

DEMOCRACY, ELECTIONS AND THE
ELECTORAL SYSTEM IN NIGERIA

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1. Introduction:

The title of this paper reflects the fact that an electoral system or an Electoral Law is a means to an end, i.e., valid elections, leading to the legitimacy of the outcome of the process. Elections themselves are also a means to an end, and that end is democratic governance and a democratic society. There can be no democracy without free, fair and valid elections, but such elections merely open the door into a democratic culture and society. Let me briefly explain the meaning and relevance of these concepts.

2. Democracy

i. Meaning.

The popular definition of Democracy as “Government of the People by the People for the People”, which is ascribed to Abraham Lincoln, has become a mere slogan devoid of any scientific or measurable factors. More precise and scientific definitions can be proffered. Democracy is based on two key principles.

- a) “Popular control over collective decision making and decision makers”, and
- b) an equal right to share in such control, i.e., political equality¹. Here the key words are ‘popular control’ ‘collective decision making and decision makers’. Another definition by John Planneta, which provides measurable ingredients, goes as follows: “government by persons freely chosen by and responsible to the governed”. What this means is that if a government is not freely chosen by the

¹ See D. Beetham, Key Principles and Indices for a Democratic Audit (London, Sage, 1994)

governed or it is not responsible to the governed, it is not a democratic government.

Although these definitions appear to cover the essence of true democracy, other major attributes must be present for democracy to exist. These include

- i. The Rule of Law (in contradistinction to the Rule of Man)
- ii. The Independence of the Judiciary
- iii. Separation of Powers
- iv. Observance and enforcement of human rights
- v. Constitutionalism, i.e., governance that is subjected to the Constitution.

ii. The Scope of Democracy

Democracy is a complex and comprehensive phenomenon. There are numerous components, which go to make a democratic society. Indeed elections constitute a single one out of numerous factors. Elections constitute the threshold of a democratic society – the doorway into democracy. But beyond this door, are numerous chambers, which collectively, go to constitute what we call democracy. Elections are procedural democracy. It is infact after elections that substantive democracy commences. Some of these democratic components or chambers include:

- “i. Open and accountable government.
- ii. Socio-political freedom that enables citizens to associate freely with others and to express divergent or unpopular views.
- iii. Existence of and active participation in political activities of independent and accountable institutions of civil society.

- iv. Government consultative processes and procedures: (are public opinion and relevant interest systematically and openly consulted and respected prior to policy formulation and legislation?)
- v. Accessibility by the public to information about government actions and effects of government policies.
- vi. Legislative supervision of the executive and effective scrutiny of executive spending.
- vii. Accessibility of constituents of their representatives: (are the views of such constituents well articulated by their representatives?)
- viii. Incorruptible judiciary.
- ix. Access to courts and to justice (can redress be obtained against government maladministration?)
- x. Respect for human rights in the polity.
- xi. Control of state security and other government agents against abuse of power and other transgressions.
- xii. National consciousness and a common national goal that cuts across religious and ethnic boundaries?)
- xiii. Popular confidence in the political system and institutions: (is there confidence in the ability of government to solve the main problems confronting society?)
- xiv. Unrestricted right to form political parties and the right to contest elections even as independent candidates.
- xv. Freedom of the press.

These and many more components constitute the measuring rod of a truly democratic society: and the quantity and quality of their presence in the Nigerian polity should determine the degree and level of existence of true democracy in our society.”

3. **Elections**

Genuine, free and fair elections constitute the threshold or doorway into a democratic stable and progressive society. Without free and fair elections, there can be no democracy.

Elections are part and parcel of the democratic process, and as the right to democratic governance has become established as a human right, so too has the right to regular, free and fair elections. Thus by resolution 45/50 of 1991, entitled "Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections" the U.N. General Assembly stressed the conviction of members states that:

"periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed and that as a matter of practical experience, the right of everyone to take part in the government of his or her own country is a crucial factor in the effective enforcement by all in a wide range of other human rights and fundamental freedoms, embracing political, economic, social and cultural rights."

These principles were re-iterated by the Assembly at its 48th session (1993-4) during which it declared that "periodic and genuine elections" are "necessary and indispensable elements and a crucial factor in the effective enforcement of a wide range of rights". The resolution established a procedure for authorizing the monitoring of national elections in states all over the world and endorsed, the Secretary-General's¹ decision to create an office for the purpose of monitoring elections in member states.

The system of election monitoring and observation by independent and indeed outside based organizations and persons has become so wide spread, that virtually all developing states conducting elections now invite such bodies to monitor their elections, with the clear implication that only an election endorsed

by such internationally respected observers, can grant validity to the outcome and by clear inference confer legitimacy on the government emerging from that election process. The results of elections, fully endorsed by respected international monitoring groups and observers, now serve as evidence of popular sovereignty and have become the basis for international endorsement of the elected government. The invitation of international election monitors and observers therefore is no longer an act of courtesy, or a mere demonstration of the integrity of the electoral process, but an application for the recognition of the legitimacy of the government emerging from that process.

In inviting international observers and monitors to the 1999 and 2003 elections, Nigeria was observing a mandatory requirement for the conferment of validity to its transition to civil rule and democracy programme. In the world of today, human rights, self-determination of peoples and the rights to democracy, are no longer matters essentially within the domestic jurisdiction of states, but matters of legal interest and rights of the international community.

This is why the reports of the various international observers and monitoring groups, including that of the locally established, Transition Monitoring Group, have a fundamental impact on the validity of elections. Therefore the ambivalent stance of Professor Maurice Iwu, Chairman of the Independent Electoral Commission on the invitation of international election monitors and observers, to the 2007 elections is not acceptable or tolerable.

4. The History of Elections in Post Independence Nigeria

i. First Republic

In the first Republic, the Ruling NPC (Northern Peoples Party) and the NNDP (Nigerian National Democratic Party) of Chief S.L. Akintola formed an alliance called Nigerian National Alliance, whilst the rump of the NCNC (National Council of Nigerian Citizens) now essentially restricted to the Eastern Region, with a sprinkling of support in the Midwest Region, formed an alliance with what was left of the Action Group Party, after Chief

Akintola left it with his government. This Alliance was called the United Progressive Group Alliance. Thus the battle was joined for the December 1964 Federal Elections.

“The strategy was simple. Prevent the candidates of the UPGA from filing their nomination papers, and NNA candidates would be returned unopposed. It was a simple scheme and it was successfully implemented. In the North alone, 78 NPC candidates out of a total 167 constituencies were unopposed. The tactic was repeated in the West, although the proportion of un-opposed NNDP candidates was smaller, only 15 out of about 94 seats. The UPGA boycotted the election and the country was precipitated into a crisis that nearly ended in violence and country-wide anarchy.

An unsatisfactory compromise was agreed to under which the elections were to be repeated in the East alone and a broad-based Federal Government was to be formed. The NCNC was invited to join this broad-based government and the storm was averted for a short while. Everyone was waiting for vindication in the October 1965 Western elections. The Action Group to whom the NCNC rump in the West was allied was certain of winning the election – such was its overwhelming popularity. The NNDP was determined to hang on in government, regardless of the votes cast. As was widely reported in those days one of the leaders of the NNDP felt confident enough to tell the people of the West, “whether you vote for us or not, we will remain in power.”

The election came. This time it was impossible to use the “nominated unopposed” tactics. Instead, in total disregard of the election results announced and certified at counting centers in constituencies, the Western Region Radio Station broadcast a pre-arranged list as the official result. Victorious candidates with certified result slips literally still warm in their hands, heard fictitious results being announced on the radio,

declaring opponents who in fact lost their deposits, as the winners. At the end, the NNDP awarded itself 73 seats, and gave the Action Group and NCNC 15 and 4 seats, respectively. This was the final straw. Hell broke loose. The long suffering people of the West decided to take matters into their own hands and literally brought the curtain down on the First Republic.

ii. Second Republic

“One major cause of the collapse of the Second Republic was the effort of the NPN to move from being merely the ruling party whose strength exceeded that of other parties, to one which enjoyed a monopoly of power within the political system. The NPN wanted to bring about a situation it had frequently and openly boasted as already existing namely, that there were only two political parties in Nigeria, the NPN and the Military. To this end it schemed to take over critical States under the political control of the other parties. Four states were of strategic importance in this scheme. These were, Oyo, Anambra, Bendel and Kano States.

In other words, the NPN was determined “to pry away from the opposition, the heart of their political bases.” Although there was nothing illegitimate in this ambition, the NPN knew that it would be impossible to achieve it by fair means, so they set out to achieve it by foul means. To achieve this purpose, they decided to tamper with the voter registration and the voting process. Thus the voter registration of areas sympathetic to the NPN was grossly inflated in order to prepare for “landslide” results. Modakeke, a suburb of Ile-Ife in the Oyo State, enjoyed a phenomenal increase in voter registration from about 26,000 to over 250,000. The Federal Electoral Commission (FEDECO) which was itself a willing recruit to the planned electoral fraud, saw nothing wrong with this new figure, which was even higher than the actual population of Modakeke. This farce was replicated throughout the country.

Election results in the 1983 elections were manipulated and false and inflated figures, all favouring the NPN, were announced by FEDECO which decreed, with threats of dire consequences, against any one in breach of its Order, that no other organization, be it newspapers, radio, television stations or political parties, should publish any election result, other than those released by it. At the national level, FEDECO's manipulation of voter registration was further revealed when it announced that the number of registered voters in Nigeria had increased from 48,499,097 to 65,304,818. Considering that the earlier figure of 48 million (1979) was already grossly inflated, it was clear that the farcical 1983 figure of 65 million was intended to be used for rigging the subsequent elections. And that is precisely what happened. The 'landslide' victory of the NPN predictably led to the end of the second Republic.

iii. Fourth Republic

The electoral process of the 3rd Republic ended in the fiasco of the annulment of the June 12 Presidential Election by Babangida's Military Government. As for the present Republic, i.e. the fourth Republic, the 2003 elections has remained the sort of stuff that legends are made of. I shall simply summarize what happened in the words of Justice Nsofor of the Court of Appeal as stated in his judgment at the Tribunal for the Presidential Elections.

"In Adamawa State, on the facts as admitted, there were massive rigging, irregularities and malpractice perpetrated by the 1st respondent's party, functionaries and their agents in collusion and active support of security agents and some staff. It was further a fact as admitted that the 2nd respondent issued instructions to stop agents of the petitioners from entering Jada, Ganye and Tongo Local Government Area on the election eve.

Evidence is galore which I accepted that the 1st respondent as Commander-In-Chief of the Armed Forces of Nigeria called out the military and the mobile policemen armed, to almost every Local Government Area in Akwa Ibom (See DW4). In Benue, see dw72 Colonel Emmanuel Clement Samuel Ifon), and in Enugu State, Ebonyi, indeed in each of the States above enumerated. And there was no state of war in any of those States, no emergency declared therein. On the other hand there was peace and calm and tranquility.

And I ask this: Had the 1st respondent the constitutional authority so to do where there was peace and calm during the election? See section 217 and 218 of Constitution, 1999. Based on the evidence on both sides, I am satisfied that the 1st respondent had no such constitutional authority so to do. The deployment of the military and police was therefore unconstitutional.

There was evidence overwhelmingly that the soldiers illegally deployed before the presidential election in the States shot and killed several innocent Nigerians e.g. in Bayelsa State, Akwa Ibom; injured so many in Igbo-Eze North Local Government Area of Enugu. Not one single arrest was made. No police investigation. Why?

The principle applicable is: *Qui peccat per alium peccat per se.*

I am satisfied based on the evidence from these States that the Soldiers and Police were called in a crisis-free, peaceful and calm State of Nigeria before the 19/04/2003 presidential election to intimidate and harass the electorate.”

The learned Justice of the Court of Appeal thereafter went on to nullify the election on the ground of intimidation and vote rigging. Of course as it was a minority judgment, it had no effect on the validity of the elections.

(See [2005] 19 WRN 1 at pages 298 – 299)

5. Electoral Act 2006.

Not much was expected from the 2006 Electoral Act and indeed it could not tackle all the problems that have been brought out by our past elections. For example, on the question of independence of INEC, the Chairman and Resident electoral Commissioners are still to be nominated (in the case of the Chairman) and appointed (in the case of the Electoral Commissioners) by the President. So the issue of independence remains unsolved, because it is an issue involving the amendment of the Constitution.

The new Act also does not establish an independent funding for INEC. It had been hoped that funds would go to it directly from the consolidated revenue fund instead of going through the President. This has not happened.

Again, the new Act does not provide a time limitation for election petitions in order to eliminate the absurdity of an election tribunal judgment being given 3 years after the election, as happened in Anambra.

Rather disappointingly, the new Act does not institute independent candidacy. You therefore have to be sponsored by a political party before you can contest an election. This therefore deprives the Nigerian electoral system of a phenomenon which enables immensely popular candidates to emerge on their own recognition, and usually in support of special causes.

However, there are some positive changes in the Act. In the first place, limitation has been placed on election expenditure, in Section 93 with a

sanction of imprisonment or fine or both for expenditure in excess of the limits. The limits depend on the position being contested for as follows:

- | | | | |
|------|------------------------------------|---|-----------------|
| i) | Presidential candidate | - | N500 million |
| ii) | Government candidate | - | N100 million |
| iii) | Senator candidate | - | N20,000 million |
| iv) | House of Representative candidate- | | N10 million |
| v) | House of Assembly candidate | - | N5 million |
| vi) | Chairman of Council candidate | - | N5 million |
| vii) | Councillorship candidate | - | N500,000. |

This provision tries to create a level playing field by reducing the advantages enjoyed by money bags. The only problem is that proof of over-spending may be difficult.

The Act has also prescribed some punishment for a breach of the spending limits. Any candidate who knowingly exceeds the spending limits commits an offence punishable as follows:

- i. Presidential Candidate – a fine of N1 million or 12 months imprisonment or both.
- ii. Governorship Candidate – a fine of N800,000.00 or 9 months imprisonment or both.
- iii. Senatorial Candidate – a fine of N600,000.00 or 6 months imprisonment or both.
- iv. House of Representative Candidate – a fine of N500,000.00 or 5 months imprisonment or both.
- v. House of Assembly Candidate – a fine of N300,000.00 or 3 months imprisonment or both.
- vi. Chairman of Council Candidate – a fine of N300,000.00 or 3 months imprisonment or both.

vii. Councillorship Candidate – a fine of N100,000.00 or 1 month imprisonment or both.

(See Section 93(10))

This is a welcome provision, which will act as a deterrent against corruptly turning the elections into a competition between the wealthy in a country where wealth is usually acquired illegitimately. Section 93(10) also provides that no donation towards an election by any individual or entity shall exceed N1 million.

Secondly by section 54, where the votes of a candidate exceed the number of registered voters, the election is cancelled and has to be repeated.

Another innovation is the mandatory Oaths in Section 29 which electoral and presiding officers now have to take, not to accept bribes or any type of gratification from anybody and not to be influenced, but to discharge their duties impartially. Can anyone guarantee that they will respect their Oaths?

By Section 32, the list of candidates must be submitted at least 120 day before the general elections. The advantage of this provision is that it eliminates the possibility of what happened in Anambra State in the 2003 elections, when new names were substituted for the original list of candidates after the elections had been conducted and results declared.

The system of open secret ballot is retained under Section 53. This enables the voter to indicate the candidate and party of his choice in privacy whilst openly dropping his ballot paper into the ballot box in full view of the public.

The Act also stipulates in Section 78 (3) that any political association that meets the conditions laid down by the Constitution and the Electoral Act be registered within 30 days. This provision attempts to implement the decision of the Supreme Court in a case brought by a National Conscience Party and others in

2003 against the refusal of the INEC to register new associations, which had complied with the provisions of the Constitution.

The provisions for disqualification of candidates for election as stipulated in Section 110 (1)(C) would appear to have created a fresh and unacceptable obstacle to eligibility of otherwise upright citizens. After the usual disqualification of a person who has been sentenced to imprisonment or fine for an offence involving dishonesty or fraud, it then goes on also to disqualify a person sentenced to imprisonment or fine for **any other offence** imposed on him by Court or Tribunal. This means that a person convicted for unlawful assembly under the Public Order Act or for protesting against unpopular government policy, for example, increases in petroleum products prices, will be disqualified from contesting an election even though his offence, if any, is of a political nature and does not involve fraud, murder or any other act involving dangerous bodily injury. This provision must be expunged if our right to participate in government and politics is not to be taken away.

As will be stated later, no matter how excellent an electoral law is, if those who operate it are not upright people, if they lack integrity and commitment to justice and fair play, if they are not highly principled people, the process will still fail. That is why Nigerian politics and government has been such a dismal failure since the first Republic.

6. **Prospects of 2007 and Beyond**

There is a lot of apprehension in the polity about the 2007 elections and the civilian to civilian transition process. Will desperate politicians finally bring disintegration on our heads because of the current obsession for power and the control of national resources? Let us hope that reason and sanity will prevail and we shall pull back from the brink.

We must imbibe a culture of regarding political power as the property of the voting masses, who are freely entitled to grant it to chosen political parties and

persons from time to time. Let it not be forgotten that Section 14(2) of the Constitution proclaims that sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority. We must not manipulate the process or steal the peoples' vote. If we lose in a fair process, let us accept it and congratulate the victor, whilst fine-tuning our programme towards the next election. We must imbibe the culture that winning elections or winning power is not a do or die affair.

The greatest missing factor in our electoral and democratic process is the total lack of integrity, both in the players and in the process. Politicians join parties in order to look for offices which will enable them gorge themselves full of our resources and amass untold wealth. There is no motivation to serve society, win honour and respect and leave a legacy for posterity.

We are thus engaged in a long and painful process towards political and social maturity and integrity. I certainly support the intervention of the EFCC and the ICPC in eliminating corrupt politicians from contesting elections and in the monitoring of politicians in order to check corruption and promote transparency. I would propose that clear evidence of a good source of livelihood should be one of the conditions to be met by aspiring politicians and candidates.

Another suggested temporary innovation is to institute a system in which some political positions offices and power is shared with the opposition. This could involve a few ministries and some parastatals and state agencies. This will eliminate or reduce the "winner take all" syndrome which generates so much desperation amongst politicians.

7. True Federalism

One major cause of tension in Nigerian politics, is the fierce struggle for power at the Center because of the enormous powers and resources under the control of the President. All our minerals resources, customs revenue, ports revenues,

VAT, etc., are under the control of the Federal Government. This equally applies to political power. The Armed Forces, Police, Security Agencies, Banks, currency, electrical power, industrial relations, telecommunications, broadcasting, etc, are exclusively in Federal hands.

This creates a mad rush for Federal Power. We can and must douse the tension thus created by transferring power and resources from the Center to the Federating Units, be it States or Zones.

The right of a State to own and control its natural resources must be accepted. States should own their mineral resources, collect their VAT, run their ports and pay a tax to the Centre. States should be able to run their independent Police Forces, conduct State censuses for their own developmental programmes, generate their own electricity, control their own labour and industrial relations and enjoy a large dose of autonomy. This will draw attention from the Federal Government and the tension will be considerably reduced. It is the total absence of such provisions from the so-called 151 amendments to the Constitution, that made the Nigerian polity welcome the dumping of the remaining 150 hollow amendments along with the tenure elongation provision.

I am certain that if the South South States were in full control of their oil and gas resources, they would not be so determined to have a go at the Presidency. It is the idea of absentee Landlords controlling their resources and carting away all the dollars whilst leaving the pollution and environmental degradation behind, that the South South finds intolerable and unacceptable.

Thus we need to reach a national consensus on all these outstanding matters in order to be able to organize free and fair elections and commence the process of transition into a truly stable and democratic society.