

THE POLITICS OF ELECTION TRIBUNALS AND DEMOCRATIC CONSOLIDATION IN NIGERIA: AN APPRAISAL OF EBONYI STATE 2011 GUBERNATORIAL ELECTION TRIBUNAL

Professor Jonah Onuoha
Department of Political Science,
University of Nigeria, Nsukka

Utobo, O. J.
Department of Political Science and Public Administration,
Ebonyi State University

Abstract

The politics of election tribunals had held democracy in Nigeria on the jugular. This study that focused on the 2011 Ebonyi State Gubernatorial Election Tribunal sought to inquire, among others, into how our democracy and democratic institutions could be sustained and transferred from one regime to another, and the role of the judiciary therein. Without doubt, democratic practice in Nigeria since her independence had remained unstable, most often due to perceived or actual election irregularities which frequently resulted in election litigations. That had as many times shifted the security and strengthening of our democracy to the doorstep of the courts. We applied the system and elite theories, and, as a simple survey research, relied solely on secondary materials which were content analyzed to prove our hypothesis that election tribunals did not significantly contribute to democratic consolidation. Thus, it was found, among others, that the integrity of election tribunals in Nigeria, as shown in most of their judgments, portend danger for the country and her democracy unless they bestir to uphold popular and proper values. We recommended, inter alia, for real independence of the judiciary from the clog of other arms of government, especially the executive, adequate public enlightenment and effective political party competition that could constrain the electoral body from being biased.

Introduction

Why have Nigerian elections been characterized by crisis and litigation and how could the courts rise to the occasion to strengthen our fledgling

best democracy money can buy" (Palast, 2012). Such compromises breed immune and non-responsive governments with consequent popular disaffection and political crises. These could be either between the people and the government as demonstrated in the Niger Delta militancy and the malignant Boko Haram insurgency in the North-East, or between communities as evidenced in several communal crises in Ebonyi State, among others. It boils down to show that the survival and strength of any democracy, developed or developing, depend centrally on astute and courageous judiciary, complemented by transparent and effective politicking, and enlightened public with appropriate values and orientations.

Finally, any mention of the 1999 Constitution or Electoral Act in this work, except otherwise specified, refers respectively to the 1999 Constitution of the Federal Republic of Nigeria (as amended) and the Electoral Act 2010 (as amended).

Concept and theories of democratic consolidation

Democracy has its origin in the supreme will of the people, even though its direct form among the adult male Athenians has been replaced by representative pattern in consonance with modern complex and highly populated states (*en.wikipedia.org/wiki/democracy*; Jembibewon, 1998:230-231; Igwe, 2005:109). Although this "most civilized method of governance known to man" (Saliu, *et al*, 2008:123), popularized by Abraham Lincoln as "the government of the people, by the people, for the people," has no consensus definition, it has in all era been determined by "the extent that the government is controlled by the members of the population rather than imposed on them" (Goldstein and Pevehouse, 2012:13).

Thus, whether the body of men (government) is elected, selected or appointed, it must, to be a democracy, be determined by popular will. The general will in our modern, populous and heterogeneous society has usually been expressed through the people exercising their ultimate governing power by either directly or indirectly choosing their representatives or key decision makers in competitive, free, and honest elections (Adrain and Apter, 1995:155; Appadorai, 2003:137). The spread and speed of democratization have spiraled since "the defeat of communism.. and the triumph of the West.." (Onuoha, 2008:50).

Besides independent and credible elections, democratic sustainability and consolidation can be guaranteed through:

for government institutions (Welzel, 2008:82). Scholars here include Lipset (1959), Moore (1967), and Vanhanen (2003).

- ii) **The Genetic or Process Theory:** This theory emphasizes the epicenter of an independent and courageous judiciary to the enforcement of the rules of such processes as secret ballot, universal adult suffrage, regular competitive elections, equal participation, popular sovereignty, and executive accountability. They argue that, although these issues are regarded as 'procedural minimum', they are of greater essence to democratic stability and consolidation than structural changes espoused by the modernization theorists. Scholars here include Dahl (1971), Linz (1978), O'Donnell and Schmitter (1986).
- iii) **The Game-Theory Approach:** The exponents here attribute democratic success or otherwise to the rational choices of specific individuals or organizations, so that rather than election litigations or other subversive actions, losers in an election should concede defeat in the interest of stable democracy, and re-strategize for the next election. According to such proponents of this theory as Boix (2003), Przeworski (2006), and Acemoglu and Robinson (2006), our choices invariably determine social outcomes.
- iv) **The Institutional-Historical Theory:** This very recent theory is piecemeal, favouring historical analysis of each institution of democracy to ascertain its influence on political actors, rather than evaluating the development of democracy as a whole. So that any ingredient or practice which does not promote sustainable democracy is either modified or expunged altogether. Exponents here include Rodden (2009), Kruezar (2010), and Diamond and Robinson (2010).

Above theories notwithstanding, evidence shows that Nigeria's democracy is fettered and challenged from many fronts. These include reckless misrule by elected officials, political interference with, and corruption of, the judiciary, weak opposition and insensitivity to/intolerance of opposing views, primordial or subterranean influences on individual and group choices, generalized insecurity of lives and property, and the militaristic foundation of our constitution which makes it fundamentally unrepresentative or unpopular. The extent to which the 2014 National Conference would cure above ills remains dubious. Thus, Jega (2005:260) observes that:

democratic consolidation: "...very much requires strong democratic institutions, and democrats with the

undue election or undue return (Section 133(1), Electoral Act) that occasion election disputes and possible election petition (Maduagwu, 1988: iii). These petitions are filed before the relevant Election Petition Tribunal (EPT) empowered to "find the facts and decide the case by applying the legal rules or principles laid down by the enabling statute (Oluyede, 2007:217).

Election tribunals are variously composed. They comprise the Area Council Election Tribunal (S. 135(1), Electoral Act), National Assembly Election Tribunal (S. 285(1), 1999 Constitution), Governorship/Legislative House Election Tribunal (S. 285 (2), 1999 Constitution), and the Presidential Election Tribunal (S. 139, 1999 Constitution). Each has powers as provided by its enabling statute, and shall be constituted not later than 14 days before the election (S. 133(3), Electoral Act). Each tribunal, according to its powers and once a quorum comprising the Chairman and two other members is formed, shall have jurisdiction to determine whether:

- a) a person has been validly elected to an office;
- b) the term of office of the person elected to an office has ceased;
- c) the seat of any member of the council, legislature, National Assembly, Governor/Deputy Governor or President/Vice President has become vacant; and
- d) a question or petition brought before the election tribunal has been properly or improperly brought. (See generally, S. 285, Constitution 1999; S. 135, Electoral Act).

It is noteworthy that election tribunals in Nigeria are not fused with the functions of conventional courts as practiced in Ghana, Australia, etc. Again, some critics have condemned the abridgement of hearing period, requiring that tribunals shall deliver their judgment in writing within 180 days from the date of filing the petition, and appeal thereof to be disposed of within 60 days (S. 285, 1999 Constitution) as too short for thorough proceedings. However, this curtailment is well intended to circumvent the erstwhile situation where prosecution of election petitions was intriguingly made by the party in possession (i.e. occupying the office) to run the life of the term of office so that if the adverse party wins, he merely wins an expired office.

Election Petition

Election petition, which came into limelight in Nigeria during the 1st Republic, is an electoral dispute resolution (EDR) mechanism for challenging the

Table 1: Results of 26 April, 2011 Gubernatorial Elections in Ebonyi State.

S/No	Political Party	Candidate	No. of votes (as announced by INEC)
1.	Action Congress of Nigeria (CAN)	Mr. Adol Awam	3,618
2.	All Nigeria Peoples Party (ANPP)	Sen. Julius Ali Ucha	125,248
3.	All Progressives Grand Alliance (APGA)	Amb. Franklin Ogbueghu	29,055
4.	Congress for Progressive Change (CPC)	Lady Francis Mgbada	2,009
5.	Peoples Democratic Change (PDC)	Chief Kelvin Opoke	NIL
6.	Peoples Democratic Party (PDP)	Chief Martin N. Elechi	287,217
7.	Peoples Redemption Party (PRP)	Princess Esther Nwodo Agbo	448
8.	Progressive Peoples Alliance (PPA)	Mr. Jude Obasi Nkama	2,469
9.	Social Democratic Movement Party (SDMP)	Mr. Augustine Nweze	320
Total Valid Votes			450,384

Source: *The Voice (Abakaliki)* 15 January, 2012, 13.

The high hopes to reverse this declaration were dashed as the tribunal, shrouded in technicalities and perceivable undue influence, upheld it in its judgment delivered on 11/11/11 (11 November, 2011). Unexpectedly, the judgment of the EPT was subsequently concurrently affirmed by the Appeal and Supreme Courts on 7/1/2012 and 6/3/2012 respectively on even further technicalities. Although, of the nine political parties, which participated in the state's governorship election, it was only one of the candidates with his political party (i.e. Senator Julius Ali Ucha and ANPP) that maintained his action (EB/EPT/GOV/3/110 conclusively in *Ali Ucha & Anor Vs. Martin Elechi & 2 Ors* (2012) MRSCJ 1 @ 79, it was demonstrated that, as observed in the Romanian *Geoana Vs. Basescu* 2010 presidential election contest, "the court ignored extremely clear evidence" (*Boston.com.htm*).

The consequently imposed government, coupled with its high-handed "irrevocable and irreversible" policies and programmes (*The News*, 17 Sept; 2012: 14-20), and lack-lustre performance, generated wide public protests against the "government's insensitivity" and also multiple communal crises. These include the Iyionu-Ezillo, Edukwu-Achi, Ekpa-Omaka Ikwo and Inyimagu Ikwo, Ochi-Enyim Amagu Ikwo/Edadama, Abbi L.G.A. of Cross River State crises, in addition to the protracted Ezza-Ezillo crisis that started in May, 2008

of such incorruptible judges, as amply demonstrated in the popular Ayo Salami saga (*Salamigate*) or the ongoing governorship election tribunal in Ekiti State (Adeyeami, 2014:4) where these judges were respectively removed from office or physically assaulted, among other acts of intimidation, for resisting pressures to accede to "unconstitutional arrest of judgment" (Lai, 2011:6).

Without more, notwithstanding that there is "rot in judiciary" and "judgments were for sale" (*The Guardian*, 20 Sept, 2011:1,5; *Daily Sun*, 20 Sept; 2001:1,5,14), judges remain duty-bound, as ministers in the temple of justice, to state the law as it is. It is a threat to democracy for a court to make an order which conflicts with the process of any agency of government "to ensure good governance to the polity" (Abuh, 2014:1). Such sense of duty calls for judicial activism and avoidance of dissipative technicalities. The British lawlord, Lord Denning MR, and the Nigerian Oputa and Udo Udoma, JJSC, implore courts to employ the mischief rule as frequently as necessary in order to take cognizance of good conscience and public interest in their decisions rather than legalistic straitjackets. Accordingly, Chukwuana (2006:3) observes:

.. some justices have been known to be activist enough to use their awesome interpretative powers to correct unwarranted anomalies and activate social reforms for public interest and put our democracy in the path of growth.

Though few and far apart, there are instances of such enviable judicial activism. We shall cite only three here as they relate to election petition. In *Jim Nwobodo Vs. Christian Onoh* (1983 Governorship/Anambra), Petitioner (P), as sitting governor, claims against Respondent (R) as not duly elected and/or returned because, among other reasons, the Returning Officer allegedly falsified some results to favour the R. Although the tribunal found for the P, ostensibly due to incumbency pressure, the Court of Appeal reversed the judgment. Again, in *Peter Obi Vs. Chris Ngige* (2003 Governorship/Anambra), the P sought to void the return of the R allegedly due to massive rigging and substantial non-compliance with the Electoral Act 2002. After verifying the invalid votes of both parties, the tribunal held that the P had higher number of lawful votes and declared him as duly elected (*Saturday Independent*, 29 June, 2013:47).

The fact that the above judgment, further upheld on appeal, did not give legality to the choice of the electorates has continued to have its toll on Ebonyi State in form of scandalous performance by the government, wide public protests due to government insensitivity to the people's aspirations, and communal crises, all of which go to the roots of democracy and its consolidation. Such elite aggrandizement, irresponsibility and insensitivity to public welfare, and the consequent dissatisfaction and disaffection, account for militancy, instability and the on-going Boko Haram scourge that has killed about 13,000 Nigerians as of October 2, 2014 (Uthman, 2014:39; *Punch News*, 2 October, 2014). In fact, Governor Babatunde Fashola of Lagos State, speaking on the title, "Consolidating democratic norms through credible electoral process" rhetorically observes that "we cannot consolidate the norms of democracy without proper values, which are shared" (Oyebade, 2014:9).

But when corruption or power of incumbency or other forms of intimidation or undue influence dissipate the electoral process, or colour the electoral body's sense of decorum and integrity, is onus or incumbent on the judiciary to reverse the slide as done by the Supreme Court in *Peter Obi Vs. Andy Uba (supra)*, among others. This is in order to justify public confidence in the courts as the last hope of the common man, and consolidate our democracy, rather than descending into the arena and getting embroiled in the politics as the lower courts did in *Nwobodo Vs. Onoh (supra)* and *Obi Vs. Uba (supra)* to serve the interest of their paymaster rather than justice and democratic growth.

Summary

Elections, as the measure of political choice, are the vehicle of democracy, and their results are intended to reflect the pulse of the people, wherefore aggrieved parties, as practiced in Nigeria, recourse to the Election Petition Tribunals, different from conventional courts, to challenge the conduct of such elections. The fact that these tribunals and other courts, on appeal, often appeared to have been influenced or bribed, by bowing to the whims and caprices of the powerful in the society, and then hide under unwarranted technicalities to subvert popular choices in their judgments have, among other causes, led to the orgy of protests, insurgency, militancy and communal crises across the country.

The 2011 Ebonyi State Gubernatorial election petition tribunal proceedings and decision present a perfect example of this negation which

- iii) Politicians should play according to the rules of the game, use their parties as agents of virile public enlightenment and participation, and avoid unnecessary interferences which weaken the institutions of governance. Regimes are transient; it is the strengthening, sustenance and transfer of these institutions from one regime to another that underscores democratic consolidation.
- iv) Intimidation and physical assault on judicial officers are uncanny and bizarre, and should be roundly condemned and avoided, because ordinary felling of insecurity is sufficient to truncate the administration of justice, and both the leaders and the led will be losers for it.
- v) Law enforcement agencies, especially the police and the army, should demonstrate more sense of professionalism and stop politicians from using them, either by their action or inaction, to achieve inordinate, selfish political ends at the expense of the public, which these agencies and their relatives are a part.
- vi) In addition to constructive use of the hearing period abridgment to 180 days (and 60 days for appeal) (S. 285(6) and (7), 1999 Constitution), there is even higher need for religious implementation of the Justice Uwais Electoral Review Committee Report (2008), especially requisite independence of the electoral body.
- vii) All recommendations above call for more action on the part of the National Judicial Council, the Judicial Service Commission and the Nigerian Bar Association Anti-Corruption Commission in their regulatory roles to ensure high judicial rectitude and integrity to do the needful to control political actors.

References

- Acemoglu, D. & Robinson, J. (2006), *Economic Origins of Dictatorship and Democracy*. Cambridge, Cambridge University Press.
- Ake, C. (1997), *Dangerous Liaisons: The Interface of Globalization and Democracy* "In" A. Hadenius (ed) *Democracy's Victory and Crisis*. Oxford, Cambridge University Press.
- Andrain, F. C. and Apter, D.E. (1995), *Political Protest and Social Change: Analysing Politics*. London, Macmillan Press Ltd.

Saliu, J. A. *et al* (eds, 2008), *Perspectives on Nation-Building and Development in Nigeria: Political and Legal Issues*. Lagos, Concept Publications Ltd.

Akinboye, S. O. (2005), "INEC and the Management of the 2003 General Elections: Lessons and Prospects" in G. Onu and A. Momoh (eds.) *Elections and Democratic Consolidation in Nigeria: Proceedings of 23rd Annual Conference of Nigerian Political Science Association*, Lagos: A-Triad Associates.

Jega, A. M. (2005), "External Forces, Good Governance and Democratic Consolidation in Nigeria" in J.U. Ogwu (ed.) *New Horizons for Nigeria in World Affairs*. Lagos: Nigerian Institute of International Affairs.

O'Donnell, G. & Schmitter, P. (1986), "Tentative Conclusions about Uncertain Democracies" in G. O'Donnell, P. Schmitter & L. Whitehead (eds.), *Transitions from Authoritarian Rule: Prospects for Democracy*. Baltimore: John Hopkins University Press.

O'Donnell, G. (1992), "Transition, Continuities and Paradoxes" in S. Mainwaring, *et al.* (eds.) *Issues in Democratic Consolidation: The New South American Democracies in Perspective*, Indiana: The University of Notre Dame Press.

Rodden, J. (2009), "Back to the Future? Endogenous Institutions and Comparative Politics". In M. Lichbach & A. Zuckerman (eds.), *Comparative Politics*, Cambridge: Cambridge University Press.

Boix, C. & Stokes, S. (2003). Endogenous Democratization, *World Politics* 55(4): 517-547.

Enweremadu, D.U. (2011). Judicial Reform and Democratic Consolidation in Nigeria: 1999-2009, *Journal of African Elections* 19(1): 5-19.

Hirschl, R. (2006). The New Constitutionalism and the Judicialization of Pure Politics Worldwide, *Fordham Law Review* 75:721.

<http://ir.lawnet.fordham.edu/flr/vol.75/iss2/14>. Visited 17/9/13.

- Imo, E: "Ikwo Communal Clash Claims Many Lives." *The Voice* (Abakaliki), 12 February, 2012.
- Isiguzo, C: "As Elechi, Ucha Head to Appeal Court." *This Day* (Lagos), 4 December, 2011.
- Kamarudeen, O: "Judges, Public Officers Lack Integrity." *The Nation* (Lagos), 8 May, 2012.
- Kazeem, I: "CJN Condemns Governors over Independence of Judiciary." *The Nation* (Lagos), 8 May, 2012.
- Madunagu, E: "What Voting Pattern?" *The Guardian* (Lagos), 8 May, 2006.
- Ngige, C: "Okija Shrine: My Story." *Saturday Independent* (Lagos), 29 June, 2013.
- Nweje, C: "Apprehensions of Aloma Mukthar." *Daily Independent* (Lagos), 8 May, 2013.
- Osuji, G: "In Ebonyi, Party Officials Guided Voters." *Daily Sun* (Lagos), 2 May, 2011. P. 36.
- Osuji, G: "Nine Killed, Several Displaced in Fresh Communal Clash in Ebonyi." *Sunday Sun* (Lagos), 5 February, 2012.
- Sagay, I: "Judicial Officers Endanger Democracy." *Daily Sun* (Lagos), 20 September, 2011.
- Segun, A: "Bauchi Governorship Poll: All Eyes on Supreme Court Verdict." *The Day* (Lagos), 6 March, 2012.
- Tobi, S: "NBA Accuses Lawyers, Retired Judges of Being Conduit for Bribe." *This Day* (Lagos), 18 February, 2012.
- Tobi, S: "Technical Justice?" *This Day Lawyer* (Lagos), 21 February, 2012.
- Ughagbe, L: "Musdapher Admits Rot in Judiciary, Vows Reforms." *The Guardian* (Lagos), 20 September, 2011.