

**ELECTORAL REFORMS, POLITICAL SUCCESSION  
AND DEMOCRATISATION IN AFRICA**

**Volume 2**

*Edited By*

**SABO BAKO**

**POLITICAL SCIENCE ASSOCIATION 2008**

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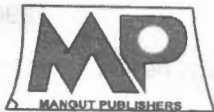
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## CHAPTER TWENTY-ONE

### THE JUDICIARY AND ELECTORAL FRAUD IN NIGERIA'S 4<sup>TH</sup> REPUBLIC: DECONSTRUCTING THE 2007 GENERAL ELECTIONS

ANUNIRU, FELIX C

#### INTRODUCTION

*'We are back to the dark days of yore, except that this time it is worse than we have ever seen. Nobody needs to wonder anymore why Nigeria is backward or why the country is the very definition of underachievement. We have allowed our worse specimens to corner power and they are determined to remake the country in their warped image and likeness'. (New Age newspaper, Wednesday, April 18, 2007)*

In a discourse of this nature, the natural starting point is to attempt to give a glimpse of the background analysis of the terrain and circumstances that heralded the republic under investigation. Barely nine years ago when the military regime of general Abubakar Abdulsalam handed over power to democratically elected civilian regime after many years of military misrule, the hearts of Nigerians were filled with joy, excitement and hope. For a nation that was traumatized by arbitrary rule 30 years, May 29, 1999 was a significant day in its chequered history. To Nigerians, that day was historic as the dawn of a new life, free society, economic prosperity, improved standard of living and most importantly, respect for the rule of law, which had eluded the country in the past three decades.

The newly elected government of then president Olusegun Obasanjo carried on as though it would live true to its promise at inauguration not to spare any sacred cow and to ensure transparency and accountability to all Nigerians in all departments of its administration. However, after the conduct of its first election in 2003, which was adjudged minimally rigged, it became apparent to discerning Nigerians that the major challenge facing the administration under review was to consolidate the democratic process by transiting from one democratic dispensation to another. In other words, owing to the protracted period of military incursion into Nigeria politics and the obvious challenges to our democratization, it became clear that a legacy of consolidated democracy, through an effective electoral process was the greatest challenge facing the last administration.

In view of the above, a strong judiciary became absolutely necessary in

actualizing the possibility of that legacy. During the first dispensation of the 4<sup>th</sup> republic, the judiciary came under serious challenges as it battled to revive its battered image from the immediate past misrule of the military. Perhaps, in order to underscore the havoc the military regime wreaked on the judiciary, Eso JSC described the regime:

*'They have since reminded the judiciary that the institution is permitted to exist. But they have done worse. They litter their legislation with ouster clauses, thus in effect rendering the judiciary, the legendary third arm of government, which they probably in their benevolence have left extant, impotent'. (Eso JSC, 1999)*

It was then common place to witness conflicting pronouncements from a struggling judiciary on the one hand and a scheming government on the other. Notwithstanding this major historical challenge on the part of the judiciary, they courageously made landmark rulings in first dispensation of the 4<sup>th</sup> republic that permanently positioned them to brace up to other more serious challenges that characterized the later end of the administration of the then president Olusegun Obasanjo.

The greatest challenge that would face the judiciary was in the process of electoral transition from the democratic government of Olusegun Obasanjo to another. In as much as this was going to be the first experience of Nigeria in such democratic experience, it would be expected that a lot of challenges would confront the judiciary, who's primary role in this process is not in question. The legal tussle between the electoral empire, INEC (Independent National Electoral Commission) and the candidates of the major opposition parties provided excellent opportunities for the Nigeria judiciary to permanently break loose from the past that had haunted it and reposition itself for a noble national assignment. The editorial page of the Nigerian daily, New Age captured this in an interesting way: **"Rather than concentrate on its primary assignment, preparation for 2007 polls, the Iwu led INEC spent most of its time fighting, intimidating and threatening opposition candidates with disqualification thus dissipating its energy in legal battle"**. It is no gain saying that the judgments made by the judiciary at the pre 2007 general elections were popularly acceptable to the largest population of Nigerians, thus boosting the confidence in the Nigerian judiciary.

Despite the air of uncertainty that surrounded the possibility of the 2007 general elections because of the plethora of legal battles that had been fought and won, thus heating up the polity, the elections of April 14 and 21 held all the same amid tension and rife. The election was generally adjudged to be the worst in our national history, with hue and cry, rejections, condemnation and calls for its total annulment from almost all stakeholders, including voters, foreign and local

observers, and civil society groups among others. The cumulation of this was the launching of a compendium of the Atrocities recorded during the "fraud of April 14 and 21 "by the Nigerians United For Democracy (NUD), an umbrella of all the interest groups in Nigeria where they "rejected the outcome of the results of the sham elections 2007 purportedly conducted by the Obasanjo Administration through its subservient Electoral Commission" (Braithwaite, 2007). Suffice it to say that the above declaration summed up the general view of all and sundry about the 2007 general elections and raised a dust of legal battles at the electoral tribunals that are still reverberating, shaking the entire foundation of our democratic space.

It is against this background that this paper places in perspective the role of the judiciary in the 2007 general elections in Nigeria with a view to re-enforcing unarguable importance of this arm of government in stabilizing our polity. It traces the history of our electoral experiences and argues that never in the life of this nation has it witnessed such magnitude of electoral irregularities that marred the 2007 general elections, with the obvious implications for our judicial system. It concludes by making a case for the judiciary in the ongoing elections tribunal while arguing that with the precedence all ready set by the Nigerian judiciary, it is capable and competent enough to foster an enduring culture of political participation in Nigeria.

## **SETTING THE FRAMEWORK FOR ANALYSIS: DEFINING JUDICIARY AND ELECTORAL FRAUD.**

### **The Judiciary in Perspective**

As it is expected in a discourse of this nature, a logical starting point is to understand the fundamental of the key concept for investigation. As rightly posited by Chafe, "the primary requirement for debating anything is to understand first and foremost the actual thing being talked about" (Chafe, 1994), hence the imperative for clarification of the judiciary as an important arm of government. The judiciary is the body of judges and courts that interpret the constitution and the laws and adjudicates conflicts and crises between the various institutions of government, groups and individuals (Ikelegbe, 2006). The judiciary also possesses the power of judicial review through which they could examine and determine the constitutionality of legislative, executive and bureaucratic actions and policies. Through this, the judiciary ensures that every governmental action conforms to the intent and letter of the laws.

These powers of adjudication, interpretation and review make the judiciary an actor in the policy process in the sense that it could make pronouncements as

to the propriety, fairness, legality and constitutionality of laws or proposed laws. The judiciary could therefore make laws, kill laws by declaring them null and void and unconstitutional, change the course of policy activity and action, and enhance policy choice by lending the weight of legality and propriety to a policy alternative and moderate implementation activity particularly the conduct and manner of bureaucratic officials and implementation. The judiciary is in fact a moderator, and umpire and mediator of conflicts and judge of propriety in the policy process. It moderates the actions and activities of government policy actors, in relation to themselves and between themselves on the one hand and groups and individuals on the other hand. The 1999 constitution of the Federal Republic of Nigeria puts it succinctly:

*"judicial powers shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person".*

The place of the judiciary in the scheme of things cannot be over-emphasised. It can be described as the last hope of the common man; the bulwark of the peoples' liberty, the upholder of the rule of law, and the defender of the rights of the people. In short, the judiciary is regarded generally as the symbol of justice ( Egbewole, 2006 ).

## **ELECTORAL FRAUD IN HISTORICAL PERSPECTIVE**

Electoral fraud is illegal interference with the process of an election. Acts of fraud tend to involve affecting vote counts to bring about a desired election outcome, whether by increasing the vote share of the favoured candidate, depressing the vote share of the rival candidate, or both ( wikipedia, 2008 ). Electoral fraud is probably as old as elections themselves. The first suspicion dates back to 471BC in the Athenian democracy (wikipedia, op. cit, p. 2). Archeologists found 190 pieces of broken pottery used then as ballots with only 14 different handwritings. In essence we can infer from this simple analysis that electoral fraud fundamentally involves shrouding the entire electoral process in secrecy, hence clogging and undermining the democratic values of popular participation and transparency. A writer probably had this in mind when he wrote:

*"secrecy is corrosive; it is antithetical to democratic values and undermines democratic processes; it serves to entrench incumbents and discourage public participation in democratic processes; and it is based on mistrust between those governing and those governed, and at the same time it exacerbates that mistrust ... , by undermining confidence that supposedly democratic processes*

*are working in the general interests, it feeds those who argue against democratic processes" (Stiglitz, 2001).*

Electoral fraud is illegal in most countries including dictatorships likely to both control the electoral process and excuse any measures that achieve a desired result. Especially with national elections, successful election fraud can have the effect of a coup d'etat or corruption of the democracy. The Catholic Bishop of Umuahia, Imo state, Nigeria, on the heels of the 2007 general elections likened the outcome of the election to be "worse than a coup". In furtherance of his comparism , he said that while coup planners and executioners do not pretend to be acting on behalf of the people, elections riggers claimed to derive their powers from the electorate. He added that coups cost the society less than election rigging, pointing out that election riggers squandered enormous resources to achieve their goals. He concluded that any government that was the product of a rigged election would struggle to establish its legitimacy, just like the government established through a military coup.

Extreme examples of election fraud are sham elections that are a common event in dictatorial regimes that still feel the need to establish some element of public legitimacy, some even showing 100% of eligible voters voting on behalf of the regime. Most people only call a regime democratic as long as electoral fraud is rare, isolated, and small, or that electoral fraud by opposing groups roughly cancels the effects. Despite many instances of electoral fraud, it remains a difficult phenomenon to study and characterize. This follows from its inherent illegality. The introduction of secret ballots in the 19<sup>th</sup> century made electoral fraud more difficult, forestalling attempts to influence the voter by intimidation or bribery. Secret balloting appears to have been first implemented in the former Australian colony- now a state-of Tasmania on 7 February 1856 ( wikipedia, op. cit. p3 ). The first president of the United States elected using a secret ballot was president Grover Cleveland in 1892.

At this juncture, a historical analysis of the list of controversial elections that qualify as fraudulent will suffice. It is interesting to observe that the 2007 general elections in Nigeria have been listed among them:

- United States presidential election, 1876
- Romanian general election, 1946
- Bulgarian plebiscite on monarchy, 1946
- United States presidential election, 1960
- Jammu and Kashmir Constituent Assembly Election, 1951-Legislature elected by this election ratified Indian rule in Kashmir, providing India with



legitimacy, but no pro-Pakistan parties contested the polls, and pro-India candidates were elected unopposed

- Greek legislative election, 1961
- Jammu and Kashmir Legislative Assembly Election, 1987- The insurgency in the Indian state of Jammu and Kashmir has been linked to the allegations that the election was rigged in favour of the National Conference Party of Farooq Abdullah.
- Mexican general election, 1988
- Serbian parliamentary election, 1992
- Serbian presidential election, 1992
- Serbian parliamentary election, 1993
- Serbian presidential election, September-october 1997
- Serbian presidential election, December 1997
- Serbian parliamentary election, 1997
- Chadian presidential election, 1996
- Chadian parliamentary election, 1997
- Peruvian national election, 2000
- Russian presidential election, 1996
- Sri Lankan parliamentary election, 2000
- 2000 United States election, controversy in Florida
- 2002 New Hampshire Senate election phone jamming scandal
- Georgian legislative election, 2003, Fraud allegations
  - 2004 U.S. presidential election controversy and irregularities
  - 2004 U.S. presidential election controversy, voting machines
  - 2004 U.S. presidential election controversy, vote suppression
  - 2004 U.S. presidential election controversy, exit polls
  - 2004 U.S. presidential election recounts and legal challenges
  - 2004 U.S. election voting controversies, Florida
  - 2004 U.S. election voting controversies, Ohio
- Romanian legislative election, 2004
- Philippine presidential election, 1986 (see also People Power Revolution)
- Philippine general election, 2004 (see also Hello Garci scandal)
- Ukrainian presidential election, 2004
- United Kingdom general election, 2001 [13]
- United Kingdom general election, 2005 [14]
- Washington gubernatorial election, 2004

- Egyptian presidential election, 2005
  - Ethiopian general election, 2005
  - Belarusian presidential election, 2006
  - Mexican general election 2006 controversies
  - Italian general election, 2006
  - Morocco elections, 2006
  - Nigerian general election, 2007
  - Russian legislative election, 2007
  - New Hampshire primary, 2008
- New York Democratic Primary, 208 (Source: wikipedia, 2008)

### **THE NIGERIAN JUDICIARY BEFORE THE 2007 GENERAL ELECTION**

As indicated earlier, governmental administration is based on a tripod with the judicial arm playing a fundamental role. In a democratic set up, the judiciary is accorded a pride of place because ordinarily the rule of law is expected to thrive. From inception, the judiciary is given the opportunity to determine whether or not a person has been duly elected into office, which he seeks to occupy. It is then practically impossible for that arm

not to be saddled with onerous responsibility in administering the state under the setting (Egbewole, 2006: 217). The Electoral Act gives the court the opportunity to look into the question of whether or not a person is elected (1981) 2 NCLR 358. The court has consistently performed this role; the extent to which this duty is responsibly discharged is a different ball game. The courts have not shied away from pronouncing on its role in this regard.

The Nigerian judiciary has overtime been regarded as a weak, inactive, dependent, vulnerable organ of government, which has failed in entirety to perform its function, has not defended the common man, has seized to be custodians of the law and many more derogatory terms were used to define the inertia of the Nigerian judiciary prior to the approach of the 2007 general elections in Nigeria. This was largely blamed on various reasons ranging on from excessive years of military rule in the nation, to excessive politicization of the judicial system, to interference of other organs in judicial activities and corruption of the judiciary among others.

However, the tide seems to have changed for the Nigerian judiciary, the prior inactive judiciary gained vigour, became active and independent of external machinations and this was evident in their recent pronouncements over the much celebrated cases of the unconstitutional impeachments of the governors of Oyo, Anambra and Plateau states and their bold re-instatements of these governors.

These cases understandably came as surprises to Nigerians, as the judiciary stood its grounds against the legislators unconstitutional activities, delivered judgment in record time ( only three weeks from the start of the trial in the case of Oyo state ), ensured the awareness of the supremacy of the constitution, thus regaining the confidence of the populace. With these cases and recorded achievements, the judiciary ceased to be the lame duck of the other arms of government, that weak, failed institution that wrings its hand in the midst of injustices and once again rekindled man's hope in it, and served as a wake up call to spoilers in the political system that the era of flagrant disobedience of court's orders and ex-parte application was over ( Egbewole, 2006: 217 ).

However, a grand ruling of the judiciary shortly before the commencement of the April polls won it an unprecedented wave of confidence from the electorates further reenforcing the earlier trust expressed in the Nigeria judiciary. On April 16<sup>th</sup> 2007, the Supreme Court in a landmark verdict but unanimous judgment nullified the action of INEC with the ruling that INEC did not have the power to disqualify "indicted" candidates for elections. Before the judgment, INEC had already short changed some candidates at the state and House of assembly elections held on 14<sup>th</sup> April 2007, who were illegally disqualified and their names not included on the ballot papers. This remarkable ruling automatically qualified Alhaji Atiku Abubakar, a leading opposition presidential candidate of the Action Congress, AC to run for the presidential polls slated for April 21, 2007. We understood that the process of re-entry of Atiku's name and pictures on the ballot papers within the stipulated time frame for the elections, cost Nigerians over one billion Naira in tax payers money (Elekwa, 2007: 7).

## **DECONSTRUCTING THE 2007 GENERAL ELECTION IN NIGERIA**

The origin of electoral bodies in Nigeria can be traced to the period before independence when the electoral commission of Nigeria, ECN was established to conduct the 1959 elections. The Federal Electoral Commission, FEC however established in 1960 conducted the immediate post-independence federal and regional elections of 1964 and 1965 respectively. The military coup of 1966 saw the dissolution of FEC chaired by Michael Ani and its subsequent replacement with the Justice Ovie Whiskey's Federal Electoral Commission, FEDECO in 1978 by the then Head of State, General Olusegun Obasanjo. It organized and conducted elections that saw Alhaji Shehu Shagari as Nigeria's second republic president in 1979. FEDECO again conducted the 1983 general elections (Zanna, 2007: 9 ).

The late general Sani Abacha, as Head of State having dissolved National Electoral Commission, NEC put in place by former military ruler General Ibrahim

Babangida, dissolved it in 1993 and in 1995 set up his own electoral body named National Electoral Commission of Nigeria, NECON. Babangida's NEC which was chaired at different times by Professor Eme Awe, Dagogo Jack and Professor Humphrey Nwosu, conducted elections into the third republic for local government councils, state and national assemblies and the governors of the states of the federation. General Sani Abacha died before he inaugurated NECON. His predecessor, General Abdusalam Abubakar scrapped it and set up the Independent Electoral Commission, INEC under the Chairmanship of Dr Abel Guobadia before the current Maurice Iwu took over as the chairman of INEC. They conducted the 4<sup>th</sup> Republic general elections in 1999, 2003 and the most fraudulent elections ever on April 14 and 21 2007 ( Zanna, 2007: 9).

Nigeria's 2007 general elections of April 14 for the governorship and state assemblies and April 21 for the presidential and national assembly conducted by Maurice Iwu's INEC have come and gone. But certainly not without hue and cry, rejections, condemnations and calls for its total annulment from almost all stakeholders, including voters, foreign and local observers, civil society groups among others. To some well meaning Nigerians, non Nigerians, groups and nations, Nigeria's April 2007 elections were far from being free and fair and one lacking credibility. Some say it was a rape of democracy, a charade, an electoral rot, a sham, a fraud, and selection, an election that is worse than a military coup, an action to perpetuate dictatorship in the country and failed elections among others. In nutshell, this election has been the most controversial and fraudulent ever in the history of elections anywhere in the world ( Hallah, 2007: 13 ).

It is ironical that the turn out of the elections, especially the April 14 election of governors and state houses of assembly members, which was marked by the unprecedented enthusiasm of a wide spectrum of voters, which enabled them to bear the long hours of delay and the dangers they faced from anti social elements, ended in dashed hopes and aborted dreams. In certain parts of the country, the electorate defied heavy rain to cast their votes. The spontaneous condemnation of the elections from the stakeholders comprising of candidates from the opposition parties, political parties, voters, domestic and foreign observers, ECOWAS, EU, UN, UK, US and other well meaning individuals, civil society groups, organizations and countries among others is a clear indication that the elections were marred by serious irregularities and malpractices, and that the results announced in many states did not reflect the will of the people.

The first to condemn the elections in its entirety is the former Vice president, Atiku Abubakar. Atiku described the elections as a sham. According to Atiku who was a presidential candidate of the Action Congress, "he was short of

words to describe the magnitude and nature of the electoral fraud introduced by the ruling People's Democratic Party, PDP in the final desperation moves by Obasanjo to remain in power till eternity". Major General Muhammadu Buhari, the Presidential Candidate of the All Nigeria Peoples Part, ANPP also announced a rejection of the election results and added that it is the worst ever in the history of Nigeria. He added: "I completely and wholeheartedly reject these results as a sham. It was a disgrace to Nigeria, a shame on INEC, a great dishonour to the PDP government".

New Age in its editorial of April 24, 2007 titled "INEC's magic figures", ask some pertinent but crucial questions: "Why was INEC so generous to the other parties? How could the biggest political party in Africa be made to look so puny by the award of about 10 million votes to the opposition when everyone knows there really is no opposition in the country?" Also in its editorial comments of same day titled "the presidential polls and our democracy", The Nation newspaper was of the view that the April 14 and 21 elections did not only reflect an electoral day of lies, aberration and gangsterism, it provides a window not only on the polls but also on the shameless bravado of INEC and a president at peace with highhandedness and deception. The paper further cautioned: "democracy is not only about choosing leaders, it is about instilling values and instituting a way of life". Sunday Trust's page one lead story titled, " How INEC bungled presidential elections", among other things said the April 14 and 21 elections conducted by INEC lacked credibility because it was enmeshed in missing party logos, missing names of candidates and pictures, insufficient ballot papers, result sheets and election papers, stuffing of ballot boxes outside designated polling booths, and using INEC, PDP members and security agents to intimidate and scare other voters from voting among others as the hidden agenda adopted by PDP to secure victory at the polls.

Even the editorial of Leadership newspaper of May 4, 2007 titled "Iwu's war with the truth", was of the view that the monumental fraud committed by Iwu and his masters will follow them to their graves. " Iwu and his co-conspirators should not hope to win in this war they waged with the truth. They ought to be arrested, prosecuted and perhaps sentenced to life in jail for this grave crime against Nigeria and Nigerians. This may appear like an extreme position, but it is a clear indication of the level of provocation that was felt by Nigerians. Okey Ndibe in his column in Thisday newspaper of May 1, 2007 titled "winners of ghost mandates", succinctly said: " it was a series of elections in which the ruling party, according to baffling data released by INEC basically seals its conquest of the Nigerian people and their resources. Obasanjo and Iwu have authored one of the most embarrassing episodes in Nigeria's history. Also in his analysis of the

elections, Segun Gbadegesin in his column in The Nation newspaper of May 4, 2007 titled "Electoral fraud and ethno religious ideologies" said the nightmarish experience of Nigerians in the elections of 2007 is only the most recent in the history of election nightmares in Nigeria. I personally share the view expressed by a retired Justice of the Supreme Court, Justice Kayode Eso (2007) in a lecture titled "Leadership, democracy and conuption", in Lagos, Nigeria, when he said, "Obasanjo's transition is the darkest in Nigeria's history. It is the most heinous in Nigeria's attempt at democracy".

The Transition Monitoring Group, TMG, along with six other civil society groups namely Labour Election Monitoring Group, LEMG; Citizens Forum for Constitutional Refonns, CFCR; Electoral Reform Network, ERN, Muslim League for Accountability, MULAC; Centre for Democracy and Development, CDD and Alliance for Credible Elections, ACE also seriously criticized the elections and called for its cancellation and the conduct of a fresh exercise. Felix Alaba Job, head of the Catholic Bishops Conference in Nigeria, in an international press conference of April, 25 2007 titled "Nigeria's church speaks", cited massive fraud and disorganization, including result being passed around to politicians who simply filled in numbers as they chose while bribed returning electoral officers looked away. A professor of English, poet, playwright and teacher, Niyi Osundare in a letter to president Obasanjo titled "Obasanjo: which way out of the electoral rot?", told

Obasanjo, " from the south to the north, from the east to the west, your "victory" like a behemoth, trampling all rules of decent engagement, raw, astonishingly greedy and disdainful of the will of the Nigerian people. He concluded that president Obasanjo in collaboration with his party and INEe have stolen the people's voice, trampled their integrity in the dust, frustrated their commonweal, their sacred trust ridiculed and profaned by venal philistines.

In the international arena, the spate of condemnation is no less intense. Lydia Blygreen of the New York Times titled "Africa's crisis of democracy", said Nigeria's troubled presidential elections, which came under fire by local and international observers and was rejected by the two leading opposition candidates, represents a significant setback for democracy in sub-Saharan Africa. The Institute of Human Rights and Humanitarian Law, IHRHL on its part said that having participated in the monitoring exercise of the elections it has come to the conclusion that that no credible elections were held in Nigeria. According to IHRHL, the elections were fraught with fundamental irregularities and failed to meet minimum standards of free and fair elections. Former Secretary of State of the US, Madeline Albright who was in Nigeria during the elections also accused

Iwu of being a failure in the arrangement and conduct of the 2007 elections. Albright, who chairs the Board of the National Democratic Institute, NDI which monitored the elections, berated Iwu for deceiving Nigerians that all was well on the eve of the elections. According to her the, elections were flawed with ballot stuffing, violence and shortage of millions of ballot papers. In short she summarized by stating that "the polls were a step backward in the conduct of elections in Nigeria".

The International Republican Institute in the course of its own observation discovered recurring incidents of underage voting, errors in voter registration lists, stuffed ballot boxes, party officials and police men instructing individuals on whom to vote for, shortage of result sheets, and other materials, falsified result sheets and others. In its own final report, the European Union Election Observer Mission, lead by Max van den Burg concluded that the elections fell far short of basic international and regional standards. It noted that in view of the lack of transparency and evidence of fraud, there could be no confidence in the results. It saw the elections as being hallmarked "by very poor organization, widespread procedural irregularities, voter dis-enfranchisement, lack of equal conditions for political parties and candidates etc". The Mission advised that Nigeria should begin the process of establishing an independent and capable election administration ( Musa, 2007: 14 ). The spokes man for the United States Department of state, on BBC News bulletin of April 23, 2007 expressed the view of US thus: "the US is deeply troubled by the flawed polls in Nigeria. The US government hopes the political parties would resolve any differences over the election through peaceful and constitutional means".

From the above analysis, no one is left in doubt as to the widespread and all round condemnation that heralded the 2007 general elections in Nigeria. The evidences are overwhelming and the truth of the fraud called an election is undeniable.

## **THE JUDICIARY AND THE POST- ELECTORAL PROCESS IN NIGERIA.**

***After the prolonged darkness, we will surely have a glorious dawn ... the onus now lies in the election petition tribunals to take the courage to annul all the fraudulent elections of ghost mandates" ( Eso, 2007: 9 )***

It will not be out of place to begin this session by affirming that the Nigerian judiciary, perhaps more than any other time in the history of Nigeria is faced with enormous challenges that threaten the very foundation of our

democratic experience. Going by the current judicial cleansing of the people who had been declared winners by the Independent National Electoral Commission (INEC) in the April 2007 polls, it becomes apparent that the wave of annulment of electoral victories by the electoral tribunals set up by the Federal Government as required by the Electoral Act (2007), is unprecedented in the annals of our history. But for the judiciary, desperate politicians operating in cohorts with a compromised electoral umpire would have run Nigeria aground. The forthrightness of the judiciary in the adjudication of disputes arising from the willfully mismanaged April 2007 elections has been the source of hope that the Nigerian situation can still be salvaged. Okoronkwo (2007: 9).

On the gubernatorial election, the starting point was the Supreme Court's ruling in Anambra State that nullified the 2007 gubernatorial elections that produced Andy Dba of the People's Democratic Party (PDP) as Governor based on the fact that Peter Obi's tenure was still running which is as a result of the Supreme Court's ruling, 18 days after the May 29, 2007 handover that Anambra State Governor, Peter Obi was yet to complete his tenure because of the irregularity in the 2003 election polls that led to his being sworn in 3 years after the 2003 polls. Obiagwu (2008: 1).

Also in Kano State the appeal Court on October 10, 2007 upheld the ruling of the lower election tribunal nullifying the election of Governor Ibrahim Idris because of the unlawful exclusion of the ANPP Governorship candidate, Prince Audu Abubakar by the Independent National Electoral Commission (INEC) and by this ruling INEC fixed March 28, 2008 for the conduct of a fresh poll. Obiagwu (2008:2). The election has been long held with the PDP candidate, Ibrahim Idris staging a come back at the polls.

In Rivers state, where Chief Celestine Omehia lost the governorship seat to another PDP Chieftain and former Speaker of the Rivers State House of Assembly, Chief Rotimi Amaechi. The Supreme Court on October 25, 2007 ruled that Amaechi was wrongly substituted as the PDP candidate. Obiagwu (2008:2).

The tribunal has also nullified the Enugu State Gubernatorial elections over alleged irregularities following petitions brought by the Governorship candidates of the Democratic people's Party (DPP), Rev Oscar Egwuonwu; Labour Party (LP), Chief Okey Eze and Action Congress (AC), Chief Dubem Onyia, challenging the declaration of Sullivan Chime as the winner of the Governorship election in Enugu by the INEC thus sacking Governor Sullivan Chime. The case has proceeded to the appeal court. Obiagwu (2008:2).

The gubernatorial election of Adamawa State was not spared by the



tribunal. The election that produced Murtala Nyako as governor was nullified due to unlawful exclusion of Alhaji Ibrahim Bapetal of the Action Congress (AC) in the electoral process. Nyako however appealed against the ruling at the Supreme Court but the higher court upheld the decision of the tribunal which later necessitated a bye-election in Adamawa State on Saturday 26<sup>th</sup> of April, 2008. Suffice it to say that the election reproduced Murtala Nyako as the governor of Adamawa State without much rancour which was described as an anticlimax. Ugbechie (2008:12).

The Appeal Court in Port Harcourt on April 15, 2008 nullified the election of Governor

\_ Timipre Sylvia of Bayelsa State and ordered fresh polls within 90 days. The Action Congress governorship candidate in Bayelsa, Ebitimi Amgbare had gone on appeal to challenge the decision of the election petition tribunal upholding the election. The petitioner said no election was held in the state on April 14, 2007 and called for fresh polls. The Election Petition Tribunal in Bayelsa had in its judgment declared Amgbare's petition null and void lacking in merit. The Appeal Court in a unanimous judgment held that nQ governorship election took place on April 14, in Bayelsa on the ground that the governor and other respondents failed to produce the Form EC8A which, according to them was the basis for every election. Alike (2008:7).

The Historic verdicts did not spare Edo, Kebbi and Kogi states which also witnessed nullification of elections in those states by the election petition tribunal set up in the respective states under varying irregularities. Some of these cases have been appealed at higher Courts while bye-elections have held in others like Kogi State, and others are embroiled in political intrigues between the Illiing party, PDP and the major opposition party, AC, like Edo State. The nation is waiting eagerly to see what events become of these cases in future.

The Senate was also not left out as the Senate President; David Mark was affected in the serial nullification of election results in Benue State. The State Election Petitions Tribunal sitting in Makurdi struck down his victory in the disputed April polls on the basis of allegations of forgery and alterations on the result forms, over a petition tendered by Usman Abubakar, an All Nigerian Peoples Party (ANPP) candidate to argue a case of over- voting in two council areas of the state. As a result, the Chairman of the tribunal, Justice C.J. Uriri ordered INEC to conduct fresh elections into the two cancelled local government areas which constitute 25.4 percent of the senatorial district. Nwankwo (2008:1).

In the Senate, other than the Senate president David Mark, others whose elections have been nullified include Senator George Akume of Benue State due to

non compliance with the 2006 Electoral Act following the petition of Dr Simon Lim of the Action Congress (AC), thus fresh polls have ordered within 60 days. Senator Joseph Akaagerger of Benue Central Senatorial District whose election was marred by irregularities according to the petition filed by the duo of Prof David Iomem and Benjamin Ikyanyon of the All Nigeria Peoples Party, was nullified by the tribunal sitting in the state and a fresh poll was ordered to hold within the stipulated period of 60 days. Senators John Shagaya of Plateau North, Sati Godwin of Plateau Central, Ayogu Eze of Enugu South, Tanko Ayuba of Kebbi South, Mohammed Bello of Kano Central and Jubril Usman Wowo of the Federal Capital Territory (FCT) Abuja have all had their elections nullified by the tribunals due to the various petitions filed ranging from irregularities to other forms of malpractices. Many of these cases are currently at the Court of Appeal and are likely to proceed to the 'Supreme Court. Obiagwu (2008:2).

It is not only the governorship and senatorial elections that the tribunals have cancelled. With about 1,249 election petitions yet to be resolved, other nullified elections in the State Houses of assembly include but not exclusive to the following:

- Nasarawa State House of Assembly; Abdulhamid Kwara (ODP), certificate forgery.
- Adamawa State House of Assembly; Ahmed Mohammed; Yola South, unlawful exclusion of ANPP candidate, Alhaji waziri Ibrahim.
- Adamawa State House of Assembly; Former Speaker Mohammed Hassan Turaki (PDP); Vola North, unlawful exclusion of Thomas Jonathan Dinnang of the Labour Party.
- Edo State House of Assembly; Ovia North East Constituency; Bright Osayande (AC), substantial non-compliance with Electoral Act 2006 (failure to distribute election materials).
- Kogi State House of Assembly; Speaker Clarence Olafemi (PDP), substantial non-compliance with the Electoral Act 2006 (election manipulation).
- Adamawa State House of Assembly; Mr. Audu Buba Ngete (PDP); Shelleng Constituency, unlawful exclusion of Aliyu Yusuf Shelleng of the All Nigeria People's Party (ANPP).
- Zamfara State House of Assembly; Alhaji Kabiru Mohammed ANPP (Gummi 11 Constituency) and Alhaji Yahaya Giwa ANPP (Maradun 1 Constituency).
- Oyo State, the election of AC State House of Assembly lawmaker, Oge Oyebusi from Kajola Constituency was annulled.
- Enugu State, PDP lawmaker Okechukwu Nwoke's victory in Igbo-Etiti

- Constituency was nullified. The petitioner was ANPP candidate, Mr. Osochi Agha.
- Niger State, the Tribunal nullified the election of ANPP lawmaker, Ahmed Bala in Kotangora Constituency.
  - Kebbi State, Senator Tanko Ayuba (ANPP) lost his seat.
  - Ekiti State, Senator Ehinlanwo (PDP) was removed as a candidate.
  - Oyo State, Justice Sidi Bage ruled that a fresh election be conducted in Iseyin-Itesiwaju State Constituency where PDP's Waheed Olaniyan had earlier been elected.
  - FCT, Abuja; Senator Jubrin Wowo (ANPP) had his election annulled because the AC candidate, Isa Ndako was unlawfully excluded from the polls.
  - Oyo State, the election of AC lawmaker, John Olaoye Oyedokun of Iwajowa Constituency was voided. Okonkwo (2007:9).

It is important to note that in the above rulings most of the Tribunals and the Supreme Court indicted INEC, but Iwu, the Chairman of INEC in debunking this claim noted that INEC could not be faulted. In the official report of the 2007 general elections, Iwu said:

*"The elections of 2007 marked a big leap in Nigeria's democratic process. For one, the elections effectively broke the jinx of several failed attempts by the country to successfully transit from one democratically elected government to another".*

Perhaps what can arguably pass as the most important of the ruling by Election Tribunals following the outcome of the widely disputed elections was the verdict delivered by the Presidential Election Petition Tribunal on Tuesday, February 26, 2008. The Presidential Election Tribunal, comprising five judges led by James Ogege on the above date dismissed the petition filed by the duo of Muhammadu Buhari of the All Nigeria Peoples Party (ANPP) and Alhaji Atiku Abubakar of the Action Congress (AC) demanding the nullification of President Umaru Yar' Adua and his deputy, Goodluck Jonathan. Delivering judgment, the five-judge tribunal said the petitioners did not prove that Yar' Adua did not win the April 21 2007 presidential election lawfully. The court also ruled that there was no evidence that the Independent National Electoral Commission (INEC) breached the electoral law in such a way that substantially affected the conduct of the election or the result to the disadvantage of the petitioners. U gbechie (2008: 11).

In fairness to the Judiciary, with the barrage of election petitions that inundated their desks, they did not engage in legal obscurantism. They treated the petitions and their prayers discretely, letter for letter and word for word. The judgments were thorough and without ambiguity. It would have amounted to injustice if the judgments had gone otherwise because that would have flown in the

face of what transpired on April 14 and 21, 2007.

## THE JUDICIARY AND THE FUTURE OF DEMOCRACY, IN NIGERIA.

The judiciary in Nigeria has no doubt come under heavy attack in the current dispensation more than any other time in our democratic experience as a nation. Going by the wave of judicial activities in the current dispensation over elections process which in itself is an indication of democratic consolidation process, one is left to re-iterate the trite about the indispensability of a strong judiciary in any democratizing society. The place of the judiciary can not be overemphasized in a democratic government. The judiciary is the last hope of man, the bulwark of people's liberty, the upholder of the rule of law, and the defender of the rights of the people. Simply put, the judiciary is regarded generally as the symbol of justice. J. S Mill puts it succinctly, thus:

*"To prevent the weaker members of the community from being preyed upon by innumerable vultures, it was needful that there should be an animal prey stronger than the rest commissioned to keep them down, but as king of the vultures would be no less bent upon preying on the flock than any of the minor harpies, it was indispensable to be in a perpetual attitude of defense against its beak and claws. In order to ensure the liberty of the individual, the law must set a limit on the power of the government".*

The judiciary as the bulwark of people's liberty, the hope of the common man and the repository of the law of the land, cannot but be independent in order to dispense justice fairly and without fear or favour. The only way the judiciary can perform its role is by being an unbiased umpire. The importance of independence of the judiciary cannot be overemphasized because it stands at the root of separation of powers. It is the basis on which liberty and justice can be guaranteed to the citizenry and of course the concept of the rule of law will become hollow and mere sloganeering.

However, the greatest challenges facing the judiciary in Nigeria has been the twin problem of ex-parte application and disobedience of court's orders and this has actually frustrated the judicial officers and the parties before the various courts. It is important to stress that ex-parte application in itself is not anathema to proper intervention by the judiciary in determining contentious issues as brought by parties. The basis of ex-parte application is for situation of real emergency, where it is not possible or a lot of damage might have been done before Motion on Notice is served. Egbewole (2006: 221).

The *Supreme Court in Badejo v Federal Minister of Education* expressed optimism that the days of wanton grant of ex-patte injunctions are gone but with

what the judiciary witnessed in the last seven years it is clear that something urgent must be done about it. Hon. Justice Kayode Eso (2001) expressed his fears that:

*'It is again, respectfully submitted that the menace of ex-parte orders is very much with us, and it rages unabated and looks ominously uncontrollable'.*

Coupled with this menace is the cankerworm of disobedience of court's order, which some scholars perceive as a corollary to the wrong exercise of discretion in granting ex parte orders. The disobedience is not limited to individuals; the government is not left out. This attitude has been deprecated in very strong language by the various courts and analysts. Egbewole (2006:222). It must be emphasized that every order of court must be obeyed until set aside by the court or an appeal. Anything contrary will breed chaos and anarchy with the consequent attendant of disruption in the legal system. The cases of flagrant disobedience of court rulings by the last administration was noticeable in the polity, especially as regards the relationship that guided the separation of powers as espoused by the federal constitution between the arms of government and the tiers of government. The case of disregard of the court ruling authorizing the Federal Government to release the funds from the Federation Account meant for Lagos State and the consequent strain created between the two tiers of government is still very fresh in our memory. Fola Akinsola has expressed this view more clearly that it is worse if government refuses to obey court's order in the following words:

*'If the government becomes a lawbreaker, it breeds contempt for the law; it invites everyman to become a law unto himself; it invites anarchy'.*

It is ironical that the same people in government who at the time found it to be politically correct to disobey court rulings while they lasted in government are currently the most dependent upon the same judiciary which they recklessly maltreated to save them from the various charges of misconduct perpetuated in office. They are the ones that readily popularized the understanding of judicial independence and perhaps have gained more from a revitalized and revamped judiciary as the immediate aftermath of executive recklessness common in the last dispensation. Needless to say that the people in government today who refuse to obey positive court orders will one day be out of government and will need the same court, which they refuse to obey.

There is no doubt that the attitude of parties in a case to court order need be re-examined and emphasis must be placed on the need for all to see that disobedience of court orders has the tendency of pulling down the entire fabric of

our democratic consolidation exercise. It is unwillingly giving room to might is right and survival of the strongest. This must be discouraged as it portends very great danger to our body polity.

## CONCLUSION

This paper has simply posited the last general elections within analytical perspective, emphasizing the place of the Nigerian judiciary within the context of our democratic experience in the 4<sup>th</sup> republic. The judiciary no doubt has gone full cycle, from the era of bastardization of its integrity by incompetent rulers and compromising officers alike, to the era of restoration of its lost glory and integrity.

The last general elections conducted by the Independent National Electoral Commission (INEC) on the 14 and 21 of April 2007 were indeed a watershed in the history of judicial experience in our national polity. No one who witnessed the bizarre brigandage and outright electoral gerrymandering that was passed as electoral process would doubt that this nation is in the vice grips of unrepentant cabals. To the extent that Nigerians are being rendered so powerless in deciding who governs them, this nation is tottering on the brinks of crisis engendered by the desperate attempt of the ruling party, POP to wring the hands of Nigeria and impose itself on Nigerians. Before the present charade, the fact of the 2003 brazen fraud of an election stood out that we wondered whether such dubious record could be surpassed. With the April 14 and 21 charade, Nigerians have eaten their words and believe strongly that the Obasanjo government is irredeemably stuck on the path of infamy and dubiety. A national daily, in its news commentary captured the mood of the entire nation in these words:

*This, therefore, is not the time to sit on the fence. The Obasanjo government has been eight years of frustrations, manipulations, mediocre achievements, and disrespect for the rule of law, contempt for the legislature and federal principles, and humiliation of the Nigerian people. Such a government does not deserve a hearing, let alone our votes'. (The Nation April 22, 2007:5)*

The current Federal Government led by Umaru Yar' Adua acknowledged the massive irregularities that qualified the election that produced him as the president to be fraudulent in public commentaries. He went as far instituting an Electoral Review Panel under the chairmanship of a former Chief Justice of the Federation, Justice Mohammed Lawal Uwais to make recommendations for the reformed of the electoral system in Nigeria. The panel has long submitted its report to the federal government and the entire world waits for the outcome and implementation of the committee's report after it is subjected to a public referendum.

Despite the massive fraud that characterized the last general elections in Nigeria, notwithstanding, it is the belief of this author that the judiciary has a life time opportunity to turn the table around for the polity. Within this electoral crisis in the polity stands the unmistakable opportunity for nation building and democratic consolidation. Should the judiciary maintain the current profile and tempo and should the current democratic government make true its claim to reform the electoral process. I see a bright chance of this nation emerging from this precipice to a democratically consolidated nation.

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