bandits who have recently been declared terrorists while in the last decade, over 200,000 persons displaced internally and others had fled to neighbouring states.<sup>46</sup>

The report concluded that “The situation is so porous already that the religious leader and Sultan of Sokoto, Muhammadu Sa ad Abubakar opined that “Bandits now move in the North from house to house with AK47 and lamented that the region had become the worst place to live in Nigeria... In Sokoto, more than 250 people have been killed in about 20 attacks, just to mention but few.” Kaduna, in substantial parts, lives in fear of bandit attacks and the once illustrious State of commerce and the capital of the entire north has completely become a slaughterhouse.

It does not seem we can overcome the problems confronting the north in terms of insecurity before the 2023 elections. What about the southern parts of the country? Are we at peace? Definitely “No”. The southern parts of the country are also at war with themselves. The eastern states have perpetually been under siege of the agitators for the independent State of Biafra. It has been outright war with the

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

Nigerian security agents and the arrest of Nnamdi Kanu, the leader of the Independent Peoples of Biafra (IPOB) has not really made much difference as his group keeps on launching guerrilla attacks on both government agencies and civilians alike. The threats from the group about elections not holding in 2023 cannot be treated with a careless abandon as the nation gravitates towards its decisive year of election.

The western parts of Nigeria have been under unprecedented invasion of herders, druggists and cult wars among the youths. The pullulating number of street urchins and the terrible incidence of ritual murder have all combined to render the hitherto progressive States once led by the illustrious sage, Chief Obafemi Awolowo, Chief Samuel Ladoke Akintola, Chief M. A. Omisade, Chief Bola Ige SAN, Chief Adekunle Ajasin, a ghost of old glory. The future of the south west has been destroyed with the kind of youths parading our streets with the mentality that one can suddenly become a multi-millionaire by engaging in ritual murders and violent killings, political thuggery and kidnapping. Our youths do not acquire skills anymore and neither do they appreciate the dignity of labour. Multitudes of them throng the houses of politicians for crumbs and dignifying themselves to be political leaders in their own right. It does not seem that there is any ray of light at the end of the tunnel.

This state of security crisis was foisted on us by misgovernance of the past. Politicians who ruled this country have failed to address the primary challenges which have now snowballed into uncontrollable inferno consuming every object on its way. It is doubtful if the 2023 elections can hold peacefully in many parts of the country. Unfortunately, our leaders do not seem to have learnt anything. They are busy calculating how to grab power and conspiring on how to enrich themselves at the expense of the masses.

Nero fiddles while Rome burns. So saith the proverb. Nigeria is tottering on the precipice. It may collapse at any time. The description of the country as a failed state is gripping and suffocating. The ants of the masses are busy regaling in self-indulgence of reckless abandon while the chameleons of the leaders satiate in assurance of

the availability of the mass coffers to loot. They are contented with the proverbial assurance of prosperity without labour as contained in the Yoruba aphorism that says *Owo olowo ni Egungun n na, aso alaso ni oga n gba bo'ra*. This is the illustration of our topic: *The Ant, The Chameleon and The Precipice: The Nigerian State Structure and the Slopes of the 2023 General Elections*.

#### PART IV: JUDICIAL DETERMINISM AND 2023 ELECTIONS

It is a popular cliché to refer to the judiciary as the last hope of the common man. If Nigeria is going to remain one, the judiciary has a huge role to play. There is the need for the judiciary to rein in the madness of the other arms of government dictated by the luscious greed of politicians. In Nigeria, the biggest and most constant headache that confronts the legal adviser of any political party in Nigeria is the non-observance of internal democracy by the party hierarchy. In the Nigerian political landscape, until recently, internal democracy is a mere tag that only existed in the imagination of politicians. In this vein, any electoral position within the structure of a political party is a subject of conferment without any consideration of the electability of the beneficiaries of the conferment. In other words, only those that the political kingmakers consider worthy are conferred with the “honour” of being the party’s candidates; the process of engaging a method that includes the members of the party in the decision making generally and nomination of the flag bearers of the party is considered alien by both the party oligarchy and their suitors.

Thus, the judiciary, in controlling the lawlessness of politicians, has been quite up and doing in this regard. Once the legislature, by Section 87(9) of the Electoral Act, 2010 (which is practically now Section 84(12) of the Electoral Act, 2022, has made nomination of candidates and failure to comply with rules and regulations in respect thereof justiciable, the Courts have been upholding the duties of the

political parties in this regard. Thus, in *PDP v. Sylvia*<sup>47</sup>, Chukwuma-Eneh, JSC opined thus:

“The clear object the provisions of section 87 is intended to achieve besides the inculcation of internal democracy in the affairs of political parties in this country moreso in the conduct of their party primaries includes thus making them transparent and providing level playing ground for their contestants in party primaries....”

Equally important is the fact that the constitutions of political parties contain the procedure for the nomination of candidates and voting at congresses and party conventions. In this respect, the constitution of the political party sets out how the party’s primary elections are to be conducted in a manner that institutionalises internal democracy. An example that easily comes to mind is Article 20 of the Constitution of the All Progressives’ Congress (as amended). A look at the provisions of the said Article 20 makes it clear that candidates of the party can only emerge through a democratic path. In case of indirect primaries, the delegates that will vote at the primary election must have been democratically elected by members of the party from the various wards contained in particular constituency at a congress. Even where an aspirant is unopposed, democratic principles still have to be followed to ensure that the unopposed aspirant is not a product of imposition. Without a doubt, the party constitution has entrenched internal democracy and eschewed imposition of candidates by the “powerful” minority. Despite this, political godfathers have always treated internal democracy as an anathema.

It, therefore, gladdens my heart to say that the Supreme Court has taken the courageous step of ensuring that the political oligarchy do not succeed in casting internal democracy into the refuse bin. Now, political parties are faced with the fact that the erosion of internal democracy will not go unpunished. A case worthy of consideration is *Mato v. Hembe & 2 Ors.*<sup>48</sup> amongst others. Equally impressive is the

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<sup>47</sup> [2012] 13 NWLR (part 1316) 85 at 148, paras. A-B.

<sup>48</sup> (2017) LPELR-42765(SC).

stance of the Supreme Court in the case of *Shinkafi v. Yari*<sup>49</sup>, where the Supreme Court held thus:

“... it is now trite that where a political party conducts its primary and a dissatisfied contestant at the primary election complains about its conduct of the primaries, the Courts have jurisdiction by virtue of the provision of Section 87(9) of the Electoral Act 2010 (as amended) to examine if the conduct of the primary was in accordance with the party's Constitution and Guidelines. The reason is that in the conduct of its primaries, the Courts will never allow a political party to act arbitrarily or as it likes. A political party must obey its Constitution.”

It is now trite to give due consideration to the impactful decision of the Supreme Court in *Mato v. Hembe* (supra). In that case, Onnoghen, CJN (as he then was) held that holding a primary election in a manner contrary to the Electoral Act, 2010 (as amended) and the constitution of the political party will render such primary election null and void. At pages 37 to 40 of His Lordship's judgment, His Lordship held thus:

“The facts deposed to in paragraphs 3 and 4 of the affidavit in support of the Originating Summons show that the said primary election was held at HAF HAVEN HOTEL, MAKURDI quite outside the headquarters of the Federal Constituency. So, apart from the irregularities catalogued in exhibits 4 and 2 reproduced above, the holding of the primary was contrary to the Electoral Act 2010 (as amended) and the constitution of the 2<sup>nd</sup> defendant...”

As a corollary to the above provision, article 14.11 of the 2<sup>nd</sup> defendant's Constitution provides that every member shall assemble at their respective Federal Constituency Headquarters and voting shall be by secret ballot. A combined reading of these two provisions reveals that it is mandatory for the political

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<sup>49</sup> [2016] 1 SC (Part II) 1 at 31, line 13 to line 23. See also *Tarzoor v. Ioraer* [2016] 3 NWLR (Part 1500) 463 at 529, para. G; *C.P.C. v. Ombugadu* [2013] 18 NWLR (Part 1385) 66 at 129 to 130, paras. F-E

parties to hold their congresses for the purpose of selecting their candidates in the headquarters of the Constituency. As was pointed out by the learned counsel for appellant in their written address, the Electoral Act and the 2<sup>nd</sup> respondent's constitution make detailed provisions for the way and manner by which primary elections are to be conducted. This is to ensure a level playing field for all aspirants. Any contravention of the Act and the Constitution of the Party in this regard would be regarded as a ploy to negate the principle of due process of law enshrined therein.

It is trite that where a statute provides for a means of doing a thing, no other means or manner shall be permitted. Both the Electoral Act and the Constitution of the 2<sup>nd</sup> defendant make it mandatory that primaries be conducted in the headquarters of the Constituency. The failure to comply with these provisions makes the entire exercise null and void...

The truth must be told and that is, that the 1<sup>st</sup> and 2<sup>nd</sup> defendants did not respect the provisions of the Electoral Act and the constitution of the 2<sup>nd</sup> defendant in the conduct of the primaries. This court has decided in quite a number of cases that political parties must obey their own constitutions as the court will not allow them to act arbitrarily or as they like....

From all I have endeavoured to say above, it is crystal clear that the primaries which produced the 1<sup>st</sup> defendant was fraught (sic) with manifold irregularities aside the fact that he was not even qualified to contest same." [Emphasis mine]

Beyond doubt, by this singular pronouncement, His Lordship seeks to enthrone internal democracy in the affairs of political parties. In the same vein, Kekere-Ekun, JSC asserted that where political parties appear to violate the principles of internal democracy, the courts will not hesitate to whip them into line by wielding the big stick.

Another more recent decision of the Supreme Court is between *Alhaji Shuaibu Isa Lau v. Sen. Sani Abubakar Danladi* regarding the Taraba North Senatorial District (delivered on June 23, 2017). The Punch

Newspaper, under the caption: *Harsh verdicts await unqualified candidates, S'Court tells political parties*, quoted, Augie JSC thus:

“This is a hard and very bitter lesson for political parties to learn. They may have chosen candidates or eminent personalities they want to present as candidates to INEC, but they have to play by the rules.

“The chosen candidates must comply with requirements of the law; they must abide by the provisions of the Electoral Act, which creates a level playing field for all aspirants who seek to contest elections.

“So, the political parties and their candidates must obey the rules.”

I need not say more. Ordinarily, this ought to sound a death knell on the untoward practice of imposition of candidates contrary to the provisions of the applicable laws and the party's constitution. However, it appears that party oligarchy appears to enjoy turning a deaf ear.

In the recent decision of the High Court of Lagos State (per Okuwobi, J.) in Suit No. ID/1838/GCM/2017: *Hakeem Abolaji Saka v. All Progressives Congress & Anor.* (delivered on July 7, 2017), the court did not hesitate to nullify the nomination of a candidate without the conduct of primary election in accordance with the stipulation of the Lagos State Independent Electoral Commission Law and the Constitution of All Progressives Congress. Consequently, the Court, inter alia, made an order restraining the Lagos State Independent Electoral Commission from recognising, relying on or using any list of chairmanship candidates submitted by All Progressives Congress for the then forthcoming Local Government elections in Odi-Olowo Local Council Development Area.

Without a doubt, the foregoing is commendable as it shows that parties do not have to get to the Supreme Court before the judiciary wields the figurative big stick where a political party jettisons internal democracy in the conduct of its affairs. This is, particularly,

instructive because the elements behind imposition always rely on the fact that it would take years before the matter would be decided by the Supreme Court in the course of which their imposed candidate would have enjoyed a substantial portion, if not the entirety of the tenure of office. The good news, however, now is that, not only are pre-election cases on fast track now, impostors are now sanctioned by both removal and restitution of illegally gotten dues. With the proactive pronouncement of High Court of Lagos State, the erosion of internal democracy will be nipped in the bud and good people will not suffer irreparable injury before salvation comes.

Good governance is the desire of every sane society. In order for any society to have good governance, there must be good leadership. For there to be good leadership in a democratic setting, internal democracy must be effectively and effectually practised. One can only hope that political parties see the handwriting on the wall and behave accordingly.

It is, therefore, safe to say that the Courts in contemporary times, have been strengthening internal democracy which is not only commendable but proactive. It is only hoped that more of our courts will see the wisdom in this approach and political parties learn the art of respect for the rule of law. The consequence is that where a party fails to comply with internal democracy rules in its primary election, its primary election would be nullified and if it had won the general election, its rightful candidate, in the case of unlawful substitution would be declared winner as done in *Amaechi v. INEC*. But since the enactment of Section 141 of the Electoral Act, 2010 which prohibited declaration of a person who did not participate in all the stages of an election to be winner of such an election, the Supreme Court has titled the consequence to mean that the party defaulting in complying with the internal democracy rules would be regarded not to have participated in the election as the next highest scorer would be declared winner. An example is the recent case of *APC v. Marafa*<sup>50</sup> in which a PDP candidate was declared as the

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<sup>50</sup> [2020] 6 NWLR (Pt. 1721) 383.

Governor of Zamfara State as against APC candidate that actually won the election. Another example is the Bayelsa case of *PDP v. Degi Eremienyo*<sup>51</sup> in which the candidate of the APC who won the governorship election was at the last minute replaced with the candidate of PDP.

That is with respect to pre-election matters bothering on nomination. How have our courts fared when it comes to election petitions? This is another kettle of fish altogether. And without the judiciary ensuring electoral justice, we are far from the much-desired good governance. At this juncture, let us consider the efforts of our courts.

#### *Nigeria: Whither Electoral Justice?*

Electoral dispute is part and parcel of our democratic evolution that we cannot downplay. Elections have been reported in this country as far back as 1958, 1960, 1961 and 1962.<sup>52</sup> One of the earliest is the decision of the High Court of Northern Region in the case of *Ahmed v. Kassim*<sup>53</sup> on election to the Northern House of Assembly on statutory limitation provision as regards election petition and the immutability of the law as regards promptness in filing petitions.

The ancient nature of rigging has been traced to a period as early as early days of independence as shown in *Uwawah v. Ekwejunor-Etchie*<sup>54</sup> in which two different bundles about 25 ballot papers each were found folded and stuck together in the ballot box from a particular polling station. The trial judge found such a development an irregularity but that were the said ballot papers to be reckoned with, the petitioner would still lose the election as he would only have 161 votes as against

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<sup>51</sup> [2021] 9 NWLR (Pt. 1781) 274.

<sup>52</sup> See Chief Akin Olujinmi, Changing Face of Election Petition Law in Nigeria, a paper delivered at the valedictory court session in honour of Justice Dejo Akanbi, President, Customary Court of Appeal, Osun State, on his retirement from Osun State Judiciary on 15th June, 2021.

<sup>53</sup> (1958) SCNLR 28. See also The cases of (i) *Alkasim v. Dantata* (1958) SCNLR 31 (ii). *Dambazau v. Gashash* (1958) SCNLR 32 and (iii) *Azare v. Maihaja* 32 which were all decided on the same ground.

<sup>54</sup> (1962) 1 SCNLR 157.

the respondent's 548 votes and, therefore, dismissed the petition. The Supreme Court dismissed the appeal of the petitioner but observed that for any irregularity in the voting process to be material, it must have affected the result of the election otherwise the election would not be nullified.

In the earlier days, the rule used to be that "Once a petitioner established non-compliance and the court or other tribunal cannot say whether or not the results of the election could have been affected by such non-compliance, the election would be avoided" which means that such an election would be nullified. A case establishing this was the case of *Swem v. Dzungwe & Anor.* decided around 1966.<sup>55</sup> The implication of that decision is that once non-compliance with the law regulating the election has been established by the petitioner, notwithstanding that the irregularity is not certain to have affected the election, the result of the election would be nullified.

However, our politicians found this position of the law unacceptable and have, therefore, enacted provisions like Section 139(1) of the Electoral Act, 2010 (which is now Section 135(1) of the Electoral Act, 2022) by which one would feel that the decision in *Swem v. Dzungwe* (supra) has been codified into statutory law. Section 139(1) provides as follows:

"An election shall not be liable to be invalidated by reason of non-compliance with the provisions of the Act if it appears to the Election Tribunal or court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election."

The interpretation of that provision has been casting a burden difficult to discharge on the petitioner and by which it is becoming questionable if an election petition alleging rigging is capable of being proved at all. The Supreme Court, in many cases, has been holding that the petitioner has a duty to prove that the non-

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<sup>55</sup> (1966) NMLR 297.

compliance substantially affected the result of the election. Cases like *Buhari v. Obasanjo*<sup>56</sup>, *Akeredolu v. Mimiko*<sup>57</sup>, readily come to mind among hundred others. Cases alleging electoral fraud, violence, thuggery, undue influence, etc. have been pretty impossible to prove as the petitioner is required to prove his case polling unit by polling unit and having to call witnesses in all the polling units challenged. In a governorship election ranging over a number of Local Governments, this is an impossible task more so that the time the petitioner has to prove his case has been limited to 14 days.

Cases relating to time limitation within which to hear and determine election petitions have presented most ridiculous outcomes. Where an election tribunal or appellate court cannot hear and determine an electoral dispute within the time stipulated by law, the cause of the petitioner who was allegedly rigged in an election has been held to have no remedy. The natural justice rule of *ubi jus ibi remedium* has failed to save the situation as such provisions stipulating time limitations have been woven into an amendment to Section 285 of the Constitution. While it is clear that the impossibility of hearing and determining the election petition is not as a result of the failure of the petitioner, the Supreme Court has declared itself unable to do justice in such cases. An example is the case of *Shettima v. Goni*<sup>58</sup>. The same position was upheld in *ACN v. INEC*<sup>59</sup>.

A number of factors have been responsible for electoral disputes requiring the Courts to intervene in order to do justice. These events include intimidation of voters, falsification of results, rigging, ballot box snatching, violence, multiple thumb-printing, vote buying, thuggery, etc. it is certain that any election affected by any of these malpractices ought not to be regarded as an election by whatever standard. Unfortunately, the courts have been upholding such elections notwithstanding such allegations which, if placed on the

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<sup>56</sup> [2005] 13 NWLR (Pt. 941) 1 at 259-260.

<sup>57</sup> [2014] 1 NWLR (Pt. 1388) 402 at 452.

<sup>58</sup> [2011] 18 NWLR (Pt. 1279) 413 at 462 B-C.

<sup>59</sup> [2013] 13 NWLR (Pt. 1370) 161 at 202 - 203.

balance of probabilities, would be held to have been sufficiently proved. However, the standard is that such allegations border on criminality and hence ought to be proved beyond reasonable doubt.<sup>60</sup>

Delay in concluding hearing of election petitions as shown in cases like *Aregbesola v. Oyinlola*<sup>61</sup> in which an election petition took more than three years has led to the amendment of the Constitution to provide time limitation for hearing and determining election petitions. The amendment to the Constitution via the 4<sup>th</sup> Alteration brought about Section 285 of the Constitution in which election petitions are now decided within six months after the declaration of results while appeals to the Court of Appeal and the Supreme Court are to be decided within 60 days each. This has brought a welcome development by which election petitions are decided within a short time but with the negative consequence of making it impossible for a petitioner to be able to adduce sufficient evidence to prove his case.

A general assessment of the performance of the judiciary when it comes to election petition will seem to endorse the position that proving election petition in Nigeria is an impossibility. Right from the days of *Awolowo v. Shagari*<sup>62</sup>; *Ibrahim v. Shagari*<sup>63</sup> up till the more recent cases like *Adeleke v. Oyetola*<sup>64</sup>, it is certain that a person that will establish electoral malpractices has too high a mountain to climb. This has emboldened fraudulent politicians to continue carrying on as if electoral malpractice were a natural part of politics and electioneering. The only way the judiciary can help in this regard is to pay more attention to the need to achieve electoral justice in the interest of the electorate who cast their votes for a particular candidate only for their aspiration to be subverted by some unscrupulous elements by way of rigging.

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<sup>60</sup> *Nwobodo v Onoh* (1984) 1 S.C.N.L.R. 1 at B. 32; *Omoboriowo v. Ajasin* (1984) 1 S.C.N.L.R. 108 at 122; *Onye & Anor. v. Kema & Ors.* (1999) LPELR-6562(CA).

<sup>61</sup> [2011] 9 NWLR (Pt. 1253) 458.

<sup>62</sup> (1979) All NLR 120.

<sup>63</sup> (1983) 2 SCNLR 176.

<sup>64</sup> [2020] 6 NWLR (Pt. 1721) 440.

This is most important as the political class is coming to realise that pronouncements of the court of law are sacrosanct and the decisions of judges would definitely terminate their shenanigans. The recent APC Convention is a proof that the political class is getting afraid of what the court would say. If not for the decision of the Federal High Court, Abuja, terminating the tenure of the Governor of Ebonyi State in March this year, APC would have arrogantly gone ahead with its Convention allowing all political appointees to participate in the Convention contrary to Section 84(12) of the Electoral Act, 2022. At the last minute, the party adopted wise counsel and directed that all political appointees would not be allowed to vote in the Convention. The judiciary should live up to the people's expectations when it comes to correcting electoral ills.

#### PART V: RECENT LEGISLATIVE INTERVENTION

The National Assembly has enacted into law the Electoral Act, 2022 which has generated a lot of furore in the national polity. The legislature itself is not unaware of the imperfections of our electoral statute but definitely refused to do the ultimate since the members of the National Assembly profit from the errors in the system. However, the new Electoral Act contains some innovations which one may think are aimed at avoiding some errors of the past. They can be considered under the following sub-heads.

##### *Death of Governorship Candidate*

One of such innovations is Section 34(3) which provides as follows:

(3) If after the commencement of polls and before the announcement of the final result and declaration of a winner, a candidate dies –

(a) the Commission shall, being satisfied of the fact of the death, suspend the election for a period not more than 21 days; and

(b) in the case of election into a legislative House, the election shall start afresh and the political party whose

candidate died may, if it intends to continue to participate in the election, conduct a fresh primary within 14 days of the death of its candidate and submit the name of a new candidate to the Commission to replace the dead candidate:

Provided that in the case of Presidential or gubernatorial or Federal Capital Territory Area Council election, the running mate shall continue with the election and nominate a new running mate.

The implication of the above is that the Kogi scenario of 2015 which led to a lot of political manoeuvring and litigation upon the death of Prince Abubakar Audu, the APC flagbearer in the State's gubernatorial election cannot repeat itself again. The interpretation of the lacunae in the Constitution and the provisions of the Electoral Act to the effect that a person could not be declared winner of an election in which he did not participate in all its stages, denied Honourable Faleke of being able to step into the shoes of Prince Abubakar Audu. Now, by the above provision of Section 34(3), the Deputy Governorship candidate shall continue the election and inherit the votes left behind by the demised governorship candidate.

#### *Prohibition of Additional Qualification Requirements*

With respect to nomination of party candidates for elections, Section 84(3) has introduced a novel provision which is aimed at preventing political parties introducing any provision in their constitutions or guidelines for nomination of candidates an additional qualification requirement to what is contained in the Constitution of the Federal Republic of Nigeria, 1999 (as amended). It is, however, questionable whether this provision is necessary in the face of the fact that any provision contained in any other law inconsistent with the Constitution is a nullity.

#### *Consensus Candidate*

In order to ensure internal democracy within every political party more so with respect to nomination of party candidates, the new Electoral Act has made it mandatory for all political parties adopting

the consensus option in the nomination of its candidates to ensure that such process is not achieved by imposition. Thus, by Section 84(9) (a) “A political party that adopts a consensus candidate shall secure the written consent of all cleared aspirants for the position, indicating their voluntary withdrawal from the race and their endorsement of the consensus candidate.”

On the other hand, a political party that is unable to secure the written consent of all cleared aspirants for the purpose of a consensus candidate is required to revert to the choice of direct or indirect primaries for the nomination of candidates for the aforesaid elective positions. In order to consolidate further on this process of ensuring avoidance of imposition by pretentious consensus, sub-section (c) of Section 84 further makes it a requirement that a Special Convention or nomination Congress shall be held to ratify the choice of consensus candidates at designated centres at the National, State, Senatorial, Federal and State Constituencies, as the case may be.

The above being the case, the politics of imposition may be coming to an end and what is left is for party members to ensure that the process of consensus is fully complied with as stipulated by the Electoral Act whenever the party chooses to go by consensus in nominating its candidates or electing its party leaders.

#### *Ineligibility of Political Appointees to Vote During Party Conventions*

Another innovation introduced into the Electoral Act is the provision of Section 84(12) which prohibits political appointees from voting or being voted for during congresses of a political party. This provision has generated a lot controversies with a High Court nullifying the provision and empowering the Attorney General of the Federation to delete the said provision. The intention of the legislature in introducing this provision is to curb the menace of executive governors who, shortly before party congresses to elect party officials, would appoint thousands of political aides only for them to fizzle out after the congress. These appointees would be used to influence the voting pattern at the congress but no one would hear

anything about them after the congresses again. It is also to prevent political appointees from abandoning their duty posts during electioneering seasons and deploying state resources to finance their personal election campaigns.

As laudable as this provision seems, there is a question as to its constitutionality. Whereas Section 66, 106, 177 and 182 of the Constitution relating to qualification requirements for contesting an election have become crystallised and cannot be added to or subtracted from, it seems Section 84(12) may be characterised as an additional qualification requirement. We must remember that the qualification requirement for contesting an election under the Constitution are basically the following:

- b) he is a citizen by birth;
- c) he has attained the age of thirty-five years (or any such age relative to the particular office being contested);
- d) he has been educated up to at least the School Certificate level or its equivalent; and
- e) he is a member of a political party and is sponsored by that party,

any provision of any law adding more to such qualification requirement is a nullity in the eyes of the Constitution. Beyond that, it is an infraction on the democratic space of the political parties, particularly in terms of their congresses and conventions.

It is the law that where the Constitution has comprehensively provided for a situation or requirement, no person shall exercise any power to add to or remove from such requirements. This is the position of the Supreme Court in the popular case of *INEC v. Musa*<sup>65</sup> and such other authorities. It is our contention that the provision of Section 84(12) of the Electoral Act, 2022, in so far as it prescribes that a political appointee cannot be voted for during a primary of a political party, has been subjected to another qualification requirement which other citizens are not subjected to by the

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<sup>65</sup> [2003] 3 NWLR (Pt. 806) 72 @ 157 paras D - G.

Constitution and, hence, may also be in conflict with the qualification provisions of the Constitution as mentioned above.

The decision of the High Court which nullified the provision of Section 84(12) has been appealed by the National Assembly to the Court of Appeal, we hope to see the outcome as soon as possible.

#### *Right to challenge nomination in court*

It has always been a right of an aspirant who alleged that the procedure laid down by the party's constitution or the Electoral Act has not been followed to have *locus standi* to challenge such nomination process in court.<sup>66</sup> A stumbling block before such a person has always been the interpretation of such non-compliance as the provision of the law requires that a person that will challenge same must be an aspirant who participated in the primary election. An aspirant in this regard has always been interpreted to be a person who actually participated in the primary elections sought to be nullified. Cases like *PDP v. Sylva*<sup>67</sup> testifies to this.

Thus, where a person bought nomination form, campaigned for a primary election but was prevented from participating in the primary election by the powers-that-be within the party, such a person is not qualified under Section 87(9) of the 2010 Electoral Act to bring an action for redress. Now, the same provision has been made in Section 84(14) of the 2022 Electoral Act which enables such a person to approach the Federal High Court for redress. To avoid the definition of an aspirant having to be someone who actually participated in a primary election, Section 152 of the 2022 Act has not defined an aspirant to mean "a person who aspires or seeks or strives to contest an election to a political office." The implication is that a person shut out of a political contest during primary election but who actually purchased the nomination form of the party, is also an aspirant who can challenge the result of such primary. This is a positive development.

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<sup>66</sup> See Section 87(9) of the Electoral Act, 2010.

<sup>67</sup> (2016) LPELR-42559(SC).

### *Acceleration of Election Petition Determination*

The Electoral Act, 2022 has also in Section 137 made election petition determination easier by relieving the petitioner of the duty to call witnesses to adduce oral evidence in a situation where he alleges non-compliance with the provisions of the Act for the conduct of elections if originals or certified true copies of the documents to be relied upon manifestly disclose the non-compliance alleged. This is one of the stumbling blocks preventing easy establishment of allegation of rigging as the courts were prevented from looking at any document in respect of which a witness was not called to testify as regards the contents of the document. This is a plus for the Act as it has relieved the petitioner of a huge burden of having to call hundreds of witnesses for which there would not be enough time. Thus, the principle of dumping of electoral documents on the tribunal and the need to call witnesses to speak to such documents have been removed. Therefore, cases like *Jalingo vs Nyame*<sup>68</sup>, *INEC vs. Abubakar & Anor*<sup>69</sup>, *Alao v Akano*<sup>70</sup> etc. are no longer the law where the documents sought to be relied upon are certified copies and reflect the allegations complained of by the petitioner.

### *Penalty for Preventing Inspection of Electoral Documents*

The previous Electoral Acts provided for the right of a party to ask the tribunal to allow him inspect electoral materials used for the conduct of an election if the aim is to institute, maintain or defend an election. Unfortunately, officers of INEC, in collusion with the respondents, have always made such orders of the tribunal a useless piece of paper as they would frustrate the inspection process by not making the electoral materials needed for inspection available to the party who needed them.

This stumbling block is being sought to be removed by the Electoral Act, 2022 and this may assist in proving allegations of rigging etc. The

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<sup>68</sup> [1992] 3 NWLR (Pt.231) 538.

<sup>69</sup> [2009] 1 NWLR (Pt. 143) 259 at 294 paras E-F.

<sup>70</sup> (2005) 22 NSCQR (Pt 11) 867 at 884 Para E-F.

new Section 146(1) of the Electoral Act has provided for the right of a party to ask for such documents and failure of INEC officials to cooperate in the inspection of documents now attracts “sanctions, which shall include the committal by the Tribunal or Court of the Commission's official to whom the order is directed to summary conviction to imprisonment for at least two years, without an option of fine.” This is contained in Section 146(3) and (4).

It is hoped that the above provisions treated under this Part, if faithfully, implemented shall assist in proving election infractions and shall bring some sanity into the process.

#### PART VI: CONCLUSIONS AND RECOMMENDATIONS

It is natural for a paper of this nature to proffer solutions to the problems identified. It is in this wise that I shall attempt, in drawing conclusions, to proffer solutions to the problems identified above if Nigeria is going to join the rest of the world in genuine democratic evolution.

1. It is of utmost importance that security in the land must be guaranteed. A nation at war is not a convenient platform form for electoral activities. The government needs to step up its efforts at providing security in the country. States where boko haram is terrorising the citizens or bandits are extracting taxes from the populace cannot be said to be part of civilised humanity as to expect free and fair elections in such places. The same thing applies to States where secessionist is threatening the people. If Nigeria intends to survive and not fall off the precipice, it is urgent that we provide a solution to this security challenges.
2. There is need for an urgent and nationwide enlightenment programme towards educating the people with respect to their rights as to the fact that participating in an electoral process is a civic duty cast on the citizens. In some countries, failure to vote has been made a criminal offence. It may be needed to consider this in the context of Nigeria but making voting

attractive is certainly a better option.

3. There is also need to educate the masses on the purpose of election and the fact that selling of votes or voting for some primordial sentiments cannot guarantee good governance. The masses must be given proper orientation on the need to engage contestants as to how they intend to provide good governance and not purchasing votes from the masses. The Independent National Electoral Commission, National Orientation Agency (NOA), Voice of Nigeria (VON), the civil societies etc. have critical roles to play in this regard.
4. It is important to educate, via workshops specially organised for the purpose, our security men who have constituted themselves to menace during elections. They must be made to understand that their allegiance is to the Constitution and not to political office holders to whom they are attached.
5. Politicians must be educated and re-orientated. Politics should not be seen as a means to livelihood but a call to serve. It should not be regarded as a means of survival and political parties should ensure that any person who has no particular job, he is earning a living from is not allowed to fly their kite during elections. Such persons have rather become liabilities to the masses by going into public offices only to go and embezzle public funds.
6. It is important that the government does something urgently about an army of youth who are unemployed or unemployable and who are, therefore, available to politicians as political thugs through whom elections are rigged. The workshop manufacturing these miscreants is unemployment. It must be tacked directly. Our youth also need proper education that they are worse than politicians stealing public funds where they allow themselves to be used for the nefarious acts of rigging an election. They cannot complain thereafter that there is bad governance as they assisted in midwifing it.
7. Party politics and the need to belong to a political party before one can contest an election cannot guarantee sanity in the

political process. There will always be persons in the parties who will be striving to control the parties for their own personal and selfish ambitions. It is important that independent candidature is allowed. Our Constitution requires an amendment in this regard allowing independent candidates to participate in the political process. People will have the freedom to look at individual potentials, readiness to serve and qualifications in determining whom to vote for. A situation where political parties foist nincompoops and imbeciles on the masses as the only available options requires urgent reappraisal.

8. It also important that duty of proving election infractions should not be on the petitioner alone. Where there are allegations of infractions, INEC and the beneficiary of the alleged infraction should be made to account for their roles. The provision of Section 135(1) of the Electoral Act, 2022 which provides that

“An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election”

should be given purposive interpretation by casting the duty of proving that the non-compliance alleged did not substantially affect the result of the election.

9. The judiciary has a huge role to play in this regard. It must be ready to sanitise the system. It must be ready to live up to its constitutional mandate as the last hope of the common man if Nigeria will not disintegrate. It must be ready to rein in the greed of politicians and their absolute lack of morals when it comes to good governance.

There is no better way to conclude than in the words of Prof Attahiru Jega<sup>71</sup>, “no doubt, one can say that good leadership recruitment has been the missing anchor in our national

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<sup>71</sup> Infra, footnote 3.

development; we must look for it and find it, as soon as possible, before 2023 elections, before it is too late, before the reckless disposition of the band of bad people who dominate and control our political and governance processes runs the country totally aground, beyond redemption or salvation. It is not too late now to do so; we must pick up the gauntlet, as we are truly running out of time. We must contribute to the development of a criteria to be used to mobilize citizens for good leadership recruitment for the 2023 general elections and beyond. This is a task that must be done”

THANK YOU.