

The Judiciary, Legislature and Electoral Violence in Nigeria: Assessing The 2019 Elections

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Abstract

The restoration of democratic rule in Africa's largest country in May 1999 should have brought a significant level of change in the politics of this vast nation of 200 million people. Corruption, electoral malpractice and political violence, the usual causes of governmental instability, have remained intractable despite a deluge of reform initiatives championed through the Legislature and the judiciary. While the benefits of most institutional reforms have been difficult to measure, there is the relative successful reform of the judiciary, which has led to the institution's gradual emergence as a courageous and impartial arbiter in intra-elite electoral disputes in the federation. The transformation of the judiciary is amply demonstrated by the large number of judicial pronouncements that have upturned the results of several flawed elections. Whether sponsored or spontaneous, election-related conflicts are distinctive, signifying discontent around tightly interwoven social and economic concerns. In Nigeria, these concerns include dissatisfaction with government performance, competition for resources, inter- and intragroup distrust, joblessness, and anger at an abundance of unscrupulous politicians with little respect for due process or rule of law. This is particularly true in countries like Nigeria where chronic instability, poor governance, communal disputes, gang-related fighting, and violence sponsored by power brokers fosters long-standing grievances. Economic incentives, pre-existing anger, and opportunistic desires for revenge can be potent incentives for violence. Fresh anger at election injustices under the aegis of a government still perceived as promising only modest accountability for electoral crimes is a worrisome factor. The legislature is to revitalize reformist laws and the judiciary is to actualize such laws in order to create a balance in the nation. This might help in mitigating against all forms of electoral violence.

Keywords: Judiciary, Legislature, Electoral Violence, Election related conflicts, Fourth republic.

Introduction

African countries reintroduced multiparty politics in the early 1990s as the curtains came down on the Cold War era. By 1997, 75% of countries in sub-Saharan Africa had adopted multiparty elections, with the exception of Eritrea, which has not conducted presidential or national assembly elections since its independence referendum in 1993. Many sub-Saharan African countries have made significant strides towards democratic development, but election-related violence has also increasingly become a common feature of the politics of alternation of power in Africa. Thus, while elections in sub-Saharan Africa have become ubiquitous, challenges around election management, particularly related to electoral violence, still remain.

Nigeria has earned itself a reputation for 'muddled elections' (Suberu 2007), 'criminal politics' (Human Rights Watch 2007) and 'garrison democracy' (Omotola 2009). Since the democratic transition in 1999 all the elections held in the country – in 1999, 2003, 2007 and 2011, 2015, 2019 – have been accompanied by reports of widespread electoral fraud. After the 1999 elections, for instance, the Transition Monitoring Group (TMG) – a coalition of local civil society groups – reported that 'the trend of awarding high votes, or votes in excess of the number of accredited voters, which had been observed during the National Assembly elections assumed much greater proportions during the Presidential elections' (TMG 1999).

The Assembly has broad oversight functions and is empowered to establish committees of its members to scrutinise bills and the conduct of government officials. Since the restoration of democratic rule in 1999, the Assembly has been said to be a "learning process" that has witnessed the election and removal of several Presidents of the Senate, allegations of corruption, slow passage of private member's bills and the creation of ineffective committees to satisfy numerous interests. The Senate has the unique power to impeach judges and other high officials of the executive including the Federal Auditor-General and the members of the electoral and revenue commissions. This power is, however, subject to prior request by the President. The Senate also confirms the President's nomination of senior diplomats, members of the federal cabinet, federal judicial appointments and independent federal commissions (Nwabufo and Onapajo, 2014).

Before any bill may become law, it must be agreed to by both the House and the Senate, and receive the President's assent. Should the President delay or refuse assent (veto) the bill, the Assembly may pass the law by two-thirds of both chambers and overrule the veto and the President's consent will not be required. The present Assembly has not hidden its preparedness to overrule the executive where they disagree (Bature, 2015).

Conceptualizing Elections

The founding pillars of any democratic political system, whether considered fragile or established, remain undoubtedly elections which can simply be taken

as the most critical and visible means through which all citizens can peacefully choose or remove their leaders, and which are evidently costly affairs (Anglin 1998:474). Thus, elections require the existence of a multiparty system so that citizens make a political decision by voting for the competing candidates fielded by various political parties holding divergent views and presenting different alternatives (Mesfin, 2008:1).

In a democracy, elections serve as an important mechanism and viable means that ensure orderliness in the process of leadership succession and change. It gives legitimacy and political authority to every administration. Elections play dominant roles in a democracy and these roles are hugely circumscribed in terms of portraying the popular will, inculcating political changes and actualization of regimes legitimacy (Osinakachukwu and Jawan, 2011:130). Schumpeter (1947) notes that democracy ensures that the people have the opportunity of accepting or refusing the men who are to rule them, this means that democracy is all about conducting elections and choosing political leaders. Elections ensure how popular a government is and it reveals the social pact that exist between the govern and the governed and this illustrates the basis of political authority, legitimacy and citizens' obligations. It also helps to shape and sharpened political accountability between the governors and governed via reciprocity and exchange. As Sandbrook (1988) posit: Elections and the struggle for power are essential because it gives the oppressed classes the chance to put the question of alternative ideologies on the agenda and therefore constitute an important stage in the socialist quest to extend democratic control to the social and economic as well as political sphere.

Elections have facilitated the emergence of democratic governments in Benin, Cape Verde, Ghana, Mali, Senegal, and South Africa. Following autocratic regimes and protracted civil wars, more stable societies have emerged in Guinea, Liberia, Niger, and Sierra Leone. In some cases, however, elections have been manipulated to legitimate autocratic regimes or to ensure dynastic successions on the continent. Violence still plagues approximately 20 to 25 percent of elections in Africa. In recent times, high-profile electoral crises in Kenya (2007-2008), Zimbabwe (2000 and 2008), and Côte d'Ivoire (2010-2011) have led to violence. Electoral violence can erode a people's faith in the democratic processes. Additionally, countries with a history of electoral violence often experience a recurrence of such violence, as has been witnessed in Kenya, Nigeria, and Zimbabwe.

Electoral Violence in Nigeria's Elections

Elections in Nigeria continue to elicit more than casual interest by Nigerian scholars due to the fact that despite the appreciation that only credible election can consolidate and sustain the country's democracy, over the years, Nigeria continues to witness with growing disappointments and apprehension the inability to conduct peaceful, free, fair and open elections whose results are widely accepted and respected across the country (OsumahandAghemelo, 2010).

The nation's political history is replete with instances of electoral violence. We cannot discuss all in one paper like this. To this end, some of them would be discussed here. Since Nigeria became independent on October 1, 1960, the history of elections has been written in violence and the nation's post-independence history has been overshadowed by the depredations of a series of corrupt, abusive, and unaccountable governments. This description is apt because it appeared that Nigerians seem to have acquired a culture of electoral violence in most of the general elections conducted since independence in 1960:1964/1965, 1979, 1983, 1999, 2003 and 2007 (Malu, 2009) and 2011. Elections are said to be characterized by widespread complaints of fraud, violence, competitive rigging and intimidation (Osaghae, 1998).

Election rigging has taken many dimensions in Nigeria. This has foisted electoral violence. In his observation, Ibrahim (2011) identifies some forms of electoral fraud as follow: 1. Illegal printing of voter's cards; 2. Illegal possession of ballot boxes; 3. Stuffing of ballot boxes; 4. Falsification of election results; 5. Illegal thumb-printing of ballot papers; 6. Infant voting 7. Compilation of fictitious names on voters' lists; 8. Illegal compilation of separate voters' lists; 9. Illegal printing of forms used for collection and declaration of election results; 10. Deliberate refusal to supply election materials to certain areas; 11. Announcing results in places where no elections were held; 12. Unauthorized announcement of election results; 13. Harassment of candidates, agents, and voters; 14. Change of list of electoral officials; 15. Box-switching and inflation of figures. Added to the above, some politicians who have upper-hand in the government, in an attempt to win an election by all means may call for an illegal arrest and detention of their opponents on or before the Election Day. This as a result, might render mobilization of votes by his opponents very limited. Influential politicians sometimes hire thugs who will rigmarole the streets shooting sporadically in the air at polling centres to scare away genuine electorates who will in return run for their dear lives allowing these thugs to take away the stuffed ballot boxes and replace it with empty ones.

Most of the elections that have ever been conducted in Nigeria have generated increasingly bitter controversies and grievances on a national scale because of the twin problems of mass violence and fraud that have become central elements of the history of elections and of the electoral process in the country (Gberie, 2011). Despite the marked improvement in the conduct of the 2011 elections, the process was not free from malpractices and violence (Bekoe, 2011; National Democratic Institute, 2012).

Thus over the years, electoral processes in the history of Nigeria's democratic governance have continued to be marred by extraordinary displays of rigging, dodgy, "do or die" affair, ballot snatching at gun points, violence and acrimony, thuggery, boycotts, threats and criminal manipulations of voters' list, brazen falsification of election results, the use of security agencies against political opponents and the intimidation of voters (Nnadozie, 2007; Omotola, 2010,). In fact elections remain one of the leading notable sources of conflict

which often result to confrontations that continue to threaten the political stability and peace of the nation(Gberie, 2011).

The Judiciary

The Nigerian judiciary has had a history of four distinct eras, the period before 1842, 1845-1912, 1914-1953 and 1954 to 2020. The various indigenous people in Nigeria had different methods of disputes, conflict and resolution mechanisms put in place before the establishment of the judiciary (Ali, Nd:15). After 1842, the Nigerian judicature evolved and the organ performs the functions of:-a.Punishment of offenders,(b) adjudication of disputes between individuals and the state and disputes between and among different tiers of government (d) appraisal of the acts of both the legislature and the executive and possible declaration of such acts as null and void in cases of aberration (e) administration of oaths of office to public officers, both elected, selected and appointed (f) making of laws through judicial precedents (Alabi and Shehu, 2012:5).

The Nigerian judiciary upholds the rule of law and it ensures that every exercise of power by other organs is in accordance and compliance of that fact (Duru, Nd:7)The 1999 Constitution in line with the Republican Constitutions of 1963 and 1979 adopts the Separation of powers and the exercise of these powers of which, the executive, legislature and the judiciary are derived thereof.

The judiciary is that branch of government that is charged with the exercise of judicial powers of the Federal Republic of Nigeria. Chapter Six (Section 6) enacts that the judicial powers of the federation shall be vested in the courts. Section 6(1) (2) a and b talks about the existence of the apex court in the land which is the Supreme Court, the office of the Chief Justice and other justices of the Supreme Court (FRN,1999). It also establishes the Court of Appeal, the Federal High Court, the High Court of the Federal Capital Territory, Abuja, the High Court of a state, the Sharia Court of Appeal of a state, The Customary court of Appeal of the Federal Capital Territory, Abuja, the Customary court of Appeal of a state: such other courts as may be authorized by law to exercise jurisdiction on matters with respect to which the National Assembly may make laws and such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters to which a House of Assembly may make laws (Section 6 (3) and 5 of FRN, 1999).

The National Assembly or any state House of Assembly may establish any court other than those that have been listed in the Constitution to exercise subordinate jurisdiction to that of the High Court. The National Assembly and any of the State Houses of Assembly have the power to abolish any court which it had hitherto established or which it has brought to being. As such it will be safe to generalize that the courts vested with the exercise of the judicial powers of the Federation include the Magistrates' courts, the customary courts and such other tribunals and courts as the legislature may establish either for the federation or for any of the states of the federation. It is these courts both expressly mentioned in the constitution or within the contemplation of the constitution that constitute the judiciary or the judicature under the constitution (Udechukwu, 2004: 1-2).

The primary function of the judiciary is that of adjudication, whereby a court determines guilt and administers punishment to anyone who has breached the law. A judge or a group of judges settles disputes between parties through the application of rules and procedures already laid down by the appropriate state agencies. The political environment in which the court operates dictates the mode of its application (Enamena and Fenemigho, 2014:93). The judiciary also has the powers of judicial review.

This ensures that actions and activities of other arms of government and administration are in accordance with the law and the constitution. Judicial review is the power of the court in appropriate proceedings before it to declare a legislative or executive act either contrary to or in accordance with the constitution, with the effect of rendering the act invalid or vindicating its validity and by so doing putting it beyond challenge in future. The court can declare a law unconstitutional on the grounds that it contravenes certain provisions of the concerned Federal or State constitution. It is considered as a check against possible excesses by the legislature or the executive (Olawatara, 2006:4-6).

The court most times in the process of judicial review also performs legislative functions. When the judiciary also interprets a particular law by assigning specific meanings, such new meanings become rules which guide actions and behavior. In the same vein, when a particular legislation is termed unconstitutional, there is a new rule, inherent in the judicial decision, which guides behavior and action. This judicial judgments and decisions constitute some form of rule making. The judicial responsibilities of the courts place them as moderators of behavior, a balance of powers, restrainers of the excesses of other arms of government and government officials (Mahmoud, 2012: 52).

The Supreme Court also intervened by virtue of judicial review in the case of unconstitutional impeachment of Governor Rashidi Ladoja by a faction of the State House of Assembly because the House was polarized against itself. A section of the House was aligned with the Governor, while the other was aligned with the Deputy Governor. The pro-deputy Governor group on 13th December, 2005 issued a notice of allegation of gross misconduct against the Governor. A motion for the investigation of the allegation of the Governor was mooted on 22nd December, 2005 and the Governor was unconstitutionally removed from office (Nigerian Supreme Court Quarterly Report, 2007 (29):958). At first, the removal was challenged at the State High Court which declined jurisdiction. It then went before the Court of Appeal. The Court of Appeal gave judgment regarding the way and manner in which the supposed impeachment was conducted. The disgruntled faction of the legislature were dissatisfied with the judgment and therefore brought an appeal before the Supreme Court to determine the constitutionality of the act. Justice Niki Tobi, JSC declared the impeachment as unconstitutional (Nigerian Supreme Court Quarterly Report, 2007 (29):1116-1118).

The judiciary has also intervened in cases brought to it in the forms of tribunals to correct certain anomalies in the nation's electoral history. Example of such cases, are cases such as that of Bayelsa and Enugu States, where the lower tribunals nullified the elections of Governors Timipre Silva and Sullivan Chime. The lower tribunal based its decision on the fact that the elections of these

governors contravened certain sections of the 2006 Electoral Act. The Appeal Court squashed the decision of the lower tribunal and a re-run of elections in both States (Nwagboso,2011:48). The same were also applicable in Adamawa, Sokoto and Kogi States, the results of the re-run elections were also in favour of the ousted governors.

In Edo State, Professor Osunbor Oserheimen of the PDP was ousted in favour of Comrade Adams Oshiomhole of the AC. The Lower tribunal based its decision on the fact that Adams Oshiomhole scored the highest number of valid votes in the April 14th gubernatorial elections. Prof. Osunbor's appeal was dismissed for lack of merit (Duru and Nwagboso,2010:116). The 2003 elections were heavily tainted with violence, fraud and other forms of electoral malpractices, leading to the filing of approximately 1500 law suits before the various courts constituted to resolve such disputes. The handling of these cases brought the judiciary into the limelight.

Hitherto, the judiciary has been accused of corruption and rot in the judicial system. This called for judicial reforms. The reforms of the judiciary failed to achieve much attention because it was theoretically an independent institution, constitutionally separated from the executive arm of government. Secondly such reforms required some constitutional amendments.

The reform process entails the support of absolute majorities in not only the federal legislature (Senate and House of Representatives), but also in at least 2/3 of the 36 states of the Houses of Assemblies in the federation. The third is the poor appreciation of the role of the judiciary in democratic governance and consolidation: a fact that became established during the adjudicating of the 2003 election petitions. The inability of the then Obasanjo administration to extend its reforms to the judiciary did not stop other actors such as International organizations and the judiciary itself from implementing reforms between 1999 – 2007. These reforms sought to enhance the capacity of the judiciary and those that were directed at improving judicial integrity (Enwernmadu, 2012: 50 -55).

The role played by the judiciary during the 2011 general elections was commendable, particularly in post-election dispute resolution. However, during the pre-election phase, courts of equal jurisdictions made conflicting judgments over who was the actual candidate of each party. Additionally, the absence of a time limit for the resolution of electoral disputes before polling delayed legal redress during a time-sensitive period and made it difficult for INEC to keep pace with the barrage of ex parte orders issued by courts. This restrained electoral umpires from accepting nominated candidates and judgments toward which they were suspect. Further, if there had been a timeframe for dealing with litigation arising from the candidate nomination process, INEC would have had an easier time preparing for the polls and taking on such tasks as ballot printing.

The Legislature and the Electoral Act

Nigeria has experimented with three forms of legislative power. Prior to 1960, she operated the concept of parliamentary supremacy under the British colonial masters. By 1960 and 1963 Constitutions, there was a parliament and the 1979 Constitution which vested the legislative power on the National Assembly made

up of the Senate and House of Representatives at the center and the Houses of Assemblies at the state. The term “legislative power” can be defined as the law-making powers of a legislative body, whose functions include the power to make, alter, amend and repeal laws. In essence the legislature has the power to make laws and such powers is reposed exclusively in such body, though it may delegate rule making and regulatory powers to departments in the executive branch. It may however delegate its rule making powers (Mowoe, 2008: 93).

The National Assembly passed a new Electoral Act in 2010. Although lawmakers did a good job in improving the electoral process through this legislation, some clauses in the law. were contentious. For instance, in the second amendment to the 2010 Electoral Act, the National Assembly watered down laudable provisions it spelt out earlier in Section 87, which dealt with the candidate nomination process. They withdrew the authority given to INEC in Section 87(9), which empowered INEC to supervise party primaries and disqualify anybody who did not emerge through a free and fair contest. Lawmakers replaced that subsection with Section 31, which stated that parties shall submit names of candidates they intended to sponsor; this section also stipulated that the INEC could not disqualify them for any reason whatsoever.

The insertion of Clause 80(1) into the Electoral Act; generated a lot of hue and outcry, both from the general public and within the National Assembly itself. The clause, known as section 80(1) of the Electoral Act “provided that the newly registered political party – shall first participate in the local government election and win at least 10% of the councillorship and chairmanship positions throughout the federation spread among two thirds of the states in the federation and Federal Capital Territory to be eligible to participant in the federal and states elections”. (Bature, 2015:152)

The clause therefore prevented new parties from contesting the 2003 elections with other parties which were registered in 1999. The Bill was signed into law by the President on 6th December 2001. The insertion of the clause 80(1) was seen by Nigerians as a legislative fraud. At the peak of the controversy; it was alleged that a letter had been written on December 5th 2001 asking for the insertion of the clause and the insertion of the clause was made as a precondition, before it would be signed into law. It was assumed to be known as the “printer's devil”. (*Newswatch February 4, 2002:25*).

The original bill, Clause 80 read:

At the close of nominations for the general elections any political Party which fails to sponsor at least 15% of the candidates for councillorship, Council Chairman and State Houses of Assembly respectively throughout the Federation, spread among two – thirds of the states of the Federation, and the Federal Capital Territory, shall not participate in the general elections (*Newswatch 14/1/2002:24*).

But, the controversial clause was inserted and the bill read that:

Provided that the newly registered political party shall first participate in the Local government election and win at least 10% of the

Councillorship and Chairmanship position throughout the Federation, spread among two thirds of the States of the Federation and the FCT to be eligible to participate in the Federal and State elections (*Newswatch* 14/1/2002:25).

The manipulation of the Electoral Act was seen as a part of the politics of re-election which the president felt the new political were an emerging threat. Nigeria's experience with democratic elections since independence has been mixed. Even though the country has tried to transit from one administration to another, hardly any election conducted in the country has been completely free of charges of irregularities, electoral malpractices, violence and degrees of disruptions. The factors responsible for this state of affairs, include amongst others, the character of the Nigerian state as the arena for electoral contests; the existence of weak democratic institutions and processes; negative political culture; weak legal / constitutional framework and lack of independence and capacity of the election management bodies (Report of the Electoral Reform Committee 2008: 42).

Thus, the Electoral Reform Committee, popularly known as the “Justice Uwais Electoral Committee”; the Chairman who headed the Committee was inaugurated by the former President Shehu Musa Yar'adua on the 29th of May 2007 to “examine the entire electoral process with a view to ensuring the quality and standard of general elections and to deepen democracy”. The Uwais report came up with a list of recommendations concerning institutions, agencies and stakeholders that will shape the electoral process. Some of the recommendations have been implemented; while others have not.

Theory of Violence and Peace

The Norwegian theorist Johan Galtung, Often referred to as the “Father of Peace Studies,” has developed a three pronged typology of violence that represents how a confluence of *malleable* factors merge in particular cultural/historical moments to shape the conditions for the promotion of violence (and, by inference, peace) to function as normative.

Violence is present, when human beings are being influenced so that their actual somatic and mental realizations are below their potential realizations. The definition points to at least six important dimensions of violence. Violence is here defined as the cause of the difference between the potential and the actual, between what could have been and what is. Violence is that which increases the distance between the potential and the actual, and that which impedes the decrease of this distance. In other words, when the potential is higher than the actual is by definition avoidable and when it is avoidable, then violence is present (Galtung 1964: 168-169).

The first distinction to be made is between physical and psychological violence. Under physical violence human beings are hurt somatically, to the point of killing. Direct Violence represents behaviours that serve to threaten life

itself and/or to diminish one's capacity to meet basic human needs. Examples include killing, maiming, bullying, sexual assault, and emotional manipulation (Campbell, 2010). In Structural Violence, it represents the systematic ways in which some groups are hindered from equal access to opportunities, goods, and services that enable the fulfilment of basic human needs. These can be formal as in legal structures that enforce marginalization or they could be culturally functional but without legal mandate (Obakhedo, 2011).

Cultural Violence represents the existence of prevailing or prominent social norms that make direct and structural violence seem “natural” or “right” or at least acceptable. For example, the belief that Africans are primitive and intellectually inferior to Caucasians gave sanction to the African slave trade. Galtung's understanding of cultural violence helps explain how prominent beliefs can become so embedded in a given culture that they function as absolute and inevitable and are reproduced uncritically across generations. These forms of violence are interrelated and mutually reinforcing (Galtung, 1990: 291-305).

The institution of elections is virtually ubiquitous in the contemporary world. With the exception of a handful of states, including Brunei, China, Eritrea, Qatar, Saudi Arabia, and South Sudan, citizens today have the opportunity to elect their leaders in national elections. Many elections, especially those in democracies not yet fully consolidated, are fraught with significant levels of violence, either physical, psychological, cultural or otherwise during the campaign period, on polling day or in the aftermath of voting. Electoral violence can result in casualty tolls that meet the threshold of civil war within days or weeks; when this occurs, it can undo years of peace building and development work, it can undermine democratic institutions. Elections in Afghanistan, Bangladesh, India, Iraq, Kenya, Nigeria, Pakistan, and Zimbabwe were similarly accompanied by high levels of conflict. Violence, even at levels below that witnessed in the most egregious cases, undermines the democratic character of elections by substituting free choice with coercion and by deterring participation. When force intrudes into electoral processes, something is seriously amiss with democratic institutions (Birch et al 2020: 1-2).

Electoral violence is typically selected from among available tools to achieve electoral ends, even if the use of force may simultaneously deliver on other goals. The goals of violence generally include political exclusion, be it exclusion from candidacy (via attacks on candidates); from campaigning (via attacks on or obstruction of campaign events); from the provision of electoral information (via attacks on media outlets, election observers, and NGOs involved in voter education); from electoral participation and free electoral choice (via the intimidation, coercion, and/or the displacement of voters); from electoral victory (via attacks on polling stations and poll workers or the destruction of polling materials); or from power (via post-electoral protests contesting the outcome of the election) (Dandes and Ojo, 2014).

Suffice it to say that contingent upon the debilitating effect of electoral violence on the nation's political landscape, myriads of questions and responses

have been raised concerning the causes of electoral violence. It is contended that the causes are: greed; electoral Abuses, and rigging of elections; Abuse of political power; alienation, marginalization and exclusion; and the political economy of oil (Igbuzor,2009). Yet, other projections adduce it to poverty/unemployment (Maslow, 1954); ineffectiveness of security forces and culture of impunity; weak penalties; weak governance and corruption (Galtung, 1969); and, proliferation of arms and ammunitions.

In the same vein, other pundits argue that the causal factors are: lack of security; partisanship of traditional rulers who were supposed to be the custodians of our cultural heritage; abuse of office by elected officials; zero-sum politics or winner takes it all syndrome; lucrative nature of political office; poor handling of election petition, and lack of faith in the judiciary; and lack of compliance with the extant electoral law and enforcement of the enabling laws; the partisan disposition of the police, and other security agencies detailed to monitor the election, and secure lives and property; corrupt INEC staff and ad-hoc officials who connive with the politicians; conflict of interests between and among politicians; and greed and selfish interests of politicians coupled with ideological bankruptcy (Ugiagbe, 2010). However, prevalent forms of political violence in Nigeria exude in political assassinations, arsons, violence-pruned campaigns, thuggery, election-related ethno-religious crisis, snatching of ballot boxes and so on and so forth. It is averred that this has been possible because election in Nigeria is seen as a “do or die affair”.

Thus, violence is most often carried out by gangs whose members are openly recruited and paid by politicians and party leaders to attack their sponsors' rivals, intimidate members of the public, rig elections, and protect their patrons from similar attacks. The architects, sponsors, and perpetrators of this violence generally enjoy complete impunity because of both the powers of intimidation they wield and the tacit acceptance of their conduct by police and government officials at all levels (HRW, 2007). It is against this backdrop that the Nigeria's governing elite have been widely implicated in acts of electoral violence, corruption and fraud so pervasive as to resemble criminal activity more than democratic governance (HRW, 2007).

It is intriguing to note that members of the political class responsible for instigating this plethora of violence as well as their foot-soldiers who undermine the electoral process by perpetrating these violent acts are never brought to book. It is argued that violent electoral behaviour which is either intended to hurt or kill political opponents or their supporters has a devastating human rights impact on ordinary Nigerians. Furthermore, it is contended that the scenario is prevalent because of the nature of the political system, the prevailing political culture and the level of political socialization. In the Nigerian case, electoral violence is more entrenched because the political system is supportive of zero-sum game politics.

This was why Otoghile (2009) described electoral violence as the radioactive by-product of some structural and attitudinal dislocations in the

society which affects the level of political participation of the citizenry. The sociological discourse on the theory of violent conflicts and violent political behaviour that exude in electoral violence contends that such acts hinge on the following theories: relative deprivation; rising expectation; frustration-aggression; systemic hypothesis; and group conflict theories (Okanya, 2001). All of these theories can be used to explain electoral violence in Nigeria.

The Judiciary and 2019 Elections in Retrospect

An analysis of the Presidential Election in Nigeria has revealed a pattern of voting behaviour where the electorates are voting according to ethnic, religious and regional belongings. For instance, the 1979 Presidential Election disclosed that the three major contenders; Alhaji Shehu Shagari of National Party of Nigeria (NPN), Obafemi Awolowo of Unity Party of Nigeria (UPN) and Dr Nnamdi Azikiwe of the Nigerian Peoples Party (NPP) gained their votes from their respective political regions. The same phenomenon replicated itself in the 1983 Presidential Election (Akinboye and Anifowose, 2008; Sule et al., 2017).

In the Fourth Republic, the Presidential Election was contested six times in 1999, 2003, 2007, 2011, 2015 and 2019 and all the contests present ethnic and religious influence among the voters either directly or indirectly. The 2019 Presidential Election saw another dimension where the two major strong contenders; President Muhammadu Buhari of the APC and Alhaji Atiku Abubakar of the PDP emerged both from the North and both of them are from the Fulani ethnic group and are also Muslims by religion. However, the voting pattern indicates a surprising result where the Hausa/Fulani Muslims voted massively for President Muhammadu Buhari while the Northern Christians and the South-south and South-east voted for Atiku with the votes split between the two in the Southwest.

Immediately following the elections there were claims of widespread fraud by the opposition. The claims included accusations of ballot box snatching, vote-trading and impersonation. There were also claims that caches of explosives were found by police. Losing candidate Atiku Abubakar filed a case in the Nigerian supreme court citing widespread irregularities in the polls. However, the court dismissed his case, saying that Atiku has failed to prove widespread fraud committed by the electoral team of Buhari. The court also dismissed an allegation which said that Buhari lied about his academic background. The African Union said the elections were "largely peaceful and conducive for the conducting of credible elections." The electoral commission also described the elections as mostly peaceful. On the contrary, US based organisation freedom house severely criticised the conduct, saying that they were marred by irregularities and intimidation.

Democracy thrives with an independent judiciary that is insulated from undue interference. The judiciary is the hope of the common man, as well as the political elite. Nigeria, having concluded its general elections in which the contest for political power assumed unimaginable acmes with democratic institutions weakened and sabotaged by the state; rampageous political thugs destroyed election materials, abducted and raped election officials; voter suppression manifested through the arbitrary cancellations of votes and

purchase of voter cards from eligible voters; and selective and non-application of electoral guidelines and violence were the order of the day.

Conclusion

The role of the courts in election matters call into question the legitimacy and desirability of judicial review of elections. Elections are part of political discourse and actions by citizens to decide who exercises political authority in the commonwealth. So, elections are political. The conventional conception of the judicial action is that it is both principled and apolitical. By 'principled' it means that its decision draws consistently from general value propositions that have universal validity. By 'apolitical' it is meant that the court stays away from contestation as to who gets power and exercises it.

The court deals with corrective justice while the legislature and executive deal with distributive justice. The convention is that the merit of the court is that it shields itself from partisan contest to regain the neutrality and independence to settle disputes between the contestants. A partisan court loses the credibility and legitimacy to settle disputes between politically misaligned individuals and entities in the society. In matters of election, the court ought to embrace its responsibility as a non-partisan political institution. The court is an 'unusual' political institution. It is unusual because it is non-partisan and arrives at decisions in a principled manner without resort to violence and illogic. This is what makes the court legitimate and credible as a political institution to intervene in terms of national crisis.

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