

Democratization, Litigations and Criminalization of Elections in Nigeria

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Abstract: The study examines criminalization of elections in Nigeria with the prism lens focused respectively on the 2019 gubernatorial elections in Nigeria. The intention is to further advance the ongoing discourse on how criminality in elections has eroded core democratic values in the country. The source(s) of the data for this discourse are mostly derived from critical stakeholders including the Independent National Electoral Commission (INEC), political parties, aspirants or candidates, voters, election monitors and observers, and various scholarly contributions obtained from the internet. The research concluded with ways to address election criminality in Nigeria.

Keywords: Democratization, Litigations, Criminalization and Elections.

INTRODUCTION

The end of the Cold War heralded the beginning of an era marked by far-reaching political changes across the African sub-continent. The year 1990 was a harbinger for a continental 'wave of democracy' which gained incessant momentum throughout the course of the decade. The democratic 'winds of change' which swept through the continent during this political renaissance period represented a second major leap for governance and development in Africa since the struggle for independence. This period represented Africa's 'Second Revolution', which included Malawi, Tanzania, Kenya, Zambia, South Africa, Ghana and Benin, which followed the first democratic transition phase in the 1980s embraced by Zimbabwe, Gambia and Botswana, Mauritius and Senegal. Although the democratic changes which spread across the sub-continent in the 1990s did not represent absolute transformation in all states, the range of successful transitions to democracy bear exemplary significance for countries which remained under the oppressive rule well into the millennium. After two decades in which the process of democratization began in Africa, how far has the continent progressed in terms of promoting substantive democracy and democratic governance?

However, the democratic transition that started in Africa over two decades ago have produced varying results, with some states gradually progressing towards substantive democratic governance, While several states continue to grapple with meaningful structural changes towards substantive democratic governance, which reflect the potential for more African states to

progress further from the minimalist end of the spectrum. Moreover, the recent mass-protests in Tunisia and Egypt, as well as planned action in Algeria have also revealed the proclivity for Africa's citizenry to push for fundamental changes in government to allow for more decisive structural changes in the democratic governance of their states. Furthermore, Gabon and Cote d'Ivoire continue to represent the penchant for age-old authoritarian leaders to cling to archaic form of pseudo-democracy. More importantly, most if not all of African countries including Nigeria's elections are marred with serious criminal activities.

Elections are means of changing governments in democratic societies all over the globe. Once criminal elements take over the process and occupy government, the society is bound to face legitimacy crises and bad governance. In Nigeria, criminalization of elections has gruesomely degenerated the core values of democracy in the body polity and public life of the country. The situation is worrisome as expressed in different fora by the Independent National Electoral Commission (INEC), the National Assembly, the Judiciary and other critical stake holders of elections in the country especially, how it is threatening the hard-earned democracy, the way it has almost rendered good governance impotent in the past twelve years of democratic governance in the country. The query has been the entry of criminals into the political system/government at the local, state and national levels. This does not just degenerate democratic values but impede the delivery of democratic dividends to the electorates in the country. The reality about criminalization of elections (i.e. before, during and after the election process) across the various strata of the Nigerian society are facades of political and economic corruption occasioned by political god-father's crisis, imposition of candidates on the electorates, vote

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buying, murders, undercutting, pulling down syndrome, unending court cases and judicial pronouncements among others.

Criminalization of elections in Nigeria is really a disturbing development for the successful operation of democratic governance in the country. In particular, for the States in the Niger Delta (Rivers and Bayelsa), the entering of criminal elements into the politics of the region is quite alarming. Political actors or god-fathers use them in various ways to win elections including hijacking, kidnapping, murdering political opponents, ballot box snatching, political thuggery, collaborating with security agents, among others. More than that, they are imposed on the electorates, which eventually become rulers over them. All these affects the outcome of elections and in turn good governance generally in the country.

The picture painted above informed this paper to further demystify criminalization of elections in Rivers and Bayelsa States in the South-South region of Nigeria.

What is Criminalization of Elections?

It means the direct entry of criminals into the political system of a country through the avenues of political parties and participation in elections, the use of methods and tact to influence the political process and procedures in a society. In addition, the use of persons facing criminal charges to getting elected as governors, members of the national and state Houses of Assembly. Such political gladiators in Nigeria are thriving today on the basis of the cruel power provided by the criminals. The electorate who are mostly the common people that constitutes the majority, for fear of brutality, are in most cases reluctant to participate in the electoral process. Furthermore, they do not have the measures to curtail their activities and protect their lives.

Criminalization of elections also connotes the use of the national police and other security agencies to perpetrate heinous crime against the electorates by the criminals in the ruling party before, during and after elections in Nigeria. This synergy once stemmed between the criminal elements and the political class, growth and development of the country or state is truncated.

Criminalization of politics derives its roots from the defects of political systems. One particular account

Nigeria is that those that are constitutionally assigned to enforce the laws guiding conduct of elections are also collaborators with the criminal elements in power to flout the laws and only go after those that are against their masters. In the national/gubernatorial elections of Rivers State, the Nigeria Police and the Army were accused of aiding and abating the All Progressive Congress (APC) to win the elections in the State controlled by the Peoples Democratic Party (PDP), and in the process many electorates and INEC officials lost their lives.

BASIS FOR LITIGATIONS IN THE ELECTORAL PROCESS OF NIGERIA

The return to democratic government in Nigeria is one that has passed through a bumpy path, and this is largely attributed to the long stay of the military in government. Hence, against expectations, the formation and organization of political party activities since May 1999 have been organized along a strict authoritarian style. For instance, despite the wider support the Peoples Democratic Party (PDP) enjoyed upon its formation, the party began to run its activities with utmost disregard for the rule of law. Apart from this problem, the internal party resolution mechanism equally proved to be unable to address the core grievances of party members.

Hence, the unwholesome activities of the PDP laid the foundation for aggrieved politicians to seeking alternative means of seeking redress. Though, many of these aspirants lost their cases at the judiciary due to the seemingly political interferences of the executives, the unending quest of seeking redress persisted. In most cases, the springing up of the other political parties equally provided aggrieved aspirants an alternative platform to actualize their political agendas. However, many of the newly formed political parties who resonated either from coalitions or genuine concerns of citizens equally exhibited similar patterns. This has either led to internal party mechanism or the resort to judicial intervention. Hence, some of the problems that have led to increased judicial litigation in election matters are discussed below;

One of the greatest problems of party politics which has led to election litigation is the unending challenge of substitution of candidates. Across political parties in the country, a central observation that have been noted overtime is that many of these parties involve in the illegal substitution of candidates either at the party level or at the point of presenting their candidates to the

Electoral Management Body. Specifically, the PDP and the All Progressive Congress (APC) have been deeply involved in these illegal substitutions of candidates, and this has caused them severe loss at the Election Tribunal.

Second, is the inability to conduct party primaries along set down procedures, and acceptable standards. While, party primaries are expected to be the avenue where candidates are expected to sell their manifesto to the party members, party primaries have been organized in haphazard manners including with the use of violence and voters inducement. The ugly situation has left to the rigging out of popular or preferred candidates. In most cases, the primaries are hijacked by the party elites, and this has often times led to parallel primaries which eventually lead to election litigation. Even with the introduction of the Electoral Act of 2006, many of these parties and especially the APC have violated these rules, leading to the loss of Zamfara, Imo and Rivers states.

Third, is the absence of internal democracy in many political parties in Nigeria. Despite the perceived claims to being democratic, a majority of the political parties have remained largely undemocratic and leading to implosion of party structure. Many of these parties have over time adopted anti-democratic practices ranging from political intimidation, expulsion, suspension and including placing of embargo on candidates. Aggrieved candidates or members have equally resisted these anti-democratic practices either at the internal party resolution mechanism or the judiciary.

Fourth, election rigging and falsification of results either against a candidate or the party remains another reason why election litigation has remained on the increase. Election rigging has remained a recurrent pattern among many of the political parties in Nigeria. Hence, aggrieved candidates have most time approached the judiciary to seek redress. Consequently, many elections have been up-turned both at the Election Petition Tribunal and including the Supreme Court.

Fifth, the problem of institutional lapses from the Election Management Body (EMB) has often time led to contested election results. Recent experiences have suggested that in spite of the institutions professed claims to adopting a series of reforms, the Independent National Electoral Commission (INEC) have been confronted with a series of operational challenges, which have affected the outcome of elections. Many of

these operational challenges have not only come with a cost to the institution, but also led to judicial litigation.

Lastly, corrupt practices among electoral officers equally explain the increased nature of judicial intervention. Since 1999, the activities of corrupt officials working either directly or indirectly with the INEC have not gone unnoticed, as its impacts have led to increased violence and a vote of no confidence for the commission. Though, INEC seems too weak to try some of its staffs found guilty, it has however allowed for instituting cases against its staffs. Particularly, in the wake of the 2015 elections, many of the INEC staffs were dragged to the Election Petition Tribunal, and some have remained ongoing.

ELECTION LITIGATION AND THE DEMOCRATIZATION PROCESS IN NIGERIA

Since the third wave of democracy which compelled many African countries into adopting multiparty system, elections in the continent have become more competitive but with mixed outcome (Motsamai 2010, Omotola 2013, Oni *et al.* 2017). In most cases, democratic plurality in Africa and especially in Nigeria has increased citizen participation in the electoral process. Major fallout of these massive participation and proliferation in the activities of political parties is introduction of unwholesome practices aimed at capturing political power, with many of these cases getting to be resolved by the judiciary. In Nigeria, the long intervention of the military in its politics impacted negatively in the governance system. Hence, upon its return to civil rule in 1999, there were high expectations that the country must have survived many of those political constraints clogging on its wheel to meaningful development. However, while the country can successfully boast of the transition of power from civilian regime to another, its electoral process has indeed been fraught with a series of problems which includes electoral fraud, insecurity, violence, substitution of candidate, lack of internal democracy among parties, ballot snatching, falsification of documents, money politics and among others (Ojo 2016; Amusan *et al.* 2017, Tar 2010). Undoubtedly, these challenges have negatively impacted on the country's democratization process.

While, there seems to be some concerted efforts at addressing these ugly trends, these issues have persisted in successive elections with a majority of them getting to be resolved through judicial intervention. Dispute arising from elections and the

power to approach the court of law for proper interpretation remains a sine qua non to democratic stability across the globe, and this power has been supported with institutional frameworks such as United Nations Protocol A/SPI12/01 on Democracy and Good Governance, ECOWAS Protocol on Good Governance, and including the Electoral Act of 2006 adopted in Nigeria (Kari 2017). Hence, the role the judiciary plays in a country's democratization process is one that cannot be over stated. Reflecting on elections that have been held in Nigeria since 1999 till date, Buchard & Simati (2019) observe that many of these elections have not only ended up in violence, but also contentious. Thus, the need for an independent body like the Election Petition Tribunal saddled with the responsibility for hearing and adjudicating these emerging problems. Suffice to say, the introduction of the Election Petition Tribunal therefore resonated within the context of the role the judiciary could play in sustaining the Nation's nascent democracy. These roles would be discussed below;

One of the greatest threat to Nigeria's democracy in the colonial and post-colonial era is the issue of disputed election figures and massive rigging, which has consequently led to the outbreak of violence across the country. Specifically, the first Republic violence caused by disputed electoral figures which culminated into the "*Operation Wetete*" led to the death of many and burning of properties in the South West region (Kolawole *et al.* 2020). More so, this trend has continued up to the fourth Republic, such that elections that have been conducted since 1999 have been largely contested. Despite been adjudged transparent, the election results of the 2011 elections sparked a series of violence across many states in the Northern part of the country and leaving many people dead, several displaced and many houses burnt (Orji & Uzodi 2012). Also, successive elections including the 2015 and 2019 elections have followed similar pattern.

Though, election rigging and the pronouncement of falsified figures have been identified as a stumbling block to the country's democratic experience, recent evidences have suggested that the judiciary have severally intervened in election rigging and falsification of results. Thus, while a majority of politicians and even political parties have continued to rely on election rigging, there are proofs to suggest that those who loose elections since 1999 have resorted to the judiciary as a way of reclaiming their stolen mandate. A good example is the up turning of a series of elections result in favour of the opposition party – All Progressive

Congress (APC)- against the People Democratic Candidates (Enweremadu 2010), and this speaks volume of the improved and assertive role of the judiciary in recent times amidst political intimidation. Furthermore, as a fall out of the 2019 general elections, several aggrieved politicians have resorted to either the Election Petition Tribunal or the Supreme Court to claim their lost mandates. True to its promise and commitment to democratic principles, the Independent National Electoral Commission (INEC) had been compelled by court judgments to withdraw a total of 64 certificates of Return, and issue fresh certificates to winners after protracted legal battles (Agency Report 2019). While, several others are still at the various stages of litigation and awaiting judgment.

Another interesting angle to the judicial intervention in the country's electioneering process is in the area of wrong substitution of candidate and internal party democracy. Arguably, these problems pose a serious threat to the continuous existence of party politics and including the democratization process. This explains why (Domingo & Nwankwo 2010) argues that despite the centrality of elections to Nigeria's democratic experience, many of the political parties have exhibited a zero tolerance for internal party democracy. Hence, party primaries which constitute a vital component of the electoral circle are either not properly organized or end up been hijacked by party elite and god fathers. The greater implications is that over time, many of the political parties in Nigeria have been involved in this unwholesome practice, have witnessed either the mass exodus of its members, just as some other contestants have approached the court to challenge the perceived injustices meted out against their candidacy. Some of the landmark judicial interventions up to 2007, aimed at addressing wrong substitution and imposition of candidates includes the nullification of results and even elections in Rivers state, Kogi, Anambra, Kebbi, Adawawa and Ogun states (Nwachukwu 2007). Yet, a majority of political parties still operate in undemocratic manner and this has been made possible with the autocratic nature of the party elites.

Furthermore, more election results have been up-turned at the Tribunal or the Supreme Court in the cases of Zamfara, Imo and Rivers with the All Progressive Party losing these states to the opposition. In addition, several senators including House of Representatives members of the ongoing 8th Assembly have had their elections up-turned by the Election Petition Tribunal. Arguably, lack of party discipline remains a problem militating against the

survival of political parties in Nigeria. While this has cost the PDP a cost defeat in 2011, it is not very unlikely that the APC would not suffer same feat in the near future.

In addition, political parties are not left in these perceived threats to the country's democratic experience. Evidences abound to conclude that the institutional lapses associated with the conduct and outcomes of election by the Independent National Electoral Commission (INEC) equally remain a stumbling block. Though, a majority of scholars have attributed the inefficiency of the INEC to conduct free and fair elections to the seemingly desperate tendency of the country's ruling elite (Adibe 2019, Ekundayo 2015, Badmus 2017, Yangboyanju 2011), some of these lapses have also been attributed to lack of trained personnel, partisanship, and corrupt staff of the commission. Since 1999, majority of the elections that have been conducted have been seriously marred by falsification of results, connivance between politicians and INEC officials to influence electoral outcome (Alaiugba 2016). Undoubtedly, the continuous display of partisanship in successive elections conducted since the country's return to civil rule have remained alarming across the geopolitical zones. Though, many of the INEC officials have escaped the wrath of the law either due to lack of adequate laws or want of evidence, some of its officials were however not lucky. In 2017, Yisa Olarenwaju Doyin, a staff of INEC pleaded guilty to allegations of bribe amounting to the tune of \$194,495. He was however fined the sum of \$27,785.00 with an agreement to forfeit his plot of land in return for his freedom.

Furthermore, two officials of the commission similarly were docked for their involvement in the 2015 elections and consequent indictment of receiving huge sums of money from one time minister, Allison Deziani attracted the attention of the Economic and Financial Crimes Commission (EFCC). After series of legal battle, the court eventually found them guilty in January, 2020 and ordered the two officials, Mr Christain Nwosu should forfeit two choice properties valued at Twenty (25) million, USD and the sum Five (5) million naira respectively, while, Inda- Bashir was ordered to forfeit his four bedrooms situated in Abuja (Biscevic 2019). While many have hailed this landmark judgments from the judiciary as a right step towards sanitizing the decay often associated with electoral officers, on the contrary, some others have argued that over reliance on the legality of cases brought before tribunals, without considering all other variables have

no doubt contributed to the judiciary serving as a platform that promotes electoral fraud (Uzodike & Onapajo 2014). Though, this contrary position remains contentious, what seems apparent is that there is a renewed vigour on the part of the judiciary in addressing electoral related offences.

More importantly, while many experts have called for the introduction of a special court to try electoral related offences (Gambari 2008, Tarfa 2015, Hitchen 2017), the country is yet to adopt such submission. No doubt, the problem of lengthy litigations has negatively impacted the democratic practice in Nigeria, and in most parts of Africa. While, the Special Court remains a project in view, the adoption of the 2006 Electoral Act in Nigeria have greatly increased judicial powers in intervening in electoral matters and dispensing justice. Specifically, the Electoral Act No 64, 2010 as amended aims to ensure that the judiciary possesses the unrestrained power to effectively deal with election petitions, prevent delay and expedite the process of dispensing justice in the overall interest of the nation. This should also be supported by the setting up of deadline upon which the election tribunal is expected to conclude election cases (Ubanyiowu 2016), and emphasis must be put on the supremacy of the constitution (Shehu 2011).

Notwithstanding, the judiciary is confronted with series of challenges such as partisanship as it is the case with some Supreme Court and Election Petition Judges, endemic corruption, delay of dispensing judgment, political intimidation, executive interference, party politics and the lack of adequate technology to deter electoral fraud. Some others include the lack of a clear legal framework and understanding on how to dispense justice on pertinent issues of election insecurity, vote buying, voter's intimidation, and logistic lapses associated with electioneering processes. Regardless, the impact of judicial intervention through election petition tribunal and the Supreme Court pronouncements on Nigeria's democratic experience is one that cannot be over emphasized. Therefore, it behoves on the Nigerian government to ensure that the judiciary is provided with all that is needed to deal with these emerging election challenges and this would almost be impossible without complete autonomy of the judiciary. In conclusion, while the judiciary needed to leave up to the task of contribution its quota to the country's fledging democracy, the government must do all it can to complement the effort of the judiciary by paying critical attention to the welfare of judicial officers at all cadres.

Methods of Controlling Electoral Fraud and Criminality

There are 52 sections on regulations and guidelines of election in Nigeria upon INEC in compliance to 1999 constitution (PLAC, 2019). Yet there are still challenges arising from unprofessional display and unethical practices by the INEC and the voters in the country. Below are some of the methods to strengthen, control and intensify electoral management in the country.

Permanent and Professional Staff

There is need for permanent and professional staff for the commission. This will create the atmosphere of secrecy of information that concerns the commission but currently INEC as an electoral body lack permanent staff to conduct and monitor elections. Staff are hired and recruited during election and after the election they are paid remuneration. This has invited in uncapable hands and officials who are incapacitated in terms of professionalism and likely expose classified information to the public. The bulk of temporary staff (during election) of INEC are polytechnic and university graduates who are on one-year National Youth Service Corps (NYSC) scheme. Most of them are unprepared and lacks the ethical standards of electoral process and composition. Consequently, the electoral body is

expected to be made up of men and women of integrity, high standing, ethical and noted for trust.

Stringent Regulations and Monitoring Mechanisms

The existing Electoral Act in Nigeria spelt out the monitoring process but there is the problem of implementation against offenders and those who purported to go against the law. As indicated in Table 1 concerning the electoral offences, the process of paying fine of one million naira or 12months or both in the case of the president revealed leniency and over simplification of the judicial process on matters that bothers on criminality. Officer who is found guilty in an election should be disqualified and not allowed to contest in the country after serving a jail term of minimum of five years for all positions.

Reformation of the Nigerian Legal System

The operation of the Nigerian legal system in terms of funds, appointment and motivation should be apolitical. But the existing norms or Act revealed that the democratically elected president of the country nominates and to be confirmed by the National House of Assembly (Alubo 2006, p 25 cited in Okeke, Nwabufu & Hakeem, 2014). This clause or process stifled the independence of the judiciary in matters that

Table 1: Financial Boundaries of Candidates' Spending as Stated in the 2010 Electoral Act

Positions	Amount
President	\$3,183,870.91 (N1Billion)
Governor	\$636,774.18 (N200Million)
Senator	\$127,354.84 (40Million)
National House of Representative	\$63,677.42 (20Million)
State House Assembly Members	\$31,838.71(10Million)
LG Chairman	\$31,838.71(10Million)
LG Councillors	\$3,183.871(10Million)
Stipulated fines or punishment for violators as indicated in the 2010 Electoral Act	
Positions	Fines / Punishment
Presidential Candidate	N1,000,000.00 or 12Months Imprisonment or Both
Governorship Candidates	N800,000.00 or 9Months Imprisonment or Both
Senatorial Candidates	N600,000.00 or 6Months Imprisonment or Both
House of Representatives	N500,000.00 or 5Months Imprisonment or Both
State House of Assembly	N300,000.00 or 3Months Imprisonment or Both
LG Chairman	N300,000.00 or 3Months Imprisonment or Both
LG Councillors	N100,000.00 or 6Months Imprisonment or Both

Source: 2010 Electoral Acts (as amended).

concern elections in the courts which can be influenced by the politicians.

Deployment of Technologies

There is need for CCTV cameras in various polling units and computerised software that transmit results simultaneously to the central government. Although, INEC in possession of this software on transmitting results but there is the challenge of effective implementation and political interference most times the ruling elites. Most polling unit in remote villages lack adequate professional monitoring process which can be a challenge in Nigerian elections. But with the deployment of Technologies in terms of CCTV cameras and transmission facilities during election in any remote communities, the INEC officials will be able to deliver proper output that will be devoid of controversies and blame.

Information Based System and Functional Server

There is the challenge of updating and computing voters' data as stipulated in section 9 (1,2,3) and section 13 (PLAC, 2019). The problem of automated and functional server in keeping records and review of voters' information has created a huge setback in INEC as a body.

Voters' Education

Political socialization and education through conferences, seminars, the mass media and other scientific tools that serve as an awareness and conscious reawakening are regarded as the better way of detecting, deterring and avoiding electoral fraud and criminality. Most citizens in developing countries like Nigeria in particular seems to be ignorant of electoral system and its evolution. Consequently, INEC as a body saddled with elections should identify scientific means of educating the populace on matters that bothers on elections in its totality. Voters education is the most superior device of monitoring and preventing electoral fraud or criminality during elections among citizens. It informs and prepares citizens of the Modus operandi of elections and what is expected at particular point in time. But cases in Nigeria revealed that political parties and INEC come to the front when election is taking place and when the elections are over, that is the end of the session. The session will begin after four years or when the tenure of the incumbent expires and then aspirants and the Electoral Commission will gather for selections, nomination and elections. This narrow process has made most Nigerian to be gullible

and vulnerable to the manipulation of various political contesters and other mercenaries.

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