

Judicial Reform and Democratic Consolidation in Nigeria: 1999-2009

David U. Enweremadu
Department of Political Science
University of Ibadan, Ibadan, Nigeria.

Abstract

For most Nigerians, and indeed foreign observers of Nigerian affairs, the return to democratic rule in 1999 has so far brought little or no political change. Corruption, electoral malpractices and political violence, the usual problems, have remained intractable despite a deluge of reform initiatives. Yet, as this paper will argue, there have been significant changes in some key areas. One of them is the gradual emergence of the judiciary as a courageous and impartial arbiter in political and intra-elite disputes in this chronically unstable federation. The transformation of the judiciary is most amply demonstrated by the increasing number of judicial pronouncements that have overturned the results of several flawed elections. While these decisions, and the new activist role of the judiciary which produced them, may have so far failed to engender a more transparent and credible electoral process, they have helped to reinforce the role of the judiciary as vital instrument of political control and democratic consolidation, and in the process, prolonging the life of the Fourth Republic.

Introduction

On 29 May 2009, Nigerians of all works of life trouped out in their millions to mark their country's tenth year of uninterrupted democratic rule. This was by no means a mere feat. During much of the last 49 years, Nigeria's history was dominated by fraudulent elections, violent political conflicts and military coups. The country's two previous attempts at democratic rule (1960-66 and 1979-83) were both dogged by allegations of electoral fraud and violence, before they were cut short by military coups (Lewis, 2003). Despite repeated promise to abide by rule of law, election continued to be perceived as a *do-or -dire -affaire*. As soon as election results were announced, defeated political aspirants will engineer their political thugs to unleash violence and mayhem on their perceived enemies, and when this fails, issue open invitations to the military to seize power as a way of punishing their rivals. The practice of resorting to the law courts for resolution of electoral disputes was thought to be a fruitless venture.

Since the return to democratic rule on 29 May 1999, however, a major behavioral shift has occurred among Nigerian politicians. While some politicians continue to practice violence and *political thuggery*, many more now prefer to embrace judicial channels for conflict resolution. This change springs from the transformation within the judiciary itself which has since 1999 played an increasingly exertive role as a courageous and impartial arbiter in country's democratic politics in general, and electoral disputes more specifically. The clearest evidence of this fact is the increasing number of judicial decisions that have upturned the results of several rigged elections, in favour of opposition parties or individuals opposed to the government and the dominant political party, the Peoples Democratic Party, PDP. This paper discusses the factors responsible for this change in the attitude by the Nigerian political class and judiciary and the ways they have contributed to stabilize politics and democracy. The analysis will start with an analysis of recent reforms in the Nigerian judiciary. This is then followed by a review of the political consequences of these reforms (i.e. Nigerian judiciary's involvement in democratic consolidation). The paper ends with a brief conclusion, which outlines the key findings of the study.

The 1999 Transition and the Transformation of the Judiciary in Nigerian

Soon after Nigerian completed her transition from military to civil democratic rule in May 1999, its judiciary became enmeshed in very gigantic corruption scandals which culminated in the sack of several judges. Between 1999 and 2004, at least five senior judges were dismissed for corruption and abuse of power, following investigations by the *National Judicial Council*, NJC (Newswatch, 9 February 2004). The widening degree of corruption among Nigerian judges, including judges of superior courts who were thought to be relatively immune from graft, immediately became an issue of national concern. Yet, these developments could not obscure the improving level of independence and integrity of Nigerian courts and judges, which suffered under previous regimes (Otteh, 2004; Nwabueze, 1992; Oko, 2005; Federal Republic of Nigeria 2003). Indeed, much of the sanctions (suspension and dismissal) applied against corrupt judges since 1999 had been due to three reform initiatives which have converged to take the judiciary from its position of relative political obscurity at the beginning of 1999 to that of national prominence by the end of 2009.

The first factor relate to some unique provisions of the 1999 constitution, especially those providing for the establishment of two independent regulatory institutions, the *National Judicial Council*, NJC and the Federal Judicial Service Commission, FJSC. Specifically, Chapters 20 (a) and 21(a) of the *Third Schedule* of the constitution empowers the NJC to investigate judges accused of wrongdoing and recommend appropriate sanctions to the President. The body is also charged with the responsibility of recommending judges for appointment and promotion and enforcing laid down procedures (*Code of Conduct for Judicial Officers of the Federal Republic of Nigeria*). Similarly, judges are to be appointed by the President subject to Senate confirmation, but on the basis of the recommendation of the NJC, which it self receives advice or nominations from the FJSC. According to section 158(1), 'the National Judicial Council shall not be subject to the discretion or control of any other authority or person' (Federal Republic of Nigeria, 1999). The FJSC, on the other hand, oversees the general welfare of members of the judiciary. In order to guarantee their independence, the composition of both bodies was made to be largely independent of the

executive and legislative arms of government. Thus, both institutions are headed by the Chief Justice of Nigeria, CJN, and comprise some of the most senior members of the Nigerian bench and bar, plus some representation from outside the legal profession. As Suberu aptly observes, despite criticisms that these bodies represent an assault on Nigeria's federal system, they have since 1999 functioned relatively well to promote judicial independence and integrity (Suberu, 2008).

The second factor was the personal commitment of successive CJNs, notably Justice Mohammed Uwais, who was Nigeria's Chief Justice from December 1995 until June 2006 (Ibid). Throughout his tenure in office, Justice Uwais was extraordinarily committed to the idea of judicial integrity and independence. Under his leadership, Nigerian judiciary substantially adhered to both the *Code of Conduct for Judicial Officers of the Federal Republic of Nigeria*, a nationally prescribed code, and the *Bangalore Principles of Judicial Conduct* of 2002, an international judicial code. The Nigerian judiciary, under Chief Justice Uwais, was one of the major initiators of the later. It also participated actively in all the stages leading to its adoption in April 2000 in Vienna, Austria. Elsewhere, Justice Uwais also embraced the numerous administrative reforms championed by some international bodies (UNODC, 2003), in collaboration with the leadership of the judiciary.

The third factor was the vigilance and heightened awareness of the public, especially court users (lawyers and their clients), civil society groups, human rights advocates and democracy activists, politicians, especially from opposition parties. Taking advantage of the current liberal political and constitutional environment, these groups have increasingly monitored the activities of judges and in many instances raised the alarm when traces of corrupt practices or abuse of powers were found. Consequently, their petitions have led to the launching of several investigations, many of which culminated in the retirement or outright dismissal of scores of judges. As should be expected, most of these retirements occurred in matters involving election petitions (Enweremadu, 2006).

The analysis that follows is intended to demonstrate the extent to which these changes have helped transform the Nigerian judiciary into a tool for consolidating democracy. During the period under review Nigeria held three national elections (1999, 2003 and 2007). However, this study focuses only on the last two elections. The 1999 election has been

deliberately excluded from our analysis given the limited role played by the judiciary played in that election.

The Judiciary and the April 2003 elections

The 2003 elections were important in several ways. First, it will, if successful, be Nigeria's first civilian-to-civilian transition, potentially leading to the longest period of civilian democratic rule. Secondly, successful conduct of the elections will also permit Nigeria to consolidate its rising diplomatic profile and economic clout made possible by its return to the committee of democratic nations and soaring oil revenues. Thirdly and perhaps more importantly, in a decentralized political system victory in the elections, especially the governorship, will open access to massive financial resources, especially for would-be governors of the 9 oil rich Niger Delta states who looked set to profit from the sharp increase in the international price of crude oil and the decision of the federal government in early 2000 to commence implementation of existing constitutional provisions derivation requiring the payment of 13% of all oil receipts to oil producing states in relation to their productive capacities (The Sun, Lagos, 8 May 2006).

But the assumed importance of an election will not, on its own, translate to success. In the case of the 2003 elections, success depended on a number of other factors. One was whether political parties and their candidates will live up to the 'Code of Conduct for Political Parties' to eschew political violence and intimidation, and commit themselves to open and fair campaigning (Jeter, 2003). More importantly, success also depended on the capacity and willingness of the managers of Nigeria's electoral system, especially the Independent National Electoral Commission, INEC, to deliver a relatively clean, that is free and fair election. This will imply that the outcome of the election will be such that most participants will perceive the officially announced results as reflecting the wishes and aspiration of the voters, and that where this was not the case, that there is a capable and honest judiciary to assuage the grievances of the losers.

The 1999 constitution actually contained provisions for judicial outlets for the resolution of such grievances. As will have said earlier, these judicial outlets have been complemented by institutional reforms aimed at insulating the judiciary from politics and political influences, as well as the decision to retain existing safeguards against ethnicisation

of the legal system. Thus, although a federal state, the judicial architecture in Nigeria remain unitary in nature. Appeals typically emanates from the Magistrate, Customary and Sharia courts, or from the Federal High Court, State High Court, State Customary Court of appeal and State Sharia Court Of Appeal, depending on the issue at stake, then to the federal Court of Appeal, before terminating at the Federal Supreme Court. In election matters, all election complaints, except complaints pertaining to a presidential election, shall first be heard by State Election Petition Tribunal, SEPTs, to be established in all the 36 state of the federation. These tribunals are to be constituted by the President of the Federal Court of Appeal. Petitioners who are unsatisfied with the decisions reached by the SEPTs can appeal to the Federal Appeal Court, which has the final say in all matters relating to all elections, except presidential elections. Petitions relating to Presidential elections, on the other hand, will first be heard by the Presidential Elections Tribunal (equivalent to a federal Appeal Court) sitting in Abuja. Further appeals will go straight to the Federal Supreme Court, which is the highest court in the land. Both courts are to be constituted by the Chief Justice of the Federation.

While this judicial structure may reflect the centrist proclivities of its military promulgators (Suberu, 2008), the important point, as we shall see in our analysis of selected petitions brought before the courts after the 2003 elections, is that it has worked relatively well to secure the neutrality, independence of and respect for the judiciary.

Arrangement for the 2003 epic elections began several months before the date fixed for the vote. As part of the preparation for the vote, a total of 64 million voters were registered in some 120,000 polling boots (Obassa, 2003). Additional political parties were also registered, taking the number from just 3 in 1999 to 30 in 2003 (Aderibigbe, 2001). This decision greatly expanded the political space and increased competition, but at the same time fragmenting the political class and opening new potential channels for conflict. Several months to the 2003 elections, fixed for the month April, INEC also took steps to put the necessary logistics in place. But despite all these efforts, the conduct of the 2003 election vote was still marked by violence, including high-profile political assassinations, thuggery and constant harassment of political opponents, especially during the run-up to the elections (Ologbenla, 2006).

If these were not unusual in Nigeria, the 2003 elections brought a number of new challenges. Firstly, the share number of political aspirants and parties participating meant the quantity of post election petitions that are bound to result would be extremely high. Secondly,

unlike the 1999 transition election supervised by a departing military regime, which itself was not a direct part-taker in the election, the 2003 elections had nearly all incumbents at all levels running for re-election. This implied that the propensity to engage in electoral fraud will be much higher and that the judiciary, especially the judges penciled down for the various elections petitions tribunal, will come under unprecedented pressure to deliver 'politically' correct judicial decisions. Another source of worry concerned doubts about the capacity of INEC to cope with the political and logistical challenges involved in organizing elections into offices in both federal and the 36 states of the federation.

In a bid to dampen tension and ensure a more manageable election, INEC decided to stagger the elections. All legislative elections were fixed for 12 April, while presidential and gubernatorial elections were reserved for 19 April. The dates proposed by INEC coincided with the Christian Easter holidays, sparking calls on INEC to postpone the elections. Indeed, one of the political parties filed a court suit seeking to compel INEC to postpone the elections. In the end, the court ruled that such postponement will be incompatible with both Constitution and the 2002 Electoral Act, which stipulated that elections must be held at least 60 days before the expiration of the tenure of elected officials. This paved the way for INEC to go ahead with the elections as scheduled (Obassa, 2003). The strategy adopted by INEC and its doggedness paid off. The elections proved less violent than widely expected. But the only problem was that it was not enough to make the vote credible or acceptable.

Thus, like other previous elections held in Nigeria, the 2003 general elections were characterized by massive vote buying, ballot stuffing and intimidation of voters. A number of new forms of irregularities were also on display. One of these forms of irregularities, which had never been seen in all Nigeria's previous elections, was victory declared and effectively handed over to individuals who did not contest elections. These individuals neither won primary elections within their political party, nor were they known to be candidates for the elections. These acts were more rampant during the state House and National Assembly elections. By merely manipulating the party list submitted to INEC in Abuja and replacing the names on the original list, victory was declared for some individuals (Ogunsanwo, 2006). Of course, all political parties were guilty of this act, but PDP, being the dominant party, led in the act.

The scale of malpractices observed during the election was confirmed by the number of complains that arose from the elections. In all, 527 petitions were received in respect of the 2003 elections (The Punch, 10 February 2009). But the question was whether the judiciary was sufficiently prepared for act to save democracy? Or would it, as in the past, side with the highest bidder? As it turned out, the courts were well disposed to use their powers to help advance democracy. Thus, while most of the petitions brought before the courts failed to scale through, mainly for lack of evidence (The Guardian, 10 July 2004.), several landmark decisions were taken by the courts which proved that Nigeria has entered a new era of judicial independence and courage. Bellow is an analysis of just three of such cases.

Chris Ngige and Peter Obi Case in Anambra state

The election in Anambra state was officially won by the ruling PDP, which also controlled the state from 1999 to 2003, under erstwhile governor Chiwonke Mbadinuju. Its flag-bearer in that election was Chris Ngige. Mr Mbadinuju, the former governor, lost the PDP ticket for re-election in 2003 to Ngige after falling out with his local Godfather, Sir Emeka Offor and the leadership of the party based in Abuja. But the new PDP governor, Chris Ngige, had himself being sponsored by another local godfather, Chris Uba, also a multi-billionaire businessman with strong link to Abuja. Thus, soon after his inauguration in May 2003, Ngige, like Mbadinuju, faced several challenges to his position.

These challenges initially came from his self-acclaimed godfather who, vexed by his increasingly independent approach to governance, tried unsuccessfully to kidnap and force him out of office (Ologbenla, 2006). Ngige will however face even more daunting challenge from his closest rival in the governorship race, Mr. Peter Obi of the APGA. Mr. Obi had petition the Anambra State Elections Petition Tribunals, ASEPT, immediately after the 2003 elections, challenging the purported victory of Chris Ngige. His argument was that he, and not Ngige won the election. While Obi's petition was going on, Ngige's godfather openly confessed that he had helped Ngige rig the 2003 governorship elections based on a pact between the two former allies. Ngige himself gave interviews suggesting he was not very confident of his election. In one of such interviews he pointed out that

If we are taken to the tribunal, we shall also cross sword with them because we have evidence of electoral malpractices against them. We are trying to carry out a cross litigation if Peter Obi fails to accept our right hand of fellowship. But if he keeps quit we will extend

our right hand of fellowship to him and ask him and the rest to come over. Otherwise my simple advice is that those who live in glasshouses should not throw stones (The Guardian, 7 June 2003).

The fraudulent nature of Ngige's victory was widely criticized in the media and popular circles but nothing was done about it. The anomaly could only be corrected by the ASEPT, which on 12 August 2005, after nearly two years of hearings, overturned the decision of the INEC, and declared Peter Obi, the authentic winner of the 2003 Anambra governorship election. This decision would later be upheld by the Appeal Court.

Oyo State: Rashidi Ladoja and the Oyo State House of Assembly

On 12 January 2006, the elected Governor of Oyo State, Rashidi Ladoja, was impeached by the Oyo State House of Assembly, dominated mainly by legislators from his own PDP and immediately replaced with his deputy, Christopher Alao-Akala. Before his impeachment, Governor Ladoja was locked in a mortal power struggle with a local power broker and his own godfather, Lamidi Adedibu, who enjoyed the support of most members of the Oyo State Assembly. Thus, although Ladoja's removal was premised on some allegations of corruption and abuse of office, in reality, the fight, like the one between Ngige and his godfather, Chris Uba in Anambra state discussed above, actually centered on the modalities for sharing public offices and resources as agreed during a pre-election pact.

Although this impeachment was not the first in under the Fourth Republic. Much earlier, Governor DSP Alamiyeseigha of Bayelsa state had been impeached by the Bayelsa State House of Assembly after jumping bail in Britain, where he was facing charges of money laundering. Ladoja still decided to challenge it before an Oyo State high Court sitting in the city of Ibadan. After hearing his appeal, the lower court upheld his impeachment, forcing him to file an appeal to the Court of Appeal. This appeal came to a climax on 1 November 2006, when the Court of Appeal sitting in Ibadan nullified his impeachment and ordered that he be immediately re-instated as Oyo State Governor. The Court held that the impeachment process was illegal, unconstitutional, null and void. The Court based its decision on the process followed in impeaching Governor Ladoja which it said was absolutely faulty. Among the eight faulty processes were: the sitting of the legislators in an hotel rather than the State House of Assembly to deliberate on the impeachment; sending the notice of impeachment

through the newspapers; impeachment carried out by 18 rather than 22 (two third members) legislators; unavailability of affidavit of suspension; the time-frame of the process; and the declaration of lack of jurisdiction by the High Court, thereby declaring the process null and void. Here, as in the case of Anambra, the courts proved their democracy enhancing role

Plateau State: Joshua Dariye and Plateau State House of Assembly

As was the case in Oyo state, the case in Plateau state involved the reinstatement of an elected governor, who was wrongful removed from office midway into his tenure in office. This matter started on 2 September 2004, when Governor Joshua Dariye of Plateau was arrested by agents of the *London Metropolitan Police* in London on suspicion of money laundering. On the basis of this and other allegations made against Mr. Dariye, the Economic and Financial Crime Commission (EFCC), one of Nigeria's anti-corruption agencies, opened an investigation into the matter. When the investigations indicted Dariye, EFCC began prosecution at a Kaduna High Court but got stocked in the process when the Court ruled that by virtue of section 308 of the 1999 constitution, Dariye, like the other 35 state governors, enjoyed immunity against arrest and prosecution while still in office. In response, the EFCC decided to turn his file over to the Plateau state House of Assembly (The Guardian, 15 December 2005.), which was constitutionally empowered to impeach the governor. When this move however failed (majority of the 24 member plateau legislature threw their support behind the governor), many of the Plateau lawmakers were accused of corruption and picked up by the EFCC for questioning. In the confusion that followed, the house could not sit for several weeks as it was unable to form quorum. The state became ungovernable and both parties to the conflict traded accusations and counter-accusations.

In 2006, six members of the Plateau State House of Assembly, prodded by the EFCC, met at an undisclosed location and announced that they have impeached Governor Joshua Dariye, who at the time, had already gone into hiding for security reasons. This decision was obviously a violation of the constitutional provision on impeachment, which provides that a governor can only be impeached by a two-third majority vote of all assembly members. Yet, it did not invite any significant response from Abuja, suggesting that the action had a wider political dimension. Indeed, as was the case with the earlier impeachment of Governor DSP Alamieyeseigha of Bayelsa state in 2005 (an excise that was also orchestrated by the EFCC and the federal government), it was widely interpreted as a politically move intended to punish governors who had refused to support the 2003 re-election bid of President Olusegun

Obasanjo or allied themselves with his arch-rival, Vice-President Atiku Abubakar, Obasanjo's arch rival.

But whatever may be the political context, Dariye filed a suit before a High Court located in Jos, the capital of Plateau state, challenging the legality of the procedure followed by the six lawmakers in impeaching him. Again, like Governor Ladoja of Oyo state, after initial set backs at the Jos High Court, he was ultimately restored to power by the Court of Appeal, which found that his impeachment did not strictly follow constitutional laid down procedure (Ajanaku, 2007). In this case, again, we can clearly see how the judiciary in Nigeria is helping to strengthen democracy and rule of law. We will now turn to the 2007 elections.

The 2007 Elections, the Judiciary and the Institutionalisation of Rule of Law

In some ways, the 2007 election was the most important election in Nigeria's recent history. This was partly because, if successful, it would be the first "civilian to civilian leadership change election" (Ajayi, 2007). Yet it held amid fears of widespread political instability. According to Jibrin Ibrahim, three reasons were responsible for this apprehension. The first is public awareness of the vast knowledge and repertoire of the techniques of electoral fraud and electoral violence at the disposal of the political class, which have often been used to frustrate the rights of Nigerians to elect their leadership. The second is the willingness and or capacity of the INEC and security forces to prepare adequately a level playing-field for free and fair elections. The third is the growing tensions within the political class, ethno-regional zones and within political parties which have constituted the most important threat to the political stability of the country (Ibrahim, 2007).

The conduct of the election ultimately proved that Nigeria had made little progress in the very important task of cleaning up its electoral system, for long tainted with electoral fraud and corruption (Suberu, 2007). As widely expected, the results showed that the ruling PDP had won the presidential election, and majority of the state governorship positions as well as the federal and state assemblies. This victory, as was the case with the 2003 elections, was procured on the back of widespread electoral malpractices and corruption. Both international and domestic public opinion were heavily critical about the conduct and

outcome of election which was generally regarded as ‘falling far short of basic international and regional standards for democratic elections’ (The Guardian, 24 April 2007). But despite these concerns, the declared winners of the elections were duly sworn into their respective offices on May 29, 2009, leaving aggrieved aspirants with no option but to go to court to seek redress.

Consequently, the number of petitions filed before the courts in respect of the 2007 general elections reached 1250 (INEC 2007), the highest in the history of Nigeria. This represented over 100% increase over the 527 petitions received in respect of the 2003 elections (The Punch, 10 February 2009). The handling of most of these petitions showed that the Nigerian judiciary is moving to consolidate and improve on its role as an agent of democracy. An analysis of all the petitions filed is clearly beyond the scope of this article, so only petitions emanating from governorship elections in six states (Anambra, Imo, Edo, Rivers Ondo, Ekiti) are considered here.

Ekiti State: Segun Oni vs Kayode Fayemi

Ekiti state is one of the five southwest states won by PDP in 2003. During the 14 April 2007 governorship election, the state was again won by the PDP, according to results announced by INEC. This victory however proved a very controversial one. Immediately after INEC announced its result, the candidate of the AC, Kayode Fayemi, who came second on the INEC list, went before the Ekiti State Elections Petitions Tribunal, ESEPT, to challenge the result. Dr Fayemi’s complaints were mainly premised on two grounds. These were that there were serious irregularities and fraud in 63 wards in 10 Local Government Councils and that the election was marred by non-compliance with electoral act (The Guardian, 18 February 2009). After losing his appeal at the ESEPT, Feyemi appealed to the Court of Appeal in Ilorin. In February 2009, the Appeal Court upheld one of his two major complaints, which was enough to nullify the election of PDP’s Segun Oni. Specifically, the court found that Oni’s purported election failed substantially to comply with the 2006 Electoral Act. The second ground for complain was rejected because the AC candidate failed to prove his allegation of ballot box stuffing beyond reasonable doubt. Consequently, the court ordered Oni to immediately hand over the leadership of the state to the Speaker of the House of Assembly, Mr. Olatunji Odeyemi, while a re-run of the election in the 10 of the 16 local government areas of the state were to be held within 90 days.

The reactions of the two protagonists in this case are worth noting. Immediately after the final judgment was read, both parties expressed their willingness to accept and abide by the verdict. In his reaction to the judgment, Oni, the PDP governor who had just been removed by the court, underlined the changing approach of politicians to rule of law. According to him, *'It is the will of God. The verdict is not a setback. I do not see the re-run as a setback because, if we do it again, we will still win. My message to Ekiti people is that everybody should remain in a jubilant mood'*. Indeed, in the days that followed, both candidates conducted themselves peacefully, even as they commenced preparations for the re-run election.

The limit of the progress made was however highlighted by the violence and confusion that followed the Ekiti re-run election which took place on 25 April 2009. Several days after the vote, the results remained unknown. After disappearing for few days, fuelling speculation that she might have resigned her position under pressure, the Resident Electoral Commissioner, Mrs. Ayoka Adebayo, who supervised the re-run election, resurfaced in INEC's Abuja headquarters to announce that she would return to Ekiti state to conclude the announcement of the suspended re-run governorship election results (The Punch 30 April 2009.). The result that was subsequently announced when she returned to her post in Ekiti awarded victory again to the PDP, fuelling suspicion that the vote had been rigged. The announcement in fact led to a temporary breakdown of law and order, as angry supporters of AC clashed with PDP thugs and security agents. Eventually, the AC candidate returned to the ESEPT, complaining again that the result announced by INEC was a farce.

Ondo state: Oludegun Agagu vs Olusegun Mimiko

The 2007 governorship election in Ondo state, like in other states of the federation, featured several political parties and candidates, including the incumbent PDP governor, Dr. Olusegun Agagu, who was running for a second term of office as governor. The first petition against the outcome of the elections was received on 15 April 2007, 24 hours after PDP's candidate was announced winner of the election. Ultimately, the result was eventually challenged by four contestants, the most forceful being the candidate of the relatively unknown Labour party, Dr. Olusegun Mimiko, whose petition actually culminated in the removal of the PDP governor from office. This occurred on 22 February 2009, when the

Court of Appeal sitting in Benin declared Dr. Olusegun Mimiko as the rightful governor of Ondo State. In reaching this judgment, the court was only affirming the judgment of the lower tribunal that annulled the disputed polls and declared Dr. Olusegun Mimiko as the duly elected governor of the state (The Guardian, 23 February 2009).

Like others before it, this judgement was greeted with widespread jubilation and celebration. Almost immediately after the judgement was read, Akure, the Ondo state capital erupted in a frenzy of jubilation with youths taking to the streets in a victory dance along major roads, and all the drinking joints that had hitherto remained under lock were opened. Thousands of residents trooped to the streets to celebrate what one retired civil servant said was ‘a triumph of the majority over the oppression of the minority’ (Ibid.). In the end, the removal of the former Ondo State governor passed without any major political incident, except of course the well publicised message from the President, Umaru Musa Yar’Adua, congratulating the newly sworn-in governor of Ondo State, Olusegun Mimiko, and assuring him of the full cooperation of his administration (ThisDay 28 February 2009).

Edo state: Oserheimen Osubor vs Adams Oshimole

Edo state governorship election was concluded on the 14 of April 2007 but the results remained contested even 19 months after. This stemmed from the legal challenge mounted by the opposition AC against the election of Professor Oserheimen Osunbor of PDP. The candidate of the AC, Adams Oshimole, a former president of Nigeria Labour Congress had gone before the Edo State Election Petitions Tribunal, ESEPT, to complain that he, and not Prof Osunbor, won the disputed election. In March 2008, the tribunal upheld the petition of Oshimole, thereby invalidating the election of Osunbor. This decision forced the Governor to file an appeal at the Court of Appeal in Benin City, which he lost on 11 November 2008 (The Punch, 13 November 2008).

Liked other governors who had been removed from office by Nigeria’s increasingly exertive judiciary, Professor Osunbor parked out of the state house in Benin City within 24 hours, underlining the fact that Nigerian politicians have come to regard the power of the judiciary as a *fait accompli*. The conduct of the opposition in Edo state, even in the face of delayed justice, needs also to be underlined. Throughout the litigation process, the party and its leadership maintained their faith in the capacity of the judiciary to deliver justice. This was underlined by the declaration of Mr Oshimole at the beginning of his appeal in 2007: ‘The

good news is that we are running a system that is based on the principles of separation of powers. So, the President could use the INEC, Police or even the army, but he does not have control over the judiciary – and there is enough evidence that a number of judicial pronouncements have embarrassed the federal government (Saturday Tribune, 22 March 2008). The judiciary proved him right.

Imo State: Ikedi Ohakim vs Ifeanyi Ararume

The 2007 election in Imo state was won by an opposition candidate, Ikedi Ohakim. Before he emerged as Governor, this politician and his political party, the PPA, were hardly known to Nigerians outside the state. Ohakim's popularity soared when the hitherto ruling PDP got itself entangled in extra-legal and potentially damaging nomination process, for which it was heavily punished by both the courts and the electorate. PDP's governorship primaries was won by Ifeanyi Ararume, a former senator. But soon after the vote, the PDP leadership replaced Ararume with another politician, Charles Ugwu, who was never a candidate during the primaries. In doing this, the party gave no reason, contrary to provisions of the electoral Act. Senator Ararume later proceeded to the court to challenge his replacement. In the end, the Supreme Court declared his replacement illegal, noting that in the eyes of the law he remains the authentic candidate of the party in the election. But rather than comply with this ruling, PDP decided to withdraw from the Imo governorship election completely, leaving Senator Ararume running without his party's support. At the end of the election, Ararume was roundly defeated by his less well known challenger, Ikedi Ohakim.

Ohakim's victory against the ruling PDP was further cemented by subsequent judicial interventions. After he assumed office in 2007, his opponents went to court to challenge his victory. The major challenge of course was from the PDP candidate, Ifeanyi Ararume, who pleaded with the court to annul the election of Ohakim on grounds that the election was marred by corrupt practices, violence and that he, rather than Ohakim scored majority of the total votes cast in the election. Ararume also wanted the court to order by-election in nine local government areas where he alleged that elections did not take place, claiming that the results declared for those areas were fabricated by INEC (The Guardian, 24 March 2009). But both the Imo State Elections Petitions Tribunal and the Court of Appeal ruled that his petition lacked merit in every respect and that he has failed to prove his case convincingly (Saturday Tribune, 8 March 2008).

Rivers State: Celestine Omehia vs Chibuike Amaechi

The election dispute in Rivers state resembles that of Imo state, in that the PDP candidate who won the party primaries, Chibuike Amaechi, was replaced with another candidate, Celestine Omehia, who did not participate in the primaries. As usual, the party did not give any reason for this change, although Amaechi was subsequently indicted by an administrative panel set up by the federal government. However, unlike the Imo case, Omehia went on to contest and win the election for the party. But rather than unite the party, his victory only served to boost the determination of Amaechi to demand justice. Thus, immediately after the Rivers state gubernatorial election, Amaechi went to court to challenge the election of Celestine Omehia as governor of Rivers state. His ground of appeal, as should be expected, was that his party, the PDP, in substituting him did not comply with the Section 34 (1) of the Electoral Act 2006. The section provides that cogent and verifiable reasons shall be given by a political party for substituting its candidate. This was obviously not followed by the PDP, who, miffed by Amaechi's audacity to challenge the authority of 'the party' in court had slammed him with a suspension.

Initially, Amaechi's substitution was upheld by both the High court and the Court of Appeal which declared his substitution lawful. The Appeal court even went further to sight Amaechi's indictment by a Federal Government administrative panel as a further justification. But subsequently, this anomaly was corrected by the Nigerian Supreme Court which in a unanimous decision on 25 October 2007 concluded that the PDP did not provide cogent and verifiable reasons to substitute Amaechi as required by law. The apex court also held that the claim that Amaechi has been indicted by a Federal Government administrative panel was untenable because 'there is no indictment known to the law against the appellant, no court of law has pronounced the appellant guilty of any criminal offences as to justify his unlawful exclusion from the election' (The Guardian, 26 October 2007). Consequently, the court ordered that Omehia immediately vacate office and Amaechi be sworn in as the rightful Governor of Rivers state (Ibid.).

The response of the PDP hierarchy to this embarrassing judgment came through the President, Umaru Musa Yar'Adua. In a press statement released by his spokesman, the President directed all 'relevant authorities and agencies to take immediate steps to implement

the orders of the Supreme Court'. The President also 'called on all parties to the suit to respect and abide by the ruling... and to accept the judgment in good faith' (The Guardian, 26 October 2007.). This directive was fully observed, as the removed governor immediately handed over power. In his own response, he said he had accepted the judgment as 'the the will of God', while calling on his supporters and he people of the state to 'cooperate with the incoming administration' in order to 'maintain the existing peace which he observed was necessary for development of the state (The Guardian, 27 October 2007)'

Anambra state: Peter Obi vs Andy Uba and INEC

The 2007 governorship election took place simultaneously in all of the 36 states of the federation, including Anambra state, where the Governor Peter Obi had been in office for only 12 months. The election produced a PDP victory under Mr. Andy Uba, a former aide and well known ally of the then outgoing President, Olusegun Obasanjo. Governor Obi did not take part in that election. Just to recount, Mr. Peter Obi of the APGA was sworn into office as Anambra state governor in March 2006, only after successfully challenging the purported election of Chris Ngige, who was wrongfully declared winner of the April 2003 Anambra governorship election by INEC. The Anambra election therefore presented a rather unique challenge. The key question was when Governor Obi could be said to have completed his tenure as governor. Will it be 2007 or March 2010? As should be expected, Governor Obi's contention was that his tenure in office will elapse in March 2010 and not April 2007 which was proposed by INEC and the PDP. Without resolving this constitutional issue satisfactorily, INEC went ahead to conduct governorship polls in Anambra on 14 April 2007.

Immediately after that election Governor Obi, once again headed to the court. This time, his point of call was the Supreme Court, which he asked to determine if INEC was right in organizing the said election in view of the date he assumed office as Governor. The decision of the Anambra governor to go before the Supreme Court was supported by a large section of the Nigerian bench and indeed the public, who argued that Obi should have been allowed to remain in office for four years in line with the wishes of the voters and of the law. Although some lawyers, such as the well know democracy and human rights activists, Gani Fawehinmi, argued that the Court of Appeal should be the final court in matters relating to the tenure of a governor and that the Supreme Court should not have entertained Obi's case in the first instance. But the fact of the case was that Obi's suit was simply to seek interpretations on

the provisions of the constitution as it affects his tenure and was not a petition challenging the election of any other person strictly speaking. The appellant did not go to court to ask for nullification of the election of another person.

In any case, before the 29 May 2009 date fixed for the swearing in of Andy Uba came, the Supreme Court reached a decision to the effect that the tenure of Governor Peter Obi will end in March 2010, and not April 2007. On the basis of that ruling, the Anambra State Elections Petition Tribunal went ahead to nullify the 2007 Anambra governorship election won by Andy Uba of the PDP. In other words, the tribunal gave vivid expression to an opinion indirectly expressed by the apex court that the conduct of an election when the tenure of the occupant of an office has not expired "was an action in error" (The Guardian, 15 June 2007).

Conclusion

One of the basic requirements for the continued survival and prosperity of a liberal democratic state is the presence of strong and independent oversight institutions. One of such institutions is the judiciary (Mbanefo, 1975; Walraven and Thiriot, 2002). A good judiciary will not only check the abuse of power by the government (Davies, 1990; Ige and Ige, 2006), it will also be capable of managing intra-elite dispute or and conflicts which are bound to result from competition for power and economic resources which party politics in a multi-ethnic society entails (Suberu, 2001). Much of Nigeria's democratic failings in the past have been due to her inability to construct such an impartial and honest judiciary that will command the respect and confidence of most members of its fractious political class and deeply divided population (Olurode, 1990; Unobe, 1990).

Since 1999 when Nigeria moved from a military autocracy to a multi-party democracy, however, a combination of some carefully crafted legal and administrative tinkering, has transformed its judiciary from an extension of the executive into an impartial and credible arbiter of political disputes. Suddenly, the fear of the judiciary seems to have become the beginning of political wisdom in Nigeria. From our analysis of the results of the 2003 and 2007 elections and outcomes of some petitions that followed them, we can see that, although the Nigerian judiciary has not succeeded in introducing a culture of free and fair

elections, it has undergone a major transformation. The Nigerian judiciary has suddenly become a reliable partner in Nigeria's historical struggle for a fairer electoral process. To quote Nigeria's former Vice President, who has won several legal victories, even though all major elections have continued to be dogged by widespread irregularities, fraud and violence, "all hope has not been lost as the current role of the judiciary has been enough saving grace" (ThisDay, 15 February 2009).

The political consequences of the transformation in the judiciary have been significant. Although Nigeria continues to be plagued by serious intra-elite wrangling, very often resulting in bloody political conflicts, the increasing willingness of political elites to seek judicial avenues for the resolution of conflicts has helped maintain political stability and social harmony. Nigerian politicians now regularly resort to the courts to resolve their differences, and have come to see an acceptance of court verdicts, whatever direction it may go, as in their longer term interest. This largely explains the longevity of the current fourth republic.

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