

**ELECTION TRIBUNALS AND THE**  
**SURVIVAL OF NIGERIAN**  
**DEMOCRACY**

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# **ELECTION TRIBUNALS AND THE SURVIVAL OF NIGERIAN DEMOCRACY**

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## **1. Introduction:**

Elections are 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 equality<sup>1</sup>. 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

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

this means is that if a government is not freely chosen by the 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:

1. Transparency and Accountability in governance.
2. Freedom of thought, expression and Association.
3. Existence of Independent and Accountable Institutions of Civil Society.
4. Existence of Independent of Election Institutions.
5. Existence of an Independent Judiciary.
6. Access to Courts and to Justice, even against Government.
7. Freedom of Information.
8. Existence of effective oversight by the Legislature over Executive activities.
9. Accessibility of Constituents to Elected Representatives.
10. Respect for Human Rights.

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, as I stated earlier 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's' 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 the endorsement of an election by such internationally respected observers, can grant validity to the outcome of such a process 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, 2003 and 2007 elections, Nigeria was observing a mandatory requirement for the conferment of validity to its transition to civil rule and democracy programmes. 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 hostile stance of Professor Maurice Iwu, Chairman of the Independent Electoral Commission to the international election monitors and observers, to the 2007 elections is neither acceptable nor tolerable.

#### **4. Election Tribunals**

Provision is made for election tribunals in Section 239 and 285 of the 1999 Constitution, and Section 140 of the Electoral Act, 2006. Section

239 governs petitions in respect of the Presidential Elections. It constitutes the Court of Appeal as the court of original jurisdiction, with appeals going to the Supreme Court. With regard to the National Assembly and Governorship/State Houses of Assembly election petitions, the relevant provisions are contained in Section 285 of the Constitution which provides for two types of Tribunals, namely, The National Assembly Election Tribunal and the Governorship and Legislative Houses Election Tribunal. The Presidential Election Tribunal has the power to determine whether

- (a) any person has been validly elected to the office of President or Vice President under the Constitution; or
- (b) the term of office of the President or Vice-President has ceased;  
or
- (c) the office of President or Vice-President has become vacant.”

The National Assembly Election Tribunals have similar powers, plus the express addition of the power to determine the question whether a question or petition has been properly brought before the Tribunal. This extra provision seems superfluous because there is an implied power in all Courts and Tribunals to determine whether they have the jurisdiction to try a matter or whether the matter is properly brought before them.

The Governorship and Legislative Houses Election Tribunals have original jurisdiction to hear or determine, whether any person has

been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house. These Tribunals are only expressly empowered to determine whether a person has been validly elected to the office of Governor or member of a House of Assembly. The issues of term of office and whether a seat has become vacant, are not included. Whether this is deliberate or simply an inadvertent omission, is not clear.

The Court of Appeal constitutes the Appeals Tribunal of the National Assembly Election Tribunals and the Governorship and the Legislative Houses Election Tribunals.

## **5. The Troubled History of Elections in Post Independence Nigeria**

### **i. First Republic**

In the first Republic, the Ruling NPC (Northern Peoples Congress) 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 (UPGA). Thus the battle was joined for the December 1964 Federal Elections.

The strategy of the NNA 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: 1979 - 1983

“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 3<sup>rd</sup> 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 and 2007 elections have remained the sort of stuff that legends are made of. I shall simply summarize what happened in 2003, in the words of Justice Nsofor of the Court of Appeal as stated in his judgment at the Tribunal for the Presidential Elections. (Buhari v. Obasanjo [2005] 19 WRN 1, at 298-299)

“In Adamawa State, on the facts as admitted, there were massive rigging, irregularities and malpractice perpetrated by the 1<sup>st</sup> 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 2<sup>nd</sup> 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 1<sup>st</sup> 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 Mfon), 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.

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*. [He who does a thing through another does it himself]

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.”

(See [2005] 19 WRN, 1 at pp. 298-9)

With regard to the 2007 elections, it combined all elements of election fraud and rigging to achieve an unprecedented level of misconduct in elections in the chequered election history of Nigeria.

1. Strong contestants from parties other than the PDP, were eliminated by illegal disqualification.
2. Election materials, like ballot papers and result sheets did not arrive at polling units at all or did so when voting was over or about to end.
3. Where election materials were available, they were hijacked by armed PDP thugs and officials who carted away ballot boxes, and returned them later to collation centres, stuffed with thumb imprinted ballot papers.
4. Where this did not achieve the required level of pre-determined votes, INEC cooperated with the PDP to allocate votes to the parties on result sheets.
5. In some cases the INEC headquarters at Abuja, announced results on State elections in favour of the PDP, when the votes were still being collated and counted.

All the Reports of Observers and Monitors, International and Local, came to the same conclusion namely, that the so called elections were a charade, marked by outright vote rigging, ballot box snatching, fraudulent allocation of votes and criminal thumb imprinting of illegally acquired ballot papers.

According to the European Union Election Observation Mission:

“The 2007 State and Federal elections have fallen far short of basic international and regional standards for democratic elections. They were marred by poor organization, lack of essential transparency, widespread procedural irregularities, significant evidence of fraud, particularly during the result collation process, voter disenfranchisement at different stages of the process, lack of equal conditions for contestants and numerous incidents of violence. As a result, the elections have not lived up to the hopes and expectations of the Nigerian people and the process cannot be considered to have been credible. This is all the more regrettable since they were held in an improved atmosphere in which freedom of expression and assembly were broadly respected during campaigning, the judiciary played a generally positive and independent role and the people showed remarkable commitment to democracy, eagerly engaging in the electoral process and waiting patiently to vote in often very difficult circumstances.” (Statement of preliminary findings, 23-4-07)

## 6. **Role of Election Tribunals**

The question may now be asked, what role could election tribunals have on the survival of democracy in Nigeria? Election tribunals are special Courts of Law for trying election cases. It is indeed sui generis, i.e. constituting a class of its own, in the sense that it must not be held down by the technicalities and procedures of an ordinary case. Speed is of the essence and justice must not be sacrificed on the alter of technicalities.

At the end of the day, the most important question or issue in the complex mixture of law, politics and psychology involved in this matter, is the credibility of our judicial institutions and their determination to do justice.

Luckily, for us, in 2006 -2007, in a series of pre-election cases, our appellate judicial institutions established their determination to uphold the rule of law, democracy, constitutionalism and human rights. They demonstrated a determination to do justice, firmly believing that the heavens will not fall. As Oguntade, JSC, revealed subsequently in his reasons for his judgment in Rotimi Amaechi v. INEC, Omehia and PDP. (S.C. 252/2007)

“Am I now to say that although Amaechi has won his case, he should go home empty-handed because elections had been conducted into the office? That is not the way of the court. A court must shy away from submitting itself to the constraining bind of technicalities. I must do justice even if the heavens fall. The truth of course is that when justice has been done, the heavens stay in place. It is futile to merely declare that it was Amaechi and not Omehia that was the candidate of the P.D.P. What benefit will such a

declaration confer on Amaechi? Now in PACKER V. PACKER 1958 p. 15 at 22, Denning M.R. in emphasizing that there ought not to be hindrances or constraints in the way of dispensing justice had this to say:

“What is the argument on the other side? Only this, that no case has been found in which it had been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before we shall never get anywhere. The law will stand still whilst the rest of the world goes on and that will be bad for both.”

With the series of cases now known in constitutional history as the Atiku cases, plus others like Adeleke v. Oyo State [2006] 52 WRN 173, Peter Obi v. INEC [2007] 11 NWLR (Pt. 1046) 565; Ugwu v. Ararume [2007] 31 WRN 1, it became clear that the Appellate Courts were determined to take the unruly Nigerian Political bull by the horns, and take over the abandoned driving seat of democracy.

This won the judiciary, the confidence of the populace and when the crisis brought about by the ferocious and diabolical rigging of the 2007 elections came, the cheated Nigerian electorate and the opposition candidates whose mandates were brazenly stolen, decided to demonstrate their confidence in the Judiciary, by petitioning the Election Tribunals. This is the critical distinction between Nigeria of the Fourth Republic and Nigeria of the 1<sup>st</sup> and 2<sup>nd</sup> Republics. This is also the difference between Nigeria and Kenya, in which the opposition politicians, have no confidence in the Kenyan Election Tribunals,

packed with the collaborators and co-travellers of the Mwai Kibaki Executive and the, Kenya African National Union (KANU)

What the current Nigerian situation establishes is that an independent Judiciary, determined to achieve justice is, a sine qua non of democracy.

The confidence reposed by Nigerians in the Judiciary has paid off, with the present harvest of nullifications of fraudulent or illegal results, in Adamawa, Kogi, Kebbi, Anambra, and Rivers States.

When the history of the sustenance of democracy in Nigeria in the first decades of 2000 will come to be written, the Nigerian Judiciary will be given a front seat for their rescue of the Nation from disintegration. Never in the history of Africa, has the Judicial arm of government played such a positive, courageous and leading role in the sustenance of democracy and the rule of law. The Judiciary has definitely embarked on another golden age, with tremendous results for our democracy.