EXCLUSION BY ELECTORAL LAWS IN NIGERIA: A CRITICAL ANALYSIS

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ABSTRACT

This paper examines the electoral laws in Nigeria to determine their impact on political exclusion and inclusion in the Nigeria democratic process. This study is necessary because participatory governance is a key requirement of sustainable democracy, particularly in representative government. When sections of society are excluded from contributing to national debate, in development of national legal framework, and governance, the governance dividends and services become biased and unrepresentative. Such scenarios create distrust amongst citizens and gradually lead to corruption and crisis in society. Put simply, democracy fails when the right to vote and be voted for in elections is skewed against sections of the society either deliberately or as unintended consequences of legislation. On this background, this paper critically examines the legal framework on electoral process in Nigeria to determine its impact on the perception and reality of electoral exclusion and suggests approaches for improvement. The paper adopts a doctrinal approach by focusing on analysis of existing electoral legal framework, including the Constitution, Electoral Act and political party constitutions, and how they, directly or indirectly, disenfranchise sections of the society. The paper finds that the electoral regime is structured in a way that perpetuates electoral exclusion of the poor and young people via the imposition of divisive financial and age requirements. The paper recommends an alteration of constitutional provisions on qualification to contest election by reducing the age requirement and jettisoning financial requirements for participation.

Key words: Inclusive Democracy, Elections, Enfranchisement, Exclusion, Money Politics, Poverty

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1. INTRODUCTION

The right to vote and be voted for in elections is the major criteria of democratic governance. Hence to ensure a representative government the legal framework for participation in election either as a voter or a candidate must be inclusive and non-repressive. It is this concept of inclusiveness that elevates a government from fascist, oligarchy, dictatorship or other non-democratic government to a democracy. Accordingly, government is regarded as government of the people because the people have a voice in government through active participation both as the electorate and as candidates. Thus, depending on whether the people are involved in the electoral process and their level of participation, a despotic self-serving or a people-oriented government may be elected as a product of the process. Achieving either of the above results depends largely on the electoral regime and its provisions on participation in governance.

In Nigeria, the level of political inclusiveness is determined by a combination of the Constitution, the Electoral Act and other electoral regulations and party constitutions and practices. These laws and their provisions stipulate requirements as to participation using criteria like financial status, nationality, age and length of membership of and sponsorship by a political party[1]. Undoubtedly, recent agitations for more open systems suggest that the provisions of these laws and party constitutions do not meet the optimum requirement for democratic governance[2]. Key areas of contention are age and financial requirement. It is contended that by maintaining the status quo, on age and financial contribution, the rich are perpetuating exclusion of the poor and youth in political governance in Nigeria, particularly in political representation through the legislature. The argument is that this exclusion results in policies and laws established to deliberately disenfranchise the poor and subjugate them to the will of the minority rich and socially connected.

It is against this backdrop that it is necessary to critically examine the legal framework on electoral process to determine the validity of this perception and suggest approaches for improvement, if any. This means that this paper will focus on analysis of existing electoral legal framework including political party constitutions in order to explore how the laws, directly or indirectly, disenfranchise sections of the society. To explore this issue, the paper is

[1] See Table 1 below for sections of the CFRN 1999 and Electoral Act 2010 on qualifications for electoral positions.
[2]Premium Times "Lawmakers decry high cost of parties' nomination forms" Premium Times Online, October 27, 2014. Available at: <https://www.premiumtimesng.com/news/top-news/170219-lawmakers-decry-high-cost-of-parties-nomination-forms.html> accessed 18th June 2018; 2019: Daily Times "Stakeholders decry expensive nomination forms" Daily Times Online, June 18, 2018, Available at: <https://dailytimes.ng/2019-stakeholders-decry-expensive-nomination-forms/> accessed 18th June 2018

structured as follows. The next section will provide conceptual clarification for the key concepts of the discourse. This is followed by a literature review on political participation in Nigeria. Next is a presentation and analysis of the body of laws on electoral process in Nigeria to determine its contribution to exclusion of a section of the society or otherwise. This is followed by a recommendation on how to reverse any observed or perceived undemocratic practices. The paper ends with a conclusion.

2. CONCEPTUAL CLARIFICATION

In the course of this research some key concepts will be recurrent and accordingly need to be succinctly defined for proper understanding of the argument herein. These concepts include poverty, disenfranchisement (political exclusion) and electoral laws. According to the Black's law dictionary[3] poverty is "a term used to denote a condition in which people are unable to meet their basic necessities, due to lack of money or skill. There are two primary terms used to denote poverty; absolute and relative. Absolute poverty "measures poverty in relation to the amount of money necessary to meet basic needs such as food, clothing, and shelter [4].'' The International poverty Center of the United Nations Development Programme (UNDP) gave some dimensions of poverty to include; income-poverty, material lack or want, and capability deprivation among others. This often led to a web of poverty disadvantages amongst which are lack of information, legal inferiority and lack of political clout.[5]

Enfranchisement on the other hand is defined as 'act of making free; giving a franchise or freedom to; investiture with privileges or capacities of freedom, or municipal or political liberty. Admission to the freedom of a city; admission to political rights, and particularly the right of suffrage...' Going by the definition some key elements of enfranchisement include; freedom (in this context freedom to choose who governs you). The importance of the enfranchisement is demonstrated by the case of *Westbury v. Sanders*[6] *wherein it was held that: "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which ... we must live. Other rights ... are illusory if the right to vote*

[3] Black's Law Dictionary Free Online Legal Dictionary 2nd Ed.

[4]UNESCO "Learning To Live Together: Poverty. UNESCO. Available online at: <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/poverty/>

[5] See particularly Sakiko Fukuda-Parr "The Human Poverty Index: A multidimensional measure" in Poverty in Focus A publication of the International Poverty Center of the UNDP Dec 2006 available online on <http://www.ipc-undp.org/pub/IPCPovertyInFocus9.pdf> accessed 13th June 2018.

[6] 376 U.S. 1, 17-18 (1964)

is undermined". Disenfranchisement thus means 'to deprive of a franchise, of a legal right, or of some privilege or immunity; *especially*: to deprive of the right to vote e.g. *disenfranchising* the poor and elderly'[7] While the right to vote is widely recognised as the key element of constitutional democracy and a fundamental human right,[8] the deprivation of this right in whatever guise is a denigration of democracy. The right to vote here includes the right to be voted as we believe both to be inherent in each other. Consistently disenfranchised groups include non-citizens, young people, and minorities, those who commit crimes, the homeless, disabled persons, and many others who lack access to the vote for a variety of reasons including poverty, illiteracy, intimidation, or unfair election processes.[9] In many cases, these disenfranchisement and political exclusions are abetted by electoral laws of the state. Electoral laws are laws that regulate who votes, when and how they vote, for whom they can vote, how campaigns are conducted, and how votes are recorded, counted, and allocated. In Nigeria Electoral Laws include, the Constitution, the Electoral Act and election guidelines and political party constitutions and regulations.

3. LITERATURE REVIEW

The discourse on political exclusion in the democratic process is one that has been ongoing for a while. In most jurisdictions, the debate has significantly moved away from exclusion caused by gender bias to exclusion caused by wealth gap and poverty[10]. A recent debate, particularly in Nigeria is exclusion caused by age bias. All these factors have been argued to lead to development of policies and laws that are unfavorable to persons within these groups because they are not properly represented[11].

The legislative tools that help perpetuate this exclusion are the legal framework on party financing, campaign funding and political contribution. On one spectrum of the argument is the perception that too lax regulation on campaign financing encourages political capture by

[7] Merriam Webster dictionary

[8] "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures." The Universal Declaration of Human Rights, Article 21.

[9] University of Minnesota Human Rights Library, Study Guide: The Right To Vote available online at http://hrlibrary.umn.edu/edumat/studyguides/votingrights.html

[10] *Beetseh, Kwaghga and Akpoo, Tarfa, "*Money Politics And Vote Buying In Nigeria: A Threat To Democratic Governance In Makurdi Local Government Area Of Benue State" *International Journal of Public Administration and Management Research (IJPAMR), Vol. 2, No. 5, March 2015. Available online at: <http://www.academix.ng/search/paper.html?idd=3300017168> accessed 13th June 2018.*

[11] See Mahmoud Alfa and John Marangos "An empirical appraisal of the role of money in Nigerian politics" *Int. J. Economic Policy in Emerging Economies, Vol. 9, No. 1, 2016*

the wealthy and corporations[12]. The argument is that once this group of political stakeholders get involved in political participation through financing candidates, it makes it easier for them to control policies and laws because such candidates become indebted to them[13]. The other spectrum to the argument is that the cost of political campaigns are so high that majority of poor but qualified individuals are schemed out of running for elective positions[14]. In addition to campaign funds, most people cannot afford the registration and notice of interest payments that candidates are often asked to pay. The result of these exorbitant fees in many cases is the political exclusion and disenfranchisement due to poverty.

This is perhaps why many jurisdictions have within their electoral laws and policies public funding of political parties and political campaigns. A study of the Electoral legal framework all over the world conducted by International IDEA discloses that out of 174 countries studied, 117 countries have either full or partial funding for political parties. A few examples from three continents include: in **Asia** –Thailand, Indonesia and Japan; in **Americas-** Canada, United States of America and Mexico; in **Africa** – Democratic Republic of the Congo, United Republic of Tanzania and Algeria. Then in **West Africa**- Niger, Mali, Ivory Coast, Togo and Burkina Faso. The regularity of this practice suggests that it is a positive approach to inclusive democracy. In apparent confirmation of its functionality, many of the well advanced democracies have some form of public funding or the other[15].

[12] See Omobolaji Ololade Olarinmoye "Godfathers, political parties and electoral corruption in Nigeria" African Journal of Political Science and International Relations Vol. 2 (4), pp. 066-073, December 2008. Available online at: <http://www.academicjournals.org/AJPSIR> accessed 13th June 2018; Victor A. O Adetula "Godfathers, Money Politics, and Electoral Violence in Nigeria: Focus on 2015 Elections" Available online at: <http://www.inecnigeria.org/wp-content/uploads/2015/07/Conference-Paper-by-Victor-Adetula.pdf> accessed 13th June 2018

[13] Julio Bacio Terracino and Yukihiko Hamada "Financing Democracy: Supporting Better Public Policies and Preventing Policy Capture" OECD publications 2014.

[14] ibid

[15] See International IDEA, Political Finance Database, International IDEA. Available online at:<https://www.idea.int/data-tools/question-countries-view/548/20/reg> accessed 29th June 2018.

Tabular Representation of distribution of countries providing public funding for Parties

Continent	Yes, regularly provided funding	Yes, in relation to campaigns	Yes, both regularly provided funding and in relation to campaigns	No	No data	Countries researched
Africa	20 (42.6%)	4 (8.5%)	6 (12.8%)	15 (31.9%)	2 (4.3%)	47
Americas	4 (11.8%)	5 (14.7%)	12 (35.3%)	13 (38.2%)	0 (0.0%)	34
Asia	15 (41.7%)	5 (13.9%)	4 (11.1%)	11 (30.6%)	1 (2.8%)	36
Europe	19 (44.2%)	0 (0.0%)	19 (44.2%)	5 (11.6%)	0 (0.0%)	43
Oceania	2 (14.3%)	2 (14.3%)	0 (0.0%)	9 (64.3%)	1 (7.1%)	14
Total	**60**	**16**	**41**	**53**	**4**	**174**

Source: *Reproduced by permission of International IDEA from "Are there provisions for direct public funding to political parties?" © International Institute for Democracy and Electoral Assistance June 2018. Available at :<https://www.idea.int/data-tools/question-view/548> accessed 29th June 2018*

What the above data and recurrence of finance in extant literature demonstrates is that money is a key part of politicking and it has the (perhaps) unintended consequences of undermining the constitutional right of some category of persons to participate in elections and governance. However, there appears to be few research in Nigeria which explores the constitutional and statutory provisions on electoral participation and their implication on cost of politics and policy development in Nigeria. This paper explore this concept from the perspective of the exclusionary role of electoral laws in Nigeria and its implication to equal representation and national development.

4. THE LEGAL FRAMEWORK ON FINANCE AND AGE REQUIREMENT IN THE ELECTORAL PROCESS IN NIGERIA

There are several constitutional and statutory provisions on age and financial requirement for contesting elections in Nigeria. These domestic legal frameworks do their best to effectuate International conventions on democracy which all emphasise the necessity of an inclusive governance. To ensure this, the law should provide the framework for all persons to participate in governance either as voters or elected. For instance, *Article 21* of the Universal Declaration of Human Rights ("UDHR"), provides that "*The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures*". The International Covenant on Civil and Political Rights (ICCPR) captures better the necessity for an inclusive government in its provision in *ICCPR Article 25* thus, *Every citizen shall have the right and opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions;*

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic election which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the elections;

(c) *To have access, on general terms of equality, to public service in the country*.

In Nigeria however, other domestic legal framework like statutory and constitutional provisions tend to impose limitations to inclusive governance through constraints like age limits for participation in different electoral positions to financial deposits or fees required of the candidate. Others include provisions on the monitoring and auditing requirement on party campaign financing. Each of these provision contribute in making elections into the available elective positions in Nigeria less inclusive. Under the CFRN 1999, available elective positions are: President – section 131, Vice- President – section 141, Governor – section 176, Deputy Governor- Section 186, National Assembly members (Senate and House of Representatives) – Sections 65 and State Assembly Members- Section 106. There are however other elective positions recognised under the Electoral Act. These are Chairmanship of area council and

Councillorship of area council under *section 91 of the* E.A. 2010. The financial and age requirements in extant laws have made the positions less open to the citizenry. These laws and there provisions are as follows:

4.1. Constitutional provision on electoral participation in Nigeria.

Section 153 (1) (f) of the 1999 constitution established for the Federation the Independent National Electoral Commission whose composition and function is as stated in part 1 schedule III (F) of the constitution. Some key sections that relates to electoral offices as stated in the constitution include: ***Section 106*** of the Constitution dealing with eligibility into the ***State House of Assembly***. It provides that: '… a person shall be qualified for election as a member of a House of Assembly if- a. he is a citizen of Nigeria; b. he has attained the age of thirty years; c. he has been educated up to at least the School Certificate level or its equivalent; and d. he is a member of a political party and is sponsored by that party. ***Section 65 (1)*** gives the criteria for election into the National Assembly, it provides that: '…a person shall be qualified for election as a member of: a. ***the Senate***, if he is a citizen of Nigeria and has attained the age of 35 years; and b. the ***House of Representatives***, if he is a citizen of Nigeria and has attained the age of 30 years;

(2) A person shall be qualified for election under subsection (1) of this section if: a. he has been educated up to at least School Certificate level or its equivalent; and b. he is a member of a political party and is sponsored by that party. ***Section 177*** gives the criteria for election as ***governor of a state***, it provides that: 'a person shall be qualified for election to the office of Governor of a State if a. he is a citizen of Nigeria by birth; b. he has attained the age of thirty-five years; c. he is a member of a political party and is sponsored by that political party; and d. he has been educated up to at least School Certificate level or its equivalent, while ***section 131*** provides for election into the office of the ***President***. It provides that; 'a person shall be qualified for election to the office of the President if- a. he is a citizen of Nigeria by birth; b. he has attained the age of forty years; c. he is a member of a political party and is sponsored by that political party; and d. he has been educated up to at least School Certificate level or its equivalent.

Table 1: Tabular representation of Constitutional and Statutory Requirements to contest in elective positions

S/N	Office	Nationality	Age	Education	Party membership
1	***House of Assembly Section 106 CFRN 1999***	Citizen	30 years	School Certificate	member of a political party and is sponsored by that party
2	***House of Representatives Section 65 (1)b CFRN 1999***	Citizen	30 years	School Certificate	member of a political party and is sponsored by that party
3	**Senate** ***Section 65 (1)a CFRN 1999***	Citizen	35 years	School Certificate	member of a political party and is sponsored by that party
4	***Governor Section 177 CFRN 1999***	Citizen **by birth**	35 years	School Certificate	member of a political party and is sponsored by that party
5	***President section 131 CFRN 1999***	Citizen **by birth**	40 years	School Certificate	member of a political party and is sponsored by that party
6	***Councilor Section 106 of Electoral Act 2010***	Citizen	25 years	School Certificate	member of a political party and is sponsored by that party
7	***and Chairman Section 106 of Electoral Act 2010***	Citizen	30 years	School Certificate	member of a political party and is sponsored by that party

In addition to the above provisions, there are other requirements that are applicable to Legislative and Executive positions at the Federal and state Levels. However, two key differences arise. For a Presidential or Gubernatorial candidate, citizenship must have been obtained by birth. Any other form of citizenship, including Naturalisation and Registration will

disqualify the candidate[16]. These limitations does not apply to Legislators at State and Federal levels[17]. Another set of limitations peculiar to executive positions under the constitution are that elective positions are limited to only two tenures of 4 years each irrespective of sequence[18]. For Legislators, there are no tenure limitations. Also the President or Governor shall not, during his tenure of office, hold any other executive office or paid employment in any capacity whatsoever[19].

Aside the above peculiar limitations, all candidates for elective positions are bound by the following requirements: (a) must not voluntarily acquired the citizenship of another country; (b) not be adjudged to be a lunatic or of unsound mind; (c) not under a death sentence or imprisonment or fine for an offence involving dishonesty or fraud (d) not convicted within a period of less than 10 years of an offence involving dishonesty or contravention of the Code of Conduct; (e) not an undischarged bankrupt, (f) not employed in the public service of the Federation or of any State not less than 30 days before the date of election; (g) not a member of a secret society; (h) not indicted for embezzlement or fraud by Judicial Commission of Inquiry or an Administrative Panel of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunals of Inquiry Law or any other law by the Federal or State Government which indictment has been accepted by the Federal or State Governments respectively; or.(i) not presented a forged certificate to the Independence National Electoral Commission[20].

4.2. Statutory provisions on Qualification for participation in electoral position in Nigeria.

The criteria for participation in electoral position as provided for by the constitution is not enough to secure a ticket for any candidate under any political party. This is because there are other laws and criteria that must be adhered to in order to be eligible to contest. The Electoral Act 2010, being the extant statute, other than the constitution, makes further requirements that must be met by political parties and candidates. Political parties also have their own guidelines (including party constitutions), with requirements for contesting in elections. Since there is no provision for independent candidacy under the Nigerian constitution, every aspirant for a political party must be sponsored by a political party, hence each candidate must adhere to

[16] Section 131(a) and 177 (a)of the CRRN 1999 for President and governor respectively
[17] See Sections 65(1) a & b, 106(a), for Federal and State legislators respectively.
[18] Section 137(1) b and 182(1) b, of the CRRN 1999 for President and governor respectively.
[19] Section 138 and 183 of the CFRN 1999 for President and governor respectively
[20] See section 66 (1), 107(1), 137(1) and 182(1) of the CRRN 1999 for Federal Legislators, State House of Assembly legislators, Governors and President respectively.

party constitution and guidelines or the other. The key requirements which parties and candidates must meet border on age and finance.

For instance, under the Act, parties have a financial threshold above which they must not spend for electoral campaign purposes. The Act in *sections 91(8) and (9)* defines what electoral expenses are and the maximum donations an individual may make to a political party or candidate for election purposes[21]. According to section 91(9) the maximum amount is ***one million naira (N1, 000,000)*** *to any candidate*.

A reading of the above provision suggests that an individual could make as much donations as the individual can afford as far as it is to a candidate. In other words, in a particular state, an individual may choose to sponsor three senatorial candidates all from the same party or different parties. In such a scenario, if all the candidates succeed, the sponsor would have succeeded in capturing three senators in any particular state. This does not augur well with inclusive democracy. It rather opens the door for governance capture by wealthy individuals or organisations.

The definition of what constitutes electoral expenses, also limits the effects of the provisions on curtailing commercialisation of electoral participation. This is because the excluded expenses, which are quite huge, does have the capacity of deterring a number of potential candidates from participation. Example is the huge amount of money, sometimes running to tens of millions, required of candidates like Presidential and Gubernatorial candidates. This for example is provided under *section 91(8)* of the Electoral Act, to the effect that electoral expenses does not include *(a) any deposit made by the candidate on his/her nomination in compliance with the law; (b) any expenditure incurred before the notification of the date fixed for the election with respect to services rendered or material supplied before such notification and (c) Political party expenses in respect of the candidate standing for a particular election.*

The above provisions have far reaching consequences for inclusive and representative democracy in Nigeria. They undermine the limitation of expenses imposed on candidates and political parties, particularly when you consider that for some positions, parties expect candidates to deposit between 22 and 27 Million Naira[22]. This amount of money can only be

[21] See table 2 below entitled *"Tabular representation of maximum campaign expenses of political parties under section 91 E.A. 2010".*

[22] Jideofor Adibe 'Exorbitant party nomination forms and systemic corruption' Daily Trust Newspaper Wednesday, May 02, 2018. Available online at: <https://www.dailytrust.com.ng/daily/columns/thursday-columns/39371-exorbitant-party-nomination-forms-and-systemic-corruption> accessed 13th June 2018.

afforded by very few and in the alternative provided by political godfathers to the detriment of effective representation.

Table 2: Tabular representation of maximum campaign expenses of political parties under section 91 E.A. 2010.

S/N	Office	Maximum Amount
1	Presidential Election	One Billion Naira - N1, 000,000,000
2	Governorship Election	Two hundred million naira N200, 000,000
3	Senatorial Seat Election	Forty million naira N40,000,000
4	House of Representatives	Twenty million naira - N20, 000,000
5	State Assembly Election	Ten million naira - N10, 000,000
6	Chairmanship Election of Area Council	Ten Million Naira - *N10, 000,000*
7	Councillorship Election of Area Council	One Million Naira - *N1, 000, 000*

4.3. Constitutional provisions on financial contribution and audit in electoral process in Nigeria.

The Constitution recognises the place of money in political participation in Nigeria. It accordingly empowers the National Assembly to make laws for distributing funds to parties for purposes of election. It also creates a provisions for auditing the finance of political parties. The import of these provisions are that it is necessary to ensure that political parties are truly representative and are not under the control of single individuals or groups, whether local or international who can fund their activities. These are provided for under sections 225, 226 and 228 of the CFRN 1999.

On financial auditing of political parties, section 225 (1) provides that "*Every political party shall, at such times and in such manner as the independent National Electoral Commission and publish a statement of its assets and liabilities. (2) Every political party shall submit to the Independent National Electoral Commission a detailed annual statement and analysis of its sources of funds and other assets together with a similar statement of its expenditure in such*

form as the Commission may require". ***Section 226*** also requires Independent National Electoral Commission, to prepare and submit each year to the National Assembly a report on the accounts and balance sheet of every political party.

Still on financial auditing and to prevent political capture by foreign interests, the constitution in ***section 225(3)*** prohibits accepting and retaining funds or assets from outside the country. On this issue, the CFRN provides thus*: (3) No political party shall - (a) hold or possess any funds or other assets outside Nigeria; or (b) be entitled to retain any funds or assets remitted or sent to it from outside Nigeria.* A similar prohibitions is provided for in section 88 of the Electoral Act 2010. Under the Electoral Act, it is an offence for a party to breach the provisions against receiving foreign funds or assets punishable by forfeiture of the funds or assets bought with the funds and a fine of N500, 000.00. However, under the constitution, a contravention may lead to the disqualification of an individual who abets or aides in contravention of the provision from holding public office.

To ensure that alternate sources of funds are provided for political parties to carry out their political advocacy and campaigns during elections and that the interests of the party remains national and representative, the CFRN empowers the National Assembly under ***section 228 (c),*** to make laws for public funding of political parties through annual grants. It is instructive to note that the Electoral Act 2002, section 80 had provisions for the disbursement of funds to political parties provided under section 228 of the CFRN 1999. This provisions was deleted in the Electoral Act of 2010 and the National Assembly has since failed to appropriate and allocate funds to INEC for disbursal to qualified political parties.

4.4. Implications of Financial Requirements to Political Participation

It would appear that these provisions on auditing and financial contribution limits are to check the excesses of political parties by curtailing extravagant spending in promoting their candidates. However, although the amount are stated as maximum, they are quite high and readily deters most otherwise eligible candidates and political parties. This is because of the unintended consequences in that it indirectly sanctions the commercialisation of the electoral process in Nigeria. For instance, making the maximum contribution that can be given to a political party by an individual or entity as One million naira ***(N1, 000,000.00),*** without also providing financial support from the government as envisaged under section 228(c) of the CFRN 1999, is an indirect sanctioning of commercialisation of political participation. Little wonder the political parties in the bid to generate money internally, sell nominations forms at exorbitant rates (clearly above the reach of the average income earner in Nigeria), and also seek

for donations through fund raising and other means clearly in breach of section 91(9) of the electoral act.[23] The electoral act itself[24] recognises that; candidates of political parties will incur expenses on their nomination in compliance with the law, which expenses will not be counted as election expenses under *section 91 (2)-(7).*

It will appear that these provision is what the political parties are capitalizing on to impose nomination fees on candidates, which rates are usually very high. For example Article 18 of the PDP Constitution[25] provides for the funding of the party, it provides that; 'There shall be established and maintained for the party a fund into which shall be paid all: Subscription, fees, and levies from membership of the party, Proceeds from investments made by the party, and Subventions and donations etc. Although it is not clearly stated how much candidates vying for different positions under the party will pay to ***obtain nomination forms***, it has been reported that for the People's Democratic Party (PDP), presidential forms were priced at N22m each; Governorship forms were priced at N11million; Senatorial seats, House of Representatives and state Houses of Assembly forms cost N4.5m, N2.5m and N1.2m respectively. [26]

The same report is given for APC as its constitutions and internal party regulations give room for Commercilisation and exclusion[27]. For APC, aspirants for the office of the President were required to pay ***N27.5m***; those for House of Assembly would be required to pay N500, 000; those aspiring for the House of Representatives must be ready to pay N2m, for the Senate the price tag for the forms is N3m while for the Governorship it is N5m. In addition to the cost of the nomination forms, APC also charges *separately for expression of interest* forms – ranging from N50, 000 for State Houses of Assembly to N500, 000 for those aspiring to be Governors while for those hoping to fly the party's flag in the presidential election it is N2.5m.

Interestingly APC also sets prices for those aspiring to be ***party officials***: under the guidelines for the conduct of the congresses released by the national secretariat of the party, aspirants for

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[23] It was reported that individuals contribution to political parties and their candidates in the last decade in Nigeria to the tune of over 5 billion naira. See Kura S.Y.B (2011), "Political Parties and Democracy in Nigeria: Candidate Selection, Campaign and Party Financing in People's Democratic Party" *in Journal of Sustainable Development in Africa, Vol. 13, No. 6.*

[24] Section 91(8)(a)

[25] Peoples Democratic Party Constitution, Available online at <http://peoplesdemocraticparty.com.ng/?page_id=71> accessed 18th June 2018.

[26] Jideofor Adibe 'Exorbitant party nomination forms and systemic corruption' Daily Trust Newspaper Wednesday, May 02, 2018. Available online at: <https://www.dailytrust.com.ng/daily/columns/thursday-columns/39371-exorbitant-party-nomination-forms-and-systemic-corruption> accessed 13th June 2018.

[27] Article 22 APC Constitution. Available online at: <https://officialapcng.com/downloads/APC-Constitution-Amended.pdf> accessed 18th June 2018.

the office of the state chairman are expected to pay N100, 000 while aspirants for state executive will be required to pay N30, 000. Similarly those hoping to become local government chairmen must pay N25, 000 for the forms while those who want to be on local government executive will have to find N10, 000. For individuals seeking to be ward chairman of APC, they must be ready to part with N10, 000 while N2000 if are required of candidates for APC party ward executives.[28] The party offers its female aspirants a *50 per cent* discount for all positions. The story is the same for most registered political parties in Nigeria. This impunity keeps happening unchecked because the election monitoring board in Nigeria (INEC) is apparently not effectively controlling party campaign finances and sourcing of funds as provided for in the Electoral Act.

These impositions of nomination fees, either by parties or electoral body, have several disturbing implications. Firstly, the process of individuals running for political offices should not be different from persons seeking for employment in the public service. Each wants to render his or her service to the country. For persons seeking employment in the public service, it is clear that it is illegal to sell to them application forms. Such persons are exercising their right as citizens and individual to seek gainful employment within the government and for this government should not and does not require them to purchase application forms. It is therefore contradictory to impose such onerous task on persons seeking political office. Secondly, seeking political office is not contract bidding exercise but an exercise of the constitutional right to vote and be voted for in furtherance of the freedoms of association and principle of government by the people. Also the CFRN 1999[29] and Electoral Act 2010 has already made stipulated requirements for contesting for political offices. Further requirements outside the Constitution that further reduces the opportunity of citizens is unconstitutional. This has been the decision of *Osun State High Court in Action Congress v Osun State Independent Electoral Commission*.[30] Thus imposing nomination fees on candidates effectively shuts out individuals who cannot afford to make such payments[31]. It means that such persons have been denied of their right to freedom of expression and to participate in government.

[28] ibid

[29] See for example *sections 7(4), 106 and 107 CFRN 1999*

[30] See unreported cases, *Alliance for Democracy and 9 others v Osun State Independent Electoral Commission* per Justice J.O.Bada on a March 2004 jugdements held nomination fees unconstitutional. Same decision was held 4 years later in *Osun State Chapter of Action Congress v Osun State Independent Electoral Commission* Suit No: HOS/71/2008 and HOS/72/2008

[31] See Daily Times, June 18 2018. 2019: Stakeholders decry expensive nomination forms, Daily Times, June 18 2018. 2019

It is also worth noting that quite a couple of unreported high court cases, in newspaper reports are anything to go by, have held that payment of nomination fees are illegal and unconstitutional[32]. It is therefore worrisome that this illegality continues to exist despite its unconstitutionality and contribution to the exclusion of sections of the population from the political representation and participation.

5. CHALLENGES AND CONSEQUENCES OF THE LEGAL FRAMEWORK ON AGE AND FINANCIAL REQUIREMENTS.

The constitutional and party regulatory requirements pose some challenges to inclusive participation in the electoral process in Nigeria. These challenges fall into two main groups - age requirements and financial requirements. These are discussed below.

a. Age Requirements

Age limits imposed on political aspirants is serious challenge to effective representation. This is particularly with regards to participation in the legislative arm of government. Going by the constitutional limitations of age, the youngest an individual can be to participate in election, House of Representative of the National Assembly is 30years. This is a direct exclusion of over 40% of the Nigerian population. This means that the interests, fears, concerns and aspirations of over 40% of the population, equating about 60million persons will not be taken into consideration in the law making process.

This has a more far reaching consequence than limitation of age on executive positions. This is because while the executive implements the law, the Legislature makes the law that is implemented by the executive. It is thus necessary to make the Age limit as inclusive as possible. It is worth noting that Nigeria has seen the logic in this argument hence the enactment of the Not too young to run Bill. The Act lowers the age to contest for House of Representatives to 25years etc. This is a great achievement. It is however still very high. All adults, who are qualified to marry, enter into a contract, and pay tax as defined by the law, should have the

[32] See Democratic Socialist Movement, 2004, NCP LISTS CONDITIONS FOR PARTICIPATING IN THE COUNCIL POLL" Available online at: <http://www.socialistnigeria.org/paper/2004/march/10.html> accessed 18th June 2018. Where the report cited an Osun State High Court as declaring payment for nomination forms illegal; Vanguard Newspapers "LG polls: NCP to sue LASIEC over nomination fee" Vanguard Newspapers Online. Available at: <https://www.vanguardngr.com/2017/04/lg-polls-ncp-sue-lasiec-nomination-fee/> accessed 18th June 2018. It is, at the time of completion of this paper, unknown whether this case succeeded.

capacity to contest for membership of the legislature. This will widen the pool of representation and ensure that the law covers most persons.

b. **Financial Requirements**

Financial requirements fall into two main groups. These are regulatory provisions on Campaign finance and registration requirement for parties and candidates.

One of the negative features of the development experience during the past 50 years is that poverty in the developing world remains widespread. One quarter of the world's people continue to live in absolute poverty, unable to meet their most basic needs, and surviving on less than a dollar a day[33]. Nigeria is not exempted. Some of the definitions of poverty list income-poverty, material lack or want, and capability deprivation as characteristics. This circumstances it is argued leads to a web of disadvantages that effectively reduces political participation. This means therefore that low income earners if not accommodated by the removal of financial obstacles to political participation can neither make any meaningful impact in the Nigerian Political space nor get their interests represented. Poverty as a cause for non-inclusiveness, manifests itself in two ways in the Nigeria political process: Campaign financing and financial requirement of candidates.

Campaign financing laws relate to regulations governing sourcing of funds and its spending for political campaign by parties and candidates. As already discussed above, under the Nigerian electoral legal regime, there are maximum amounts which parties are allowed to spend in electoral campaigns for particular elective positions starting from presidential elections to legislative office in State Houses of Assembly. Such money are supposedly to be used in financing campaign activities of the party and candidates. This appear to be in line with arguments that money is crucial for democratic politics, and that political parties need to be well funded to play their roles in the political process. This however does not mean that the raising of such funds should constitute a deterrent to effective representation[34].

On the other hand, it is not to suggest that regulation of campaign funding, as a way of controlling the adverse effect of too much money in campaigns, should be used to stifle healthy competition among political parties. Rather the intent should be to device ways of making funds

[33] Sulaiman Khalid 'The Politics of Poverty Eradication in Nigeria' Department of Sociology Usman Danfodiyo University Sokoto available on line at <www.gamji.com/article6000> accessed 10th June 2018.
[34] Jideofor Adibe note 18,

available, for the services for which funds are required, to political parties and candidates and thus eliminate the unintended consequences of commercialisation of political representation. An example is the regulation of campaign contributions and donations.

In the US for instance, although attempts to regulate campaign finance by legislation dates back to 1867, there are still several loopholes that are exploited by candidates and their supporters. A good case in point is the Federal Election Campaign Act (FECA) of 1972. This Act was amended in 1974 with the introduction of statutory limits on contributions. It attempted to restrict the influence of wealthy individuals by limiting individual donations to $1,000 and donations by political action committees (PACs) to $5,000. Despite this, it was quickly found that while this reform could control 'hard money', (those donated directly to the candidates) it proved ineffective in reigning unregulated contributions or 'soft money' (funds which are not contributed directly to candidate campaigns such as those used in running a candidate's support organisations). For instance, *in Citizens United v Federal Election Commission*,[35] a landmark case in the USA in 2010, the US Supreme Court *held* that corporate funding of independent broadcasts supporting or opposing a candidate for an election could not be regulated as it would infringe on the rights of such entities to free speech.

Although this decision is hinged on fundamental rights of free speech, it has the unintended consequence of subverting the electoral legal regime on limits of campaign contributions. The laws were put in place to avoid political capture by a wealthy group. The perennial debate in the US on gun control is one of the feared effects of political capture to the detriment of the majority. This is because it is often alleged that the National Rifle Association (NRA), which is the anti-gun control lobby in the US is able to dictate the policy and law on gun control in the US because it has through financial contribution effectively captured most of the legislators and political office holders and effectively gun regulation in US. [36]

The above example is a demonstration of what happens when a section of the society has financial control over governance either by giving too much or making it financially difficult for others to participate in decision making. The present situation in Nigeria falls within both divide, i.e., susceptibility to political capture and exclusion of the poor.

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[35] 558 U.S. 310 (2010)

[36] Guardian Newspaper USA 'Why is the National Rifle Association so powerful?' The Guardian Newspaper USA, Nov 17, 2017 available online at: <https://www.theguardian.com/us-news/2017/.../nra-gun-lobby-gun-control-congress> accessed 10th June 2018.

Susceptibility to political capture happens because, although law regulates the maximum amount that can be spend for election, it says nothing about pre-election spending or like the US, money spent by Political Action Committees in support of candidates. The effect is that individuals or group of persons may effectively take control of a candidate by funding all the candidates' pre-election expenses, including purchase of nomination forms[37]. The result is an elected official, who because of working towards placating political financial sponsors, may end up mismanaging government funds in order to recoup or pay off sponsors or build a war chest for re-election. This has far reaching consequences because the poor though also citizens who need adequate representation, particularly, at the law making level, get both disenfranchised due to the high cost of political participation and their interest are ignored due to prioritisation of interest of political godfathers. [38]

5. RECOMMENDATIONS AND WAY FORWARD

As demonstrated above, the commercialisation of political participation effectively shuts out the less privileged in society. Similar exclusion happens with age limit. In both situations, government policies become only for the privileged, the rich and wealthy while recognising the poor as tokens or votes for sale. These challenges could however be resolved via some practical actions as follows.

a. Specifically prohibit payment for Nomination Forms either to parties or electoral commission

Amend the electoral act to specifically prohibit payment for nomination forms. The fear that if made free all and sundry will pick the forms will not matter as parties can establish and carry out internal checks including primary elections to choose a particular candidate. Also other non-financial requirement could be introduced to reduce the list of candidates representing each party to only committed party members. Candidates who want to run for offices may also be required to submit a certain number of signatures from bona fide members of the party who endorse their candidacy as a prerequisite to take part in the primaries. This will ensure that candidates are truly representatives and not impositions.

[37] Note it is our considered opinion that as has been demonstrated by some unreported High Court Cases, payment of nomination forms is illegal and inimical to democratic principles.

[38] See other views by Alabi Abdullahi 'Democracy and Politics of Godfatherism in Nigeria: The Effects and Way Forward' *International Journal of Politics and Good Governance Volume 4, No. 4.2 Quarter II 2013* available online at <www.onlineresearchjournals.com/ijopagg/art/124.pdf> accessed 10th June 2018.

b. Reduce the Age limit to age of consent

Democracy is more likely to develop and endure when all segments of a society are free and able to participate and influence political outcomes. In Nigeria, youths constitute the majority of the work force. It is therefore illogical to deny them voice in the political process, particular as representatives of communities and sectors of the society. The constitutional age limit for vying into political positions should therefore be reduced. The agitation for and successful signing of the Not-Too-Young-To-Run bill also known as the Reduction of Age for Election bill, via a constitution alteration, is a demonstration of the necessity for this amendment.

c. Amendment of party constitutions and guidelines to emphasise capacity and commitment

Parties should amend their constitutions and guidelines to emphasis capacity, commitment, financial prudence, accountability, and dedication in the allocation of party nomination forms. These are criteria that will ensure that only truly dedicated individuals are given the opportunity to run for office and that such persons are not limited by financial considerations or captured by money bags. These requirement although they may seem abstract can easily be ascertained. For instance, issues of accountability and financial prudence could be ascertained or at least deduced from criminal record checks, financial history (Bankruptcy and debt records), and contributions to party funds via payment of dues, where applicable.

d. Amendment of electoral act to require government to finance electoral campaign

The amendment should impose on government the duty to finance electoral campaigns and particularly to give relevant parties equal platform for the dissemination of their message. This will ensure that the necessity for parties to devise means of raising funds from the citizenry, which may impact on the control of the party or candidate, will be reduced. The foundation for this is already provided for under section 228(c) of the CFRN 1999. The Constitution however has not made it compulsory for the National Assembly to enact such a law or fur government to make such disbursement. It is noted that INEC at some time did disburse funds to political parties under an INEC regulation and under *section 80* of the Electoral Act 2002[39]. This was however a discretionary provision which only, like the constitution, empowering the National Assembly to enact a law giving grant to political parties. The sustainability of this approach is in doubt hence the recommendation for an amendment of the Constitution and Electoral Act to

[39] Electoral Act 2002,NO4 Laws of the Federation of Nigeria, 2004

make it a compulsory requirement. To enhance the utility of the funds disbursed to parties, they should be required to present their candidates for compulsory community interactions at different levels. This will give the electorate the opportunity to ask questions of the candidates and their party. For the candidates and their party, it will also be opportunity to communicate to the public their manifesto.

6. CONCLUSION

Democracy is arguably the best form of government. Its effectiveness however depends on the level of its inclusiveness. Democracy needs to be inclusive to ensure that as the definition implies, it is of the people, by the people and for the people. Anything less is not democracy. The best way to ensure inclusiveness is to ensure it is a constitutional democracy where every adult citizen who is able to vote is also able to contest for political position. This ensures that the voice of the citizenry is truly heard in the policy making process. This requires eliminating all factors that may exclude a majority of the citizens from political participation. In Nigeria, for the purpose of this paper, these factors that cause political exclusion and disenfranchisement are mainly age limits and financial requirements.

Age limits and financial requirements limit the opportunity for effective representation of the citizenry. This is because only about 5% of the population of over 180 million citizens, under the current electoral law and policy, may be able to meet both the financial and age requirements to have the opportunity to independently vie in political representation positions. Further factors like interests, educational qualification, party membership etc., will further whittle down this number thereby reducing the pool of potential representatives. This implies that the interests, aspirations and fears of the remaining 170 million or so citizens may not be represented except where their interest coincides with that of the elite. A taste of this is already reflected by the lukewarm attitude of government towards development and implementation of people oriented policies and programmes. Practical examples are the poor funding of Education, Health sectors, ineffective power supply and near-none existent pipe borne water. These are services which the poor cannot afford but which the rich can purchase. Unfortunately, these are essential services for a healthy living, but for which the rich have ready alternatives and care little whether government provides them or not. The supposition here is

that this would have been different where all sections of the citizenry are fully represented. The best way to achieve this is through the amendment of the relevant laws. The aim should be to remove all unconstitutional and undemocratic barriers including the financial requirements; reintroduction of public funding of political parties, enforcement of auditing requirements and making qualification age for political candidacy same as age of consent.

A CENTURY OF LAWMAKING IN NIGERIA: A REVIEW

By

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PUBLISHERS/DATE OF PUBLICATION: National Institute for Legislative Studies (National Assembly), 2014.

VOL/EDITION/NO. OF PAGES/CHAPTERS: Single volume, edited by Professor Ladi Hamalai, 381 pages of 11 Chapters. It has a supplementary compendium which is of five (5) volumes, containing all treaties, constitutions and constitution-drafting committee/assembly reports from 1851 to date of publication of the book (2014), except the report of the National Constitutional Conference of that year.

SUBJECT MATTER: This is a book of essays which seeks to provide "an in-depth and critical assessment of the *Nigeria legislature* and *legislative processes* from colonial years" through independence and post-independence Nigeria.

PURPOSE/OBJECTIVE OF BOOK: The book's main purpose/objective is to accomplish one of the mandates of the National Institute for Legislative Studies (NILS, the predecessor of NILDS) which is to act as a centre of excellence for research and publication on democratic governance, and legislative practice and procedure. The book therefore seeks to accomplish this by setting out the history, politics and processes of legislative governance in Nigeria from colonial period to the present. In this regard, the book is divided into six (6) sections of eleven (11) chapters as follows:

Chapter One – This chapter addresses the role of lawmaking in a democracy. It's a theoretical evaluation of conceptual aspects of the processes of lawmaking. It offers a historical discourse of law making tracing it to the beginning of human existence, and civilization. The chapter identifies the systematic approach to lawmaking pioneered by Athenians and narrows down to the traditional forms in Nigeria. The chapter appraises the modern form of law making from the time of commencement of representative government in England as well as the unique approach introduced by the American Revolution. In summary, according to the author, the

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idea of lawmaking is a celebration of the will of the people to be governed by the government of their choice. The American Revolution marks a watershed in that popular resolve without which lawmaking will be a meaningless, detached process. Lawmaking is therefore an expression of the will of the people through their freely elected representatives in parliament. The starting point of law making in Nigeria is traced to the concession granted to the Royal Niger Company by the British government for the company to exploit the territory now known as Nigeria. The concession was later withdrawn pursuant to a Bill passed by the British pursuant to the Foreign Jurisdiction Act of 1890, a statute of general application in England. The chapter extensively discusses the various mechanisms of law making and their net implications for the economic, social and political wellbeing of the Nigerian people. It concludes on the note that lawmaking is the "pen that crystallizes the inalienable rights of humanity, without which there would be inconsistency in the protection of men's proprietary rights". Thus, it's important that lawmaking must be undertaken in such a way as not to infringe on the inalienable rights of citizens, but rather to further and enhance them.

Chapter Two – The chapter discusses the constitutional development of Nigeria through pre-colonial era, then to the colonial period and post-colonial times till the present. It identifies the first constitution of Nigeria as the Clifford Constitution of 1922 followed by the Richards Constitution of 1946, Macpherson Constitution of 1951 and the Littleton Constitution of 1954 all of which were promulgated by British Colonial administration with minimal input of Nigerians, except for the last two in which consultations were held between local political leaders and British colonial administration. The chapter also identifies post-colonial constitutions such as the Independence Constitution of 1960, Republican Constitution of 1963, the 1979 and the current 1999 Constitutions. The chapter identifies some important features of each of these constitutions including the introduction of elective principle (1922), introduction of national representative council (1946), grant of self-rule and introduction of quasi-federal system (1951), introduction of full-fledged federal system (1954) grant of independence and constitutional guarantee of human rights (1960), adoption of republicanism (1963), introduction of presidentialism and centralist federal system with consociational mechanism to manage diversity (1979), continuance of presidentialism and centralism, with consociational mechanism (1999). The chapter concludes that the current constitutional framework is un-autochthonous to the extent that military junta superintended the process of its making and largely dictated its terms.

Chapter Three –This chapter addresses parliamentary democracy and law-making in the context of the role of federal parliament in the politics and governance of the first republic. The relevant period covers 1960-1964. The chapter deals with how the House of Representatives in conjunction with political stakeholders handled three significant national issues namely: creation of regions, federal-regional relations with reference to declaration of State of Public Emergency in Western Region by the federal government, and the Anglo-Nigerian Defence Pact and the reaction of the general public to them with concomitant impact on the survival of the Balewa government.

Chapter Four discusses regional parliaments and governance in Nigeria during the First Republic. It provides a historical outline of regional legislatures from 1946 when they were introduced in the Eastern, Northern and Western provinces. The chapter discusses the crisis in the Western Region and its impact on legislative business in the region shortly after independence. It also examines specific aspects of regional policy governance in areas of educational and particularly university education and establishment of universities by regional governments in Ife, Nsukka and Zaria; "regional" police and native authority administration. The chapter concludes that in the final analysis regional assemblies exhibited qualities consistent with most multi-party democracies underscored by "debates, bitter opposition and sometimes crisis". The author expresses the view that despite this, key issues were successfully deliberated in all regional assemblies which yielded progress in the area of local administration, education and community development.

Chapter Five – The chapter discusses presidential democracy and lawmaking in Nigeria. It provides a background to adoption of presidentialism in the country. The author suggests that the adoption of the "system in 1979 was a deliberate political choice made by the Nigerian political elite informed by the experience of premature collapse of the first democratic experiment in 1966", and believes that the "tussle for exclusive power between a ceremonial President (Head of State) and an executive Prime Minister (Head of Government) was at the centre of a festering political crisis which dovetailed into the collapse of the Republic". These conclusions are contentious since the republic was too young for constitutional provisions

creating these two positions to be fully tested for informed conclusive evaluation. The conclusion also seems to ignore the impact the wave of coup-making across Africa and South America had in the minds young officers who toppled the democratic government, or whether the alleged tussle for power weighed on the minds of the coup-makers in truncating democratic government. The officers largely complained of corruption and related matters, which charge appears to remain the most populist reason to justify such unconstitutional takeover, and seems to be a powerful rallying point even in the hand of long-standing political opposition. The chapter gives the verdict that the legislature of the second republic under-performed in discharging its law-making power, except for the effort to robustly address the challenges of federalism and its concomitant impact on intergovernmental fiscal relation. The chapter skips the third republic to address the fourth republic law-making experience. Still founded on the presidential system, the Fourth republic parliament is assessed as having cultivated a high level of public confidence despite its initial travails. The chapter concludes on the note that strengthening law-making process and conduct of routine elections as constitutionally prescribed are critical elements for institutionalizing democracy in Nigeria

Chapter Six – The chapter reviews lawmaking in Nigeria by the military. It commences by citing the coup day speech of Major Kaduna Nzeogwu by which he pronounced the toppling of constitutional government and imposition of martial law over the "Northern Provinces of Nigeria". The chapter avoids a discussion of the justification for the coup of 15 January 1966. Instead it notes that that coup set the stage for subsequent military intervention at various times thereafter until restoration of democratic rule in 1999. During the period, the military ruled by decrees. The chapter examines the legality of military rule in the country reasoning that military coups are criminally and constitutionally outlawed. Despite this, the critical determinant of whether effect can be given to this prohibition is if the coup succeeds or not. The chapter notes that the jurisprudence in Nigeria appears to endorse the legality of a successful coup; meaning that a forceful take over which gains popular support to the point that the coup-makers are able to assert authority, is made legitimate by these chain of events despite extant constitutional and statutory censor of coup. The chapter discusses framework for law-making during military rule, procedure for lawmaking during the era and identifies seven sectors or items in which the regimes were most active in lawmaking. They include federalism and state creation, education, agriculture and land development, trade and investment, and constitution-making, among

others. The chapter concludes with the author proposing a revision of some of the laws made during military era in order to bring them up to conformity with democratic standards.

Chapter Seven – The chapter addresses the issue of creating a durable constitution. It is discussed from the perspective of Senate Constitution Review Committee. The chapter sets the tone by offering a brief review of constitution making in Nigeria. It then addresses the specific questing of how to evolve a durable constitution in the country. Seven parametres are set to achieve this namely: inclusivity, participation, diversity, autonomy, transparency, accountability and legitimacy. The chapter identifies a number of issues focused on, in the effort by the Seventh National Assembly constitution review exercise. They include nature of federal structure, local government, security/policing and fiscal federalism. The chapter also identifies a number of challenges which make constitutional alteration process difficult. They include high but apparently unrealistic public expectations, lack of procedural template to accomplish the task, ethnic bias, apathy and a lack of political will. The author concludes that in order to mobilize robust support for constitutional review endeavor, the general public has to gain good enlightenment on the necessity of the exercise in addition to their active participation to secure legitimacy for the review process.

Chapter 8 – The chapter explores ways by which democracy can be deepened through constitution review, using the House of Representatives as the paradigm. It offers an appraisal of constitution review in the country with specific reference to the exercise conducted by the 4th National Assembly (1999-2003), 5th National Assembly (2003-2007), as well as the 6th Assembly (2007-2010) and the 7th Assembly (2011-2015). The chapter identifies some unique innovation introduced in the review process including Technical Committee of Experts and the Peoples Public Session adopted during the exercise conducted by the 6th and 7th Assemblies respectively. The chapter concludes that despite their best efforts, the House of Representatives has been unable to fully see through a number of its constitutional review proposals due to the intrinsic rigidity of constitutional alteration process.

Chapter 9 – The chapter discusses the legislature and democratic rights. The chapters attempts to draw a nexus between the legislature as the platform for the people to be represented in

government and the need for such representation to guarantee some basic rights to citizens including the right to secure their social and economic well-being, without which the entire democratic system would appear to be meaningless to the populace.

Chapter 10 – The chapter discusses the legislature and the politics of succession in the fourth republic. The author admits that strictly speaking, the legislature (the National Assembly) has no direct powers to deal with challenges of orderly political succession. Nonetheless, due to a number of factors bordering on the political structure of the country, the National Assembly inevitably gets drawn into the vortex of such issue. The chapter examines the role played by the Assembly in resolving crisis of succession which has threatened the country's democratic stability since 1999 and situates the crisis within the general dynamics of Nigeria's political economy, including the framing of competition for power through the party system and projection of ethno-regional and religious identities. The author concludes that the National Assembly has effectively used its strategic position as the venue for manifestation of Nigeria's diversity to blunt succession politics, especially during President Olusegun Obasanjo regime and in the peaceful resolution of the crisis of succession precipitated by the ill-health of President Umar Musa Yar'Adua.

Chapter 11 – The eleventh and final chapter addresses legislative lawmaking and gender in Nigeria. It raises the question "why gender"? While answering the question, the chapter connects it with Nigeria's legal system and the role of the legislature in promoting gender balance and gender equality. It also appraises the number of seats held by women in the legislature showing a low statistical outlook against their male counterpart. The author concludes by underscoring the need for increased political participation by women for the overall development of the country.

GAPS/RECOMMENDATIONS: This is a book of essays published in 2014 as part of the centenary celebration (100 years) of Amalgamation of the Northern and Southern Protectorates in 1914. The content of most of the chapters are still fresh, although there have been some significant developments since then including subsequent constitutional review process conducted by the 8th National Assembly culminating in a number of Constitutional Alteration

Acts, 2018. The 5th Chapter could have been better enriched by evidence-based research explaining what motivated the adoption of presidential system in Nigeria. The conclusion reached on alleged tussle for power between the Head of State and Prime Minister as the cause of the coup of January 15 1966 seems to be unsupportable. In any event, the Report of the Constitution Drafting Committee (CDC) headed by Chief Rotimi Williams and deliberations of the Constituent Assembly (CA) which examined the report seem to be more reliable avenues to discover reasons for adoption of presidentialism in place of parliamentary government in 1979 by the military. The chapter made only passing reference to the CDC report and the deliberation of the CA without specifically identifying any conclusion on motivation for rejection of parliamentary government and adoption of presidential government in its place. Despite this obvious gap, the book is complete in itself as it was published to mark a particular episode in Nigeria's political and constitutional history which is the 100th year of the making of the country. No recommendation for further action is necessary and same is not made in this review.

PARTY DEFECTION UNDER THE CONSTITUTION: *ABEGUNDE V ONDO STATE HOUSE OF ASSEMBLY & ORS* [2015] 61 (Pt. 3) NSCQR 1857 REVISITED

BY

EBELE GLORIA OGWUDA*

Abstract

Defection or Carpet-Crossing by Political Office holders or Nigerian politicians generally is not a new phenomenon but one that has persisted since the First Republic in the period leading to independence of Nigeria as a sovereign nation. Most defection cases in Nigeria have been primarily informed by personality clash, financial considerations, power tussles, personal glorification, etc. The practice has continued without obvious consequences for the perpetrators. It is in the light of the foregoing that the paper examines the trend of defection among political office holders in view of the 2015 decision of the Supreme Court in the case of Abegunde v. Ondo State House of Assembly & Ors where the Court had to interpret and apply the provisions of sections 68(1) (a) & (b) and 222 (a), (e) and (f) of the 1999 Constitution to ascertain whether the appellant's case falls within the exception (proviso) envisaged under section 68(1) (g). Using the doctrinal approach to research, the paper addresses issues which emanated from the decision of the court which in the opinion of the paper will henceforth agitate the minds of political office holders who stand the risk of vacating their seats for such acts of defection and also recommends amongst other things that section 68(1)(g) of the Constitution should be amended to include ***automatic loss of seat.*** *It thereafter concludes that Abegunde's case should become a locus classicus to be referred to in all cases of party defection in Nigeria.*

Keywords: Defection, political office holders, political parties, lawmakers

1. INTRODUCTION

Across the globe, it is not out of place for politicians to change their party affiliations. There are those who are of the conviction that this is in line with the exercise of an individual's fundamental freedom to dissent, which invariably gives democracy its unique meaning and power.[1] What is however unusual is for politicians already elected on the platform of one party to either the Parliament or Executive, as the case may be, to defect to another party during or before the expiration of the term.[2]

Defection[3] or Carpet-Crossing by political office holders or Nigerian politicians generally is not a new phenomenon but one that has persisted since the First Republic in the period leading to independence of Nigeria as a sovereign nation.[4] In advanced democracies, reasons adduced by politicians for defection amongst others include divergent views on the operations of parties' philosophy or idealogy, crisis, factionalisation or division, and party leaders reneging on

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[1] 'Defection Politics' <https://www.ifp.co.in/page/items/38920/defection-politics/> accessed 11 July 2018 Political defection in India for instance, was before now a norm until the practice was pushed to the limit by politicians so much so that it became necessary to introduce a law to some extent limit acts of defection. In 1985 by virtue of the 52nd Amendment to the Constitution (the 10th Schedule), an Anti-Defection Law was introduced. This law prohibits legislators from defecting to another party. The earlier arrangement before the 91st Amendment to the Constitution in 2003 in which the clause was removed was that they could do so if a group of them formed one third of their original party.

[2] ibid

[3] This trend which is generally referred to as party defection, cross- carpeting, party-switching, floor-crossing, party-hopping, canoe-jumping, decamping, party- jumping, etc. are employed to mean the same thing as defection. For further reading, see Peter Mbah, 'Party Defection and Democratic Consolidation in Nigeria, 1999-2009' *AAJSS* 2(2.3) (2011) <http://onlineresearchjournals.com/aajoss/art/68.pdf > accessed 9 May 2018

[4] Adewale Ademola, 'The History and Law of Political Carpet-Crossing in Nigeria' <http://squibguest.blogspot.com/2009/11/history-and-law-of-political-carpet.html> accessed 6 May 2015. Defection first crept into the country's political lexicon in 1951, when some members of the National Council for Nigeria and Cameroon (NCNC) were lobbied to cross over to the Action Group (AG), both defunct, to stop the former from forming the government in the then Western Region. The NCNC had won 42 out of the 80 seats in the region's House of Assembly, but in one swoop lost 20 of them to the AG. This stopped Dr. Nnamdi Azikiwe, an Igbo and leader of the party from becoming the premier of the Western Region. The trend continued in the First Republic (1960-1966). Notable defections in that era were that of Chief Ladoke Akintola, who left AG due to personality clash between him and the leader of the party, Chief Obafemi Awolowo. A similar disagreement between Azikiwe and one of his lieutenants, Dr. Kingsley Mbadiwe, forced the latter to dump the NCNC to form the Democratic Party of Nigeria Citizens (DPNC). For further reading, see Nwaneri,Felix, 'Defection: New Power Play Ahead of 2015' <http://newtelegraphonline.com/defection-new-power-play-ahead-of-2015/> accessed 7 May 2018

agreements.[5] In Nigeria of late, most defection cases, have been primarily informed by personality clash, financial considerations, power tussles, personal glorification, etc.[6] From 1999 to date, many politicians at the Local, State and Federal levels have moved from one political party to the other. Some did so abandoning the parties on which platform they were elected into public office, while others after losing elections found it the best option to jump to another party without obvious consequences.[7] Also, it is commonplace to have frequent acts of defections in the period leading up to elections.

Following preparations for the 2019 general elections in Nigeria, there has been a gale of defections in which sitting Governors, the siting Senate President as well as Senators, the Speaker and other members of the Legislature have had cause to defect, embrace and declare their political interests under new political platforms (political parties).[8] This has occurred without any repercussion or obvious consequences for the perpetrators or strict application of constitutional provisions on defection. It has been said that defection is a choice and considered part of politics.[9] However, it becomes a challenge where the defector does so while occupying the office won under his former party. By virtue of section 221 of the 1999 Constitution, it is political parties that win elections, not individuals.[10] Political parties canvass for votes, and have their names printed on the ballot papers during elections.[11] It should consequently not be

[5] Ademola (n 4)
[6] ibid
[7] ibid
[8] For further reading on political office holders that defected see, Chioma Gabriel, 'Political Defections: In whose interests?' <https://www.vanguardngr.com/2018/08/political-defections-in-whose-interests/> accessed 12 November 2018
[9] Peter Claver Oparah, 'Dealing with the Aftermaths of Defection in Nigerian Politics' <http://saharareporters.com/2018/08/06/dealing-aftermaths-defection-nigerian-politics> accessed 13 November 2018
[10] See also the case of *Amaechi v. INEC* (2008) 5 NWLR (Pt. 1080) p. 227 at 315
[11] Oparah, (n 9)

out of place for such political office holders seeking to defect to either resign or lose their seats upon such defection.

It is in the light of the foregoing that the paper examines the trend of defection among political office holders. This becomes necessary in view of the 2015 decision of the Supreme Court in the case of ***Abegunde v. Ondo State House of Assembly***[12] (hereinafter referred to as *Abegunde's* case) where the Court had to interpret and apply the provisions of sections 68(1) (a) & (b) and 222 (a), (e) and (f) of the 1999 Constitution to ascertain whether the appellant's case falls within the exception (*proviso*) envisaged under section 68(1) (g).[13] The Court also had to determine whether the lower courts' interpretation and application of same was valid. In so doing, the paper answers some posers or nagging questions which have agitated the mind of the researcher and probably most Nigerians as to the effect of this landmark decision with respect to constitutional provision on defection. Before attempting to answer these questions, it becomes imperative to look at the meaning of party defection, the provisions of the 1999 Constitution on party defection and a synopsis of the case.

2. MEANING OF PARTY DEFECTION

Political party defection or party-switching is said to occur when any elected party representative within a political structure such as the parliament or the Executive, embraces a different political or policy perspective that is incompatible with that of the party he or she previously represents.[14]

Also, party defections could mean any change in political party affiliation of a partisan public figure, usually one who is currently holding an elected office. In several nations, party defection

[12] (supra). The judgment was delivered on the 19th of March, 2015
[13] Section 222 of the 1999 Constitution stipulates the conditions for eligibility of an association to be recognised as a political party
[14] Mbah, (n 3)

takes the form of politicians refusing to support their political parties in coalition governments.[15]

3. ANALYSIS OF CONSTITUTIONAL PROVISION ON PARTY DEFECTION

The provisions of party defection are clearly spelt out in section 68 of the 1999 Constitution. Section 68(1)(g) stipulates that a member of the Senate or the House of representatives **shall** vacate his seat in the House if he becomes a member of another political party before the expiration of the period for which that House was elected.[16] What this means is that a person stands the risk of losing his seat if he defects during the subsistence of his tenure. We may want to ask at this juncture whether this provision has ever been activated to punish erring political office holders or whether it requires judicial activism to ensure effective application as will be discussed in the course of this paper when analysing issues arising from the decision of the court in *Abegunde's* case. It is imperative to point out that there is a proviso to section 68(1)(g), the effect of which is that the erring politician may escape punishment under (g) if his defection is as a result of a division in the political party which he was previously a member or a merger of two or more political parties or a situation of faction. Another important provision is subsection (2) which is on the role of the Senate President or Speaker of the House of Representatives who is required to give effect to the provisions of subsection (1) by presenting

[15] 'Politics of Party Defections, Ethnicity and Effect of 2015 Presidential Election in Nigeria' <https://hyattractions.wordpress.com/2015/11/02/politics-of-party-defections-ethinicity-and-effect-of-2015-presidential-election-in-nigeria/> accessed 11 July 2018

[16] Section 68 of the 1999 Constitution (as amended) generally spells out conditions for vacation of seat in the House by the legislators at the federal Level ranging from being a member of another legislative house, disqualification, where he ceases to be a citizen, becomes president or vice president, etc., defection to another party and so on. See section 109 for similar provisions for members of a House of Assembly of a State. The import of this provision is that a member of either House of the National Assembly duly elected for a term of four years may lose his seat in any of the aforementioned circumstances. For further reading see, J O Akande, *The Constitution of the Federal Republic of Nigeria 1999* (MIJ Publishers, 200) 166

satisfactory evidence that any of the provisions has become applicable. This provision will be discussed extensively in the course of the paper.

4. SUMMARY OF *ABEGUNDE'S* CASE

The Appellant, who contested and won the Akure North/South Federal Constituency election under the platform of the Labour Party, after a while, defected to Action Congress of Nigeria (ACN) in 2011. He gave the reason for his defection as a division in the Ondo State Chapter of the Labour Party. The Appellant filed an Originating Summons at the trial Court (Federal High Court) seeking interpretation of Section 68(1) (a) and (g) of the 1999 Constitution. He sought declaration to the effect that by virtue of the *proviso* to the stated section 68(1)(g), he was entitled to retain his seat in spite of his defection and urged the Court to restrain the respondents from tampering with his seat. The trial Court dismissed his claim. Being dissatisfied with the judgment, he appealed to the Court of Appeal, which dismissed the appeal and affirmed the trial Court's decision. He further appealed to the Supreme Court. The Supreme Court in affirming the decisions of the lower Courts held that the appellant did not come within the exception created under section 68(1) (g) of the Constitution. In its judgment, the Court stated that the division in the State Chapter of the party did not justify the appellant's defection as the division must be such that affects the national structure or leadership of the party at the Centre and not at State or Local Government or Ward level.[17] The Court therefore ordered the appellant to vacate his seat.

In the light of the foregoing, some questions have arisen which we shall now attempt to answer.

[17] See the cases of *FEDECO v. Goni* (1983) NSCC vol. 14 pg.481 at 4885 (SC) and *Abubakar v. AG Federation* (2007) 10 NWLR (Pt 1041) where the Courts enunciated the principle that it is only such factionalisation, fragmentation or division that makes it impossible for a political party to function by virtue of the proviso to section 68(1)(g) that will justify a person's defection to another party and subsequent retention of his seat in spite of the defection. This reasoning was adopted in Abegunde's case to the effect that his alleged claim of division in the state chapter of the party did not excuse his defection and as such he had to vacate his seat

5. *ABEGUNDE V ONDO STATE HOUSE OF ASSEMBLY & ORS*: EMERGING ISSUES

Recall that we mentioned earlier in the paper that certain questions bothering on the decision of the court has arisen which this paper shall attempt to answer. This section of the paper will now deal with these issues.

5.1 Does the Decision go far enough to make the Suggestion of Automatic Loss of Seat redundant?

In attempting this question, It is important to reproduce the provisions of section 68(1)(g) of the 1999 Constitution (as amended) for the purpose of emphasis. Section 68(1) (g) provides thus:

> *68 (1) A member of the Senate or the House of Representatives shall vacate his seat in the House of which he is a member if-*
>
> *(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected.*

Provided that this membership of the latter political party is not as a result of a division in the political party of which he was previously a member or of a merger of two or more political parties or factions by one of which he was previously sponsored.

The decision of the Court in *Abegunde's* case was merely an order that compelled the Appellant to comply with the provisions of section 68(1) (g) of the 1999 Constitution (as amended) as his case did not fall within the exception contemplated by the *proviso*. It will be important at this stage to point out that the Constitution does not spell out what amounts to division in the party.[18] Even though the Supreme Court in various cases have pronounced that division which entitles a legislative member to retain his seat in the face of defection must be such that affects

[18] The word 'division' could be subjected to different interpretations. It could mean division between the national Executives of the party or between the National and the state party executives, etc.

the national structure or leadership of the party, it still remains vague and as such requires explicit review by the lawmakers.[19]

Furthermore, when section 68(1) (g) is read together with subsection (2) of the same section, it becomes succinct that the president of the Senate or Speaker of the House of Representatives has to give effect to the provisions of sub-section (1) by presenting satisfactory evidence to the House that any of the provisions of that sub-section has become applicable to the legislative member concerned. What this means is that inaction on the part of the Senate President or Speaker of House becomes a loophole for the provisions of the section to be jettisoned. When this happens, it then becomes the duty of the Courts in exercise of their interpretative jurisdiction to give meaning and effect to this provision at the instance of an aggrieved party. This is because it is only a matter that is brought before the Court that can be adjudicated upon.

As part of the efforts to strengthen national unity and consolidate democratic governance in Nigeria, the 2014 National Conference (CONFAB) was inaugurated by the former President Goodluck Ebele Jonathan. The conference made far reaching recommendations, one of which was the need for defectors to automatically lose their seats regardless of the reasons.[20] It is however interesting to note that the decision of the Court in the above case does not render the automatic loss of seat recommended by the National Conference (CONFAB) in 2014 redundant. This is because CONFAB's recommendation is all encompassing as it cuts across both the Legislature and the Executive and also advocates that elected office holders who defect for whatever reasons should automatically vacate their seats save for merger of political

[19] See the cases of *FEDECO v. Goni* (supra) *AG Federation v. Abubakar* (supra) and *Abegunde v. Labour Party* (supra) on the court's interpretation of what amounts to 'division' in a party

[20] Some of the recommendations include restructuring, resource control, power sharing/rotation, creation of more states, etc. For further reading see, 'Key National Conference Recommendations You Need to Know' <https://www.premiumtimesng.com/national-conference/key-national-conference-recommendations-need-know/> accessed 14 November 2018

parties.[21] We have in recent times had several cases of defection by political office holders without punitive or stringent repercussions as envisaged under the Constitution.

5.2 Is there any Constitutional Provision covering members of the Executive that defect?

Political leaders are of the opinion that the continuous defection or cross-carpeting among either members of the Legislature or Executive in the country if not checked, could have destabilising effects on the country's nascent democracy.[22] It is quite saddening that in respect of members of the Executive at both Federal and State levels that is the President, Vice President, Governor and Deputy Governors, the Constitution is remarkably silent on the issue of defection. This in itself poses a big problem because it would appear that there is no sanction or restriction on members of the Executive. This means that members of the Executive can defect at will without obvious consequences which entail vacation of seat. It is as a result of this lacuna in the law that the Supreme Court in *AG Federation v. Abubakar*[23] on the legality of the defection of Alhaji Atiku Abubakar, the Vice President from People's Democratic Party (PDP) to Action Congress (AC) held *inter alia* that no similar provision i.e. section 68(1) (g) was made for the Vice President and the President. It was stated that if the legislators had intended the Vice President or even the President to suffer the same fate, they would have asserted that provision in clear terms. The absence of clear provisions also applies to the offices of Governor and Deputy Governor. The Court also held that it is the settled philosophy of the law that the duty of the court is *jus dicere* and not *jus dare* – "to declare the law and not make law." The Court further stated that "law making" in the strict sense of that term, is not the

[21] The reasoning behind this recommendation is so that there can be end to defections on flimsy reasons of division in the party whether at national, state, local government or ward level and also to stop the blatant abuse of the exception created under the Constitution. See volume 1, p. 302 of the National Conference Report, 2014
[22] Ndukwu, Ebere. 'Curtailing Cross-Carpeting by Elected Politicians' <http://nationalmirroronline.net/new/curtailing-cross-carpeting-by-elected-politicians/> accessed 11 May 2018
[23] (supra)

function of the Judiciary and as such there should be no incursion by one arm of the government into that of the other as that will be an invidious trespass.

What we can garner from the foregoing decision is that Law making is the exclusive preserve of the Legislature. It therefore becomes imperative for our lawmakers to address this lacuna by inserting punitive measures in the 1999 Constitution against members of the Executive that defect. Otherwise such acts even though they are spiteful and unacceptable will neither be declared illegal or unconstitutional by our Courts because they lack statutory impetus. The paper strongly suggests that the recommendation of the National Conference (CONFAB, 2014) on the amendment of section 68(1)(g) to effect automatic loss of seat for any elected official whether Executive or Legislative who defects to another political party be keyed into.

5.3 Why is there need for a conscious enforcement of Section 68?

The intention of the lawmakers in inserting the provision was to punish acts of defection to another political party by an elected legislative member before the expiration of the period for which he was elected.[24] What the drafters overlooked which somewhat defeats the aim was the need to insert the magic phrase, **'automatic loss of seat'** thus making it mandatory or sacrosanct for anyone who is in breach of section 68(1)(g) to vacate his seat without delay and prompting from either the Senate president or Speaker of the House of Representatives[25] or the Courts. This will make it have the force of law and the author also believes that outlawing defection by political office holders will put an end to political prostitution and strengthen our nascent democracy. Also the provision that requires the Senate President or Speaker of the House to give effect to the provisions of subsection (1) by presenting satisfactory evidence

[24] See *AG Federation v. Abubakar* (supra)
[25] See section 68(2) of the 1999 Constitution

should be expunged. This will go a long way in deterring such acts of defection by political office holders.

5.4 Effect of Recall on the Integrity of the House Leadership

In addressing this poser, it is imperative for us to avert our minds to subsection (2) of section 68 of the Constitution which empowers the House leadership (either the Senate President or Speaker of the House) to effect any of the provisions of subsection (1) by presenting satisfactory evidence that any of the provisions of that section has become applicable to the affected member. What this means *stricto sensu* is that until the House Leadership makes reference to such acts of defection, they are deemed as inconsequential. If Abegunde had not gone to Court and of course 'shot himself in the leg,' the matter would have likely gone unnoticed like most acts of defection in Nigeria or perhaps we would have had a rare case of recall pursuant to the provisions of section 69 of the 1999 Constitution (as amended) .[26] This ineptitude of the House Leadership i.e. the Senate President and the Speaker who coincidentally may also be guilty of this act has indeed led to rampant cases of defections with no obvious call to order. It therefore becomes a matter of urgency for the section on defection to be re-couched or reviewed by including the phrase **'automatic loss of seat'**.

5.5 Effect of Defection by members of the Executive

As stated earlier, there are no Constitutional provisions prohibiting Members of the Executive from defection and as such any attempt to declare the seat of either the Governor or Deputy Governor vacant on the grounds of defection will be declared illegal and history will indeed repeat itself as was the case in *AG Federation v. Abubakar*.[27] This is because under section

[26] Section 69 provides to the effect that a member of the Senate or House of Representatives may be recalled by means of a petition which is signed by 50% of registered voters of his constituency and presented to the INEC Chairman alleging their loss of confidence in that member. See section 110 for similar provisions for members of the State House of Assembly

[27] (supra)

188[28] of the 1999 Constitution (as amended), defection is clearly not one of the grounds for impeachment. Until it is given the force of law, it will indeed not lead to vacation of seat even though it is deemed to be an unconscionable act. It behoves on the lawmakers to act fast in addressing this lacuna by outlawing acts of defection by the Members of the Executive in order to restore integrity in politics and put an end to the upsurge in defections in Nigeria.

6. RECOMMENDATIONS/CONCLUSION

The issue of defection in Nigerian politics is one which needs to be timeously addressed and nipped in the bud before it further cripples our democracy. The paper is of the view that such cases of defection will continue which, if not properly challenged in Court, will be swept under the carpet until section 68 of the 1999 Constitution is amended to include **'automatic loss of seat'**. This will give life to the provision of section 68 and also deter our political office holders from toeing that path.

The paper therefore recommends that political office holders who defect for whatever reasons should automatically lose their seats and be given an opportunity to contest on the platform of their new political parties. This position should apply to the legislative and executive arm of Government because the mandate for any elective post is usually won on the platform of a political party.[29] Also sub-section (2) of section 68 which empowers the House Leadership to give effect to the provisions of the section should be expunged.

The effect of the decision of the Court is that the division that will entitle a political office holder to defect must be at the national level. *Abegunde's* case therefore becomes a *locus classicus* to be referred to in all cases of defection. This does not however take away the fact

[28] Under section 188, a Governor or his Deputy may be removed from office on allegation and investigation of gross misconduct in the performance of the functions of his office
[29] See Section 221 of the 1999 Constitution

that section 68 needs to be amended to include **‘automatic loss of seat’** for all political office holders.