History of Politics and Elections in Nigeria

Introduction

Politics and elections can be perceived as Siamese twins (inseparable) when viewed from a democratic prism. Though, the political history of Africa paints a different picture, with series of coups and counter coups. civil wars, secessions and rebel uprising, all showing the possibility of politics devoid of elections. This grim reality actually underscores Aristotle's assertion that all human beings are political animals either through conscious acts or unconscious actions.

Putting a date to the history of politics and by extension elections in Nigeria can be a bit tricky as a starting point can as well extend beyond pre-colonial periods, when the present day modern Nigeria was more or less an unformed embryo. What is called Nigeria today was the result of Sir Frederick Lugards' amalgamation of the Northern and Southern Protectorate in 1914, with the whole territory named the Colony and Protectorate of Nigeria. By that time British administrators, traders and missionaries had been at work, particularly in the southern area, for about 100 years, during which the influence of western education and other social institutions had continued to expand while portions of traditional local systems declined.

14 Colonial Period (1914-1960)

Events do not occur in a void as such because there are historical connections to every development. According to a book titled: Nigeria: a country study, one of the serial Area Handbook Series published by the American University. Washington D.C., it notes that activities of Portuguese navigators have been noticed in the West African coast since the early 15th century. In 1481 emissaries from the King of Portugal visited the court of the Oba of Benin. By 1851, Britain captured the colony of Lagos in a bid to have a firmer grip over its commercial interests in the coastal town and proclaimed Lagos a Crown Colony in 1861. In 1885, the Berlin-West African Conference of major European powers agreed to entrust Britain with the sphere of influence of the Niger River Basin.

The 1914 unification introduced the principle of indirect rule of administration which literally gave the power of administration to the traditional rulers but with instructions and prodding from the colonial officers. In 1916 Lord Lugard formed the Nigerian Council, a consultative body that brought together 6 traditional leaders including the Sultan of Sokoto, the Emir of Kano, and the Alaafin of Oyo to represent all parts of the colony. Though it is on record that they have no major role to play in policy formulation as Lord Lugard dictates the policies of the British Crown to them.

Colonial Constitutions and Political Parties

With the exit of Lugard in 1920, Nigeria experienced 4 successive constitutional changes with the Hugh Clifford Constitution of 1922 being the first followed by the Richards' 1946 Constitution, 1951 Macpherson's Constitution and the Federal Constitution of 1954 popularly known as the Lyttelton's Constitution. Political agitation for representation led to the birth of political parties in Nigeria. The first party to emerge was the Nigerian National Democratic Party (NNDP) in 1922. The party was founded by Sir Herbert Macaulay, reputed to be the father of party politics in Nigeria. It contested seats in the Lagos Legislative Council created by the 1922 constitution. Though, different associations and groups existed before the formation of the NNDP but they were not organized in a party structure. By 1944 another party National Council of Nigeria and Cameroun (NCNC) emerged with the late Dr. Nnamdi Azikiwe as the Secretary General and Herbert Macaulay as the President. It was initially a coalition of all the major labour unions, social groups, political clubs, professional associations and over 100 ethnic organizations, the NCNC had an almost national spread and appeal.

The Action Group led by the late Chief Obafemi Awolowo was founded in 1951 as the political party arm of the socio-cultural organization, Egbe Omo Oduduwa and the Produce Trader's Association which he gave

leadership role. Other political parties soon came into the political picture, like the Northern People's Congress (NPC) led by the late Ahmadu Bello, the Sarduana (war leader) of Sokoto, Northern Elements Progressive Union (NEPU) led by Alhaji Aminu Kano, United Middle Belt Congress (UMBC) led by Joseph Tarka, Bormu Youth Movement (BYM), Ilorin Talaka Parapo (ITP). United National Independent Party (UNIP), Niger Delta Congress (NDC), Benin-Delta People's Party (BDPP), Mid-West State Movement among others.

With the 1954 constitution which introduced principle of ministerial responsibility under British-style parliamentary form of government, events in the Nigerian state moved rapidly. By 1957, the Western and Eastern regions became formally self-governing in regional affairs within the Federal structure and in the same year the Federal Executive Council was created to prepare Nigeria for independence. In the year 1959, the Northern region became self-governing and the National parliamentary elections in December, 1959 led to the formation of a coalition government under the prime ministerial-ship of Abubakar Tafawa Balewa.

This seminar paper will be geared towards a comprehensive discussion of election as it dates back to pre- independence. There will be emphasis on our Electoral Laws and how the Legal Practitioner can benefit immensely from aftermath of Election petition.

Election Dispute Resolution Mechanism

Actions instituted for the purposes of challenging the validity of an election or disputing of due return of a candidate or claiming the return of the candidate are commenced by petition. Ojong V. Duke[1]

> "Elections petitions are distinct from the ordinary civil proceedings and in certain circumstances the slightest default in complying with procedural step which otherwise could either be cured or waived in ordinary civil proceedings could result in fatal consequences to the petition."

Section 4 (1)[2] provide thus:

> ·· An election petition under this Act shall
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> (c) State the holding of the Election, the scores of the candidates, and the person returned as the winner of the election"

In Ezeobi V Nzeka "Only an election petition may be used to question in any High court, any Local Government election and any return to a local Government council"

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[1](2003) 14 NWLR pt 841 p. 581
[2]2nd schedule to the Electoral Act, 2002
[3](1989) | NWLR pt 98 p. 478

An election petition is heard and determined by an appropriate election Tribunal as usually provided by the constitution. In the 1999 constitution, such provision is made under section 285 and the sixth schedule to the constitution. The procedure is largely governed by a law made specially to regulate the proceedings. The jurisdiction of an election Tribunal to deal with election petitions is of very special nature different from that in an ordinary civil case. So election petition is neither seen as a civil proceeding in the ordinary sense nor a criminal proceeding It can, therefore, be regarded as a proceeding sui generis.

ELECTION TRIBUNALS IN NIGERIA

In the first and the second Republic, jurisdiction to entertain petitions was generally vested in the High Courts of the Regions and State respectively. Elections to the constituent Assembly, the Constituent Assembly Act, 1977 made the following provisions in paragraph 13 (1) of schedule 2

> ¨Any question as to whether a person has been validly
> elected in any State as a member of the constituent
> Assembly shall be referred to and determined by a Tribunal comprising
> the Chief Judge of the State or such other Judge
> or legally qualified person as he may appoint as Chairman
> and two other members to be appointed by the Chief Judge¨

The provision vested jurisdiction in a Tribunal, which comprises mainly of High Court Judges.

··No election and no return to the senate, the House of Representatives or any State Assembly or to any elective office shall be questioned in any other manner except by a petition complaining about the election or the return and presented to the competent High Court in accordance with the provisions of this Act.

The election petition, must be heard by a competent High Court. Section 237 (1) Provides;

Without prejudice to the generality of the provisions of section 236Of this Constitution; the competent High Court shall, to the exclusion of any other Court, have original jurisdiction to hear and determine any question whether any person has been validly elected to any office or to the membership of any legislative house has become vacant.

Section 237 (2) thereof defines the meaning of "competent High Court" Thus;

In this section a competent High Court means

(a) In any case involving the office of president, the force of section 262 of this constitution, the High Court of the Federal capital Territory…

Local Government Elections

The Local Government (Basic Constitutional and Transitional Provisions Act Provides;

> There shall be established for each State one or more election Tribunals to be known as Local Government Council Election Tribunal...

Paragraph 51 (1) of schedule 5 to the Act provides:

> Subject to the express provisions of this Decree, the practice and procedure of the Tribunal in relation to an election petition shall be assimilated as nearly as maybe to the practice and procedure of the High to the exercise of its civil jurisdiction, and the civil procedure Rules or civil procedure code shall apply with such modifications as may be necessary to render them conveniently applicable, as if the petitioner and the respondent were respectively the plaintiff and the defendant in a civil action.

In 1987, the Babaginda administration published a civil rule programme via the Transition to civil Rule (political programme) Act. In its section 9, the president was empowered to constitute a special Tribunal was generally known as the Transition To Civil Rule Tribunal.

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4Section 70 (1)
5cap 443, laws of the Federation of Nigeria, 1990

In Participation In Politics And Election (Prohibition) Act, the Federal Government banned certain former and (then) present office holders from participation in politics and elections during the Transition programme. Section 2(1) of the Act empowered the

National Electoral Commission (N.E.C) to declare that a person nominated or appointed to any public office is a person affected by the Act.

It seems that decisions in election cases became more controversial during the transition programme leading to the ill-fated Third Republic. The grouse was, in the main, that election Tribunals, by their verdicts, supplanted the choice of the electorate. It was apparently in reaction to the abnormal situation that the law makers made the following provision in Section 92 (3) of the State Government (Basic Constitutional and Transitional provisions) Decree 1991: Which provides

> Where a court or Tribunal finds that a candidate elected or nominated was not duly elected or nominated the court or Tribunal shall order a by- election and no more

ELECTION TRIBUNAL UNDER THE 1999 CONSTITUTION

The 1999 Constitution created 3 types of Tribunals;

1. The Court of Appeal
2. National Assembly Election Tribunal
3. Governorship and Legislative >Houses Election Tribunal
4. Local Government Election Tribunal

THE COURT OF APPEAL

Section 239[6] provides that the court of Appeal shall have original jurisdiction to the exclusion of any other court in Nigeria to hear and determine any question as to whether,

(a) Any person has been validly elected to post of president or vice president

(b) The term of office of the president or vice president has ceased

(c) Or the office has become vacant

NATIONAL ASSEMBLY ELECTION TRIBUNAL

Section 285 (1)[7] the election Tribunal is to hear and determine whether any person has been validly elected to the senate and House of Representatives. The Tribunal can also determine whether any person has been validly elected to the senate and House of Representatives. The Tribunal can also determine whether a person has been properly brought before it or whether the term of office of a person has ceased or whether the seat has become vacate.

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[6]1999 Constitution of Federal Republic of Nig
[7]1999 Constitution of federal Republic of Nigeria 10

Appeal from this Tribunal goes to the court of Appeal which is the final court.

AWUSE V ODILI[8]

An appeal in respect of a decision of the National Assembly election Tribunals when decided in the Court of Appeal cannot be taken on appeal to the Supreme Court,

but is final for all purposes. This is in accord with Section 246(3)[9] which provides that the decision of the Court of Appeal in respect of appeals arising from election petitions shall be final. ONUAGULUCHI V. NDU

GOVERNORSHIP AND LEGISLATIVE HOUSES ELECTION TRIBUNAL

Section 285 (2)[10] Provides for the establishment of Governorship and Legislative House election Tribunal in each State of the Federation.

LOCAL GOVERNMENT ELECTION TRIBUNAL

This Tribunal is a creation of the Laws of each State. The House of Assembly make laws creating the Local Government election Tribunal for that State to look into the petition arising from that State. To look into the election of Chairman, Vice Chairman, Councillors of the Local Government elections.

[8](2003)18NWLR pt 851 p 116
[9]1999 Constitution of Federal Republic of Nigeria
[10]1999 Constitution of Federal Republic of Nigeria 11

CONSIDERATION OF THE ELECTORAL LAWS 1959-2003

The electoral laws in Nigeria has two facet that is the Pre - Independence period and the post Independence period.

The 1922 Constitution which notably referred to as Clifford Constitution created no election body to conduct elections. The power to issue electoral regulations for the conduct or the election lied solely with the Governor[11]

To qualify to be elected into the Legislative Council the candidate must have been registered as a voter[12]

A person is disqualified from being elected or from voting in the council if he has been sentenced by any competent British Court for any crime punishable with imprisonment for a period exceeding one year.[13]

In 1941 minor amendments were effected to the 1922 ordinance[14] as to the penalty a person sitting or voting in the Legislative Council.

In 1946 the Ordinance of 1922 as amended was repealed and in its place - the Nigeria (Legislative Council) Order in Council was promulgated. The Law reduced the tenure of office of nominated un- official members and elected members from five to three years.

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[11]Article XXXII of Nigerian (Legislative Council) order in Council 1922
[12]Article XIV Nigeria (Legislative Council) order in Council 1922
[13]Article XV of Nigeria (Legislative Council) order in Council 1922
[14]Article 14 of the Nigeria (Legislative Council) Amendment Order

In 1958 the Nigerian (Electoral Provisions) Order in Council for the Elections into the House of Representatives was promulgated. The new Regulations repealed the existing Regional Regulations, it provided for the establishment of all the regions were to be represented.

The Regulations created an "Electoral Commission and demarcated the Country into constituencies.

It was not until 1958 that an Electoral commission was establish to register voters and conduct elections.

In 1960 on attainment of Independence the Nigeria Electoral (Transitional Provisions) Act 1961 was enacted. The Act validated the Elections (House of Representatives) Regulations 1958 and the Federal Legislative House (Disputed seats) Registration 1959.

In 1962, the Electoral (Amendment) Act was enacted. The Act presented most of the provisions of the 1962 and effected minor amendments.

The military came into power in 1966 and suspended the operation of the Electoral Act. Powers to make Laws were then vested in them.

The Federal Military Government promulgated the 1977 Election Decree in preparation for Transition to civil rule. It provided for Presidential system of Government and made it mandatory for political parties to be registered with the Federal Electoral Commission before it can participate in any election.[5]

It provided for Election petition and created Election Tribunals.

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Section 77 and 78 Electoral Decree 1977 13

In 1977 Electoral Decree was further amended in 1979, the amendments provide for an electoral college among other things.

In 1982 the National Assembly enacted a new Electoral Act[16] the Act repealed the 1977 Electoral Act.

The provisions of the 1982 Electoral Act guided the conduct of 1983 general elections where the ruling party was returned to power.

In 1991, the State Government (Basic Constitutional and Transitional Provisions) Decree was promulgated Another Decree promulgated during the Transition programme is the National Assembly (Basic Constitutional and Transitional provisions) Decree No 18 of 1992 which provides for the conduct of the National Assembly elections.

The presidential Elections was conducted on the 12th of June 1993 pursuant to the provisions of the Decree though the election was unceremoniously annulled by the Government before the announcement of the final results.

In 1997 the Local Government (Basic Constitutional and Transitional provisions) Decree[18] was promulgated. The Decree repealed the earlier Decree. Later on the State Government (Basic Constitutional and Transitional provisions)[19] was promulgated for Governorship and State Houses of Assembly elections. For conduct of 1999 Elections several Decrees were promulgated.

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[16]cap 105 Laws Of Federation 1990
[17]Decree 50 of 1991
[18]Decree No 7 of 1997
[19]Decree No 22

1. Local Government (Basic Constitutional and Transitional provisions) Decree

2. State Government (Basic Constitutional and Transitional provisions) Decree

3. National Assembly (Basic constitutional and Transitional provisions) Decree No 5 of 1998

4. Presidential Election (Basic constitutional and Transitional provisions) Decree No 6 of 1999

In 2003, elections were conducted based on the Electoral Act 2002. The National Assembly have passed a Bill into law and it is now Electoral Act. 2006. This Electoral Act will be the law governing the 2007 election. It contained some slight amendments to some provisions of the Act. The Electoral Act 2002 has been re-enacted to Electoral Act 2006 with amendments.

THE ROLE OF LAWYERS: PETITIONER AND RESPONDENT

The extensive Afro barometer survey of public attitudes across Nigeria shows the ups and downs of last few years reflected in public attitudes. The great majority of those questioned still valued the democratic system in itself, and preferred it to any

other form of government, but at the same time expressed reservations about its current performance. But the right to live under this system has been hard-won.

The military governments of the 1990s were opposed by a broad front of civil-society groups, media organs, students and activists who worked both within and outside Nigeria to open up public space for opposition and debate. The true state of affairs became apparent when Babangida annulled the results of the 12 June 1993 election due to the surprise win of M.K.O. Abiola, who was later jailed and subsequently died in detention. Under the authoritarian Abacha government activists became more vocal as their work became more dangerous, and some paid with their lives. The tradition of civil society activism, as the 'eternal vigilance', which safeguards civic freedoms, has become more, not less, necessary in the return to democratic rule. Human rights lawyers, environmental groups, the media, political activists and religious leaders and others continue to hold the government and politicians to account for their past and present failings.

The Role Of Legal Practitioners In Prevention, Management and Resolution Of Conflicts Related to Electoral Matters In Nigeria

According to both, legal-electoral theory and political science, the "System for the Resolution of Electoral Disputes" refers to the system of appeals through which every electoral action or procedure can be legally challenged. Legal appeals related to electoral issues can be submitted before judicial or political agencies. Such a system aims at ensuring regular and completely legal elections. Legal elections depend on legal corrections of any mistake or unlawful electoral action. Therefore, the system's aim is to ensure a real protection for and an effective enforcement of the political rights to elect or to be elected. To do so, the system ensures to all participants (political parties, citizens and candidates) that the voter's decision will prevail. The system aids in the protection of certain values that support every electoral action and every electoral procedure as follows:

- Legality:
- Certainty:
- Objectivity;
- Impartiality;
- Authenticity:

- Clarity, and
- Justice.

The whole system is based on a capital principle: the judicial agents in charge of sorting out electoral controversies must be independent, impartial and proficient from a technical point of view in order to ensure constitutional resolutions.

The system for the resolution of electoral disputes in modern democracies is fundamental to build up stable political systems and to build up a regular legal system as well. The system's contribution to protect fundamental rights and to strengthen the democratic governance of any country is evident.

As a matter of fact, the judicial resolution of electoral disputes has become a fundamental feature of any electoral democracy, not only for those countries undergoing democratic transition and consolidation, but also for those countries whose democracies can be seen as both advanced and mature.

Different Organization have been contributing to advancement of our electoral system.

To achieve a significant impact in our electoral system and process there is need for the Legal practitioner to encourage the following:

Review The Structure, Composition, Operations, And Funding Of Introduction of a gender quota for elective and appointive positions at all levels of government

This could be achieved in the short term by working with all of the political parties, and in the long term via a constitutional review.

Conduct a review of constitutional and electoral instruments in a process that embraces the views
of all sectors of the society

The government, the National Assembly, and civil society should harmonise the various review initiatives that they have implemented. Electoral instruments should be designed to promote broad participation and a credible electoral process.

Provide civic education for members of the population

There is a pressing need to mobilize popular support for democratic reform through sustained civic education by civil society groups, political parties, and the National Orientation Agency.

Develop a code of conduct for political parties that reflects national expectations for acceptable

political conduct behavior before, during and after elections

As part of efforts to instill a new political morality, the INEC, political parties and civil society should discuss and

develop new rules to guide the behaviour of the parties and their candidates.

Review the structure, composition, operations and funding of the INEC so that it can attain

autonomy

The INEC requires assistance in order to become independent in more than just name. Nigerians need to engage in

informed debate on the options for enshrining this independence, after which the National Assembly should pass the

appropriate legislation. An important consequence of this legislation should be the emergence of a professional electoral

commission, financed directly from the Consolidated Revenue Fund.

Effect devolution of power from the centre

Democratic reform is better served by a conscious policy of decentralization. More powers, responsibilities and resources should be transferred from the centre to strengthen the federal system and to enhance the capacity of other tiers of the federation.

Initiate debate on alternative electoral systems

Nigeria has employed the first-past-the-post electoral system since independence. While this has produced clear winners, it does not reflect the diverse nature of this

complex country. Not only does it fail to relate a party's share of the votes to the seats that it wins, but also it has not proven effective in promoting female representation. Political parties, civil society bodies and the media should initiate a debate on alternative electoral systems to see whether a more inclusive one can be adopted.

Reform and enforce legislation on political-party funding and campaign finance

Politics in Nigeria is increasingly monetised in a way that discriminates against quality participation. New legislation to curb the influence of money on politics should be passed and enforced.

Provide access for electoral monitors in all communities

Obstacles to proper election monitoring, such as insecurity and intimidation of observers and monitors, should be eliminated. The accreditation process should be made more inclusive and less cumbersome. INEC should cooperate with and encourage election observers.

Enforce media ethics and establish a trust to manage state media

Most of the state media function as partisan mouthpieces, reinforcing the exclusion of social actors outside government.

These instruments should be managed by independent public trusts dedicated to maintaining high ethical standards
and non-partisanship. Media organisations, such as the Nigerian Guild of Editors, the Broadcasting Organisation of Nigeria, the Nigerian Union of Journalists, the Nigerian Broadcasting Commission and the Newspaper Proprietors Association of Nigeria, should back this drive for change.

Institutionalize continuous voter registration and review

Updating the voters registers should become a routine exercise. Employing the latest technology, the INEC should organise this important process in an orderly and accessible fashion.

Guarantee the secrecy of the ballot and the sanctity of the results

To protect the integrity of the democratic process and the legitimacy of elected officials, the results of the poll must
reflect the preferences actually expressed by voters. Citizens must feel free to vote without fear and with the feeling that
what they are doing truly matters. Declaring results at the polling station could bolster public confidence in the process.

Develop and popularize a code of conduct for the security agencies

Security-sector transformation is a vital component of democratic reform and is crucial to guaranteeing respect for civil
rights.

New standards of behaviour should be set for all members of the security services, including an end to impunity
and institutional cover-up. This could necessitate that the National Assembly make changes to existing statutes.
The government should provide security-sector officials with continuous training in democratic values, while civil society
should develop the capacity to monitor effectively the security agencies and their operations.

This all, if considered all everyone contribute their quota the electoral process will be strengthened and there will be promotion of democratic consolidation in Nigeria.

The Legal Practitioner could also go beyond representing either the petitioner or Respondent at Tribunal. We could borrow a leave from the Federal Election Commission of the United States of America who established the alternative Dispute Resolution[20] office to promote compliance with the Federal election law

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Culled from www.Google.com

by encouraging settlements outside the traditional enforcement or litigation processes. This is a way the Lawyers can expand the tools for resolving conflicts. Alternative Dispute Resolution in the area of resolving election disputes has not commenced in this

part of Africa but it is a series of constructive and efficient procedures for resolving disputes through the mutual consent of the parties involved. ADR encourages the parties to engage in negotiations that promptly lead to the resolution of their dispute. ADR when applied to violations of the electoral Act:

- Facilitates a faster resolution of disputes, because the parties begin communicating early in the process with a sincere commitment to reaching a settlement.
- Enables petitioner to take active part in shaping the settlement of your case
- Allows high cost to be avoided and stress that may accompany traditional enforcement.
- It provides for employment for the legal practitioner.