



Politics of De-Registration of Political Parties in Nigeria: Court of Appeal Judgment and the Way Forward

For Senate Committees on:
INEC, Judiciary and Human Rights and Legal Matters
For House Committee on:
Political Parties Matters

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1. Introduction

Various forms of multiparty political systems have been introduced around the world since the start of the third wave of democratization in 1974¹. Today, we live in times when more countries elect their leaders through multiparty elections—and where more people are governed by rulers of their choice. However, there has been a convergence of opinions amongst political theorists about the strong and inextricable connections between political parties and the viability of democracy². This therefore, stresses the fact that, modern democracy and party politics are not just connected but inseparable as there is no democracy without a viable political party system³. Hence, political parties are one of the primary avenues through which citizens can exercise their authority and participate in political life. They (political parties) contribute to democratic governance by aggregating and representing the interests of their constituents⁴.

The development of political parties in Nigeria can be traced to 1923, when the Nigerian National Democratic Party was launched, which was later followed by the establishment of the Nigerian Legislative Council to provide some political space for the participation of indigenes⁵. Since then Nigeria has registered many political parties. A good example was in the Second Republic, where Nigeria announced about 150 political parties in the run up for its elections,

¹<https://www.ned.org/docs/Samuel-P-Huntington-Democracy-Third-Wave.pdf>

² Maiyo, J. (2008). Political parties and intra-party conflicts in East Africa, from representative to participatory democracy, a thesis for master of philosophy in African studies, Leiden University. Retrieved from <https://www.ascleiden.nl/Pdf/thesis-maiyo.pdf>

³ Aleyomi, M.B (2014). Renewing Nigeria's democracy: the role of political party system viabilities, *the journal of pan African studies*, Vol. 6, (10), Pp. 93-110. Retrieved from <http://www.jpnafrican.com/docs/vol6no10/6.10-8-Aleyomi.pdf>

⁴ https://www.ndi.org/sites/default/files/Political_Party_Programming_Guide.pdf

⁵ Danjibo, N. and Ashindorbe, K. (2018). The Evolution and Pattern of Political Party Formation and the Search for National Integration in Nigeria. *Brazilian Journal of African Studies*. Vol.3, (5), Pp. 85 – 100.

although only 50 of them were fully constituted as parties⁶. However, 20 years later, there was an attempt by the Independent National Electoral Commission (INEC) to restrict the number of political parties to a few namely, the Peoples Democratic Party (PDP), the All Peoples Party (APP) and the Action for Democracy (AD) and a few others during the 1999 general elections⁷. While it is worthy of note, that the commission has the constitutional powers to register political parties who fulfill laid down requirements⁸ as was buttressed in a Supreme Court judgment in the case of *Balarabe Musa v INEC*, which brought about the liberalization of the conditions for registration of political parties in the country⁹ and this subsequently, made the Nigeria's political space to witness an unprecedented opening with the emergence of 63 registered political parties by April 2011. However, the Electoral Act 2010 (as amended), also gives INEC the powers to de-register political parties that do not meet certain criteria¹⁰.

This brief therefore, is aimed at interrogating the powers of INEC to de-register political parties as guaranteed in the Electoral Act, 2010 vis-à-vis the recent ruling of the Court of Appeal, which invalidates INEC's de-registration of 74 political parties on the grounds that due process was not followed by INEC before de-registering the parties.

2. Conceptual Clarification

Democracy:

Democracy is a Greek word which means '*people rule*' or '*ruled by the people*'. In this sense, it is primarily concerned with who should rule and who should decide who rules. By implication, democracy means the acceptance of the basic equality of men as humans and the basic responsibility of all adult men and women for their own destiny¹¹. Democracy therefore, cannot be divorced from such universal principles of popular participation in governance, unrestricted competition in electoral contest, respect for equality and liberty of the citizens, as all of these signify the basic tenants of true democracy.

In achieving democratic stability, the significance of political institutions especially, the political parties cannot be overemphasized. This is because, political parties usually aggregate various

⁶ Liebowitz, J. and Ibrahim, J, (2013). A Capacity Assessment of Nigerian Political Parties. A Project of UNDP Nigeria on Democratic Governance for Development (Dgd) Programme. Retrieved from http://www.undp.org/content/dam/nigeria/docs/DGD/dgd_assessment_of_political_parties.pdf

⁷ [Shola Omotola](#), S. J. (2010). Elections and democratic transition in Nigeria under the Fourth Republic. *African Affairs*, Vol. 109, Issue 437, Pp. 535–553.

⁸ See Sections 222, 225 – 229 of the 1999 Constitution (as amended) LFN

⁹ Some of the parties that had been refused registration by INEC went to court to challenge their non-registration. The matter went right up to the Supreme Court which ruled that INEC had imposed additional conditions not known to the Constitution for the registration of parties. INEC was therefore ordered to register all parties that meet the basic conditions spelt out in the Constitution.

¹⁰ See Section 78(1) of the Electoral Act, 2010. LFN

¹¹ Ogundiya, I.S. (2011). *Political Parties and Democratic Consolidation in Nigeria*, Ibadan: University of Ibadan Press.

local and national interests together in the political system thereby mobilizing people and resources in supporting the candidates they offer for electoral contest¹².

Political Party:

Political party is defined as an organized body of people with a clearly or roughly defined policy agenda whose primary aim is to win or retain political power through the aggregation and articulation of the diverse views of a nation's population for further political programmes and actions¹³. Political parties, here simply means an organized formal avenue of interest aggregation which gives candidates the political and ideological platforms that introduce them to the electorates through setting of policy goals and agenda with the sole intend of capturing or maintaining legal power to control government for a particular period of time. It is in view of the foregoing that political parties are also defined as the lifelines of modern day politics which lies at the heart of democracy, representing the crucial link between what citizens want as political demands and what the government provides as democratic outputs¹⁴.

3. De-registration of Political Parties in Nigeria and Elsewhere: the Legality

It should be noted that de-registration of political parties is not novel in Nigeria as well as in other climes. For instance, on the eve of the 2007 elections in Kenya, there were more than 300 political parties, out of which 117 nominated candidates for election to the National Assembly. This proliferation of political parties was checked by the enforcement of the Political Parties Act 2007, which de-registered some political parties and reduced the number to 47 in March, 2010¹⁵.

The conditions for de-registration of political parties in Kenya include the following¹⁶;

- i. If the political party is not nationalistic in character, as described in "Conditions of Registration";
- ii. If it fails to supply the declaration of assets, income and expenditure as outlined in "Obtaining and maintaining full Registration";
- iii. if it is in breach of its own constitution;
- iv. obtained registration by fraud;
- v. instigated or participated in the commission of an election offence or used money disbursed by the State improperly;
- vi. failure to obtain at least 5% of the vote in the two previous elections;
- vii. failure to participate in parliamentary or local government elections with its own candidates in the last six years;
- viii. Following its registration, if the party fails to participate in the next general elections.

Elsewhere in Australia, according to the Australian Electoral Commission, from 1990 to date, the country has witnessed a de-registering of over 180 political parties¹⁷. In Nigeria, the Independent

¹² Jega, A. (2007). *Democracy, Good Governance and Development in Nigeria*, Ibadan, Spectrum Books.

¹³ Umar, M. Z. and Kura, S. Y. (2004). *Political Parties, Electoral Rules and Democratic Governance in Saliu, H. A. et al (Eds.), Nigeria under Democratic Rule (1999-2003)*, Ibadan: University Press.

¹⁴ Op cit. Maiyo, J. (2008).

¹⁵ <https://www.eisa.org.za/wep/kenparties2.htm>

¹⁶ See Sections 24(6), 26(2) (1) (e) of the Kenya Political Party Act, 2007.

National Electoral Commission (INEC) has in recent past exercised this powers granted them, specifically by the Electoral Act 2010 (as amended). Recall that on December 6th, 2011, INEC de-registered 28 political parties that did not contest for any election office in the 2011 elections, a decision which elicited a plethora of court cases from the victims who protested the de-registration¹⁸. Some of the affected parties were *Fresh Party*, *People's Redemption Party*, *National Reformation Party*, *Democratic People's Alliance*, *National Advance Party*, *Democratic Alternative*, *National Action Council*, *National Democratic Liberal Party*, *Masses Movement of Nigeria*, *Nigeria People's Congress*, *Nigeria Elements Progressive Party*, *the National Unity Party* etc. At the end of 2012, an additional 31 political parties were de-registered, leaving only 27 registered political parties.

According to the Electoral Act 2010 (as amended), the conditions on which INEC can de-register a political party are thus¹⁹:

- i. Breach of any of the requirements for registration;
- ii. Failure to win at least twenty-five percent of votes cast in-
 - One State of the Federation in a Presidential election; or
 - One Local Government of the State in a Governorship election
- iii. Failure to win at least-
 - ***One ward in the Chairmanship election***
 - One seat in the National or State House of Assembly election; or
 - ***One seat in the Councillorship election***

From the foregoing, it is evidently clear that de-registration of political parties across different climes and in Nigeria particularly has been an age-long practice. The question that thus come to mind is the reason why the Appeal Court overturned INEC's decision to de-register 74 political parties recently.

The answer to this is not farfetched. While the Nigerian 1999 constitution (as amended) specifies conditions/criteria to be met for the registration of political parties by INEC thus;

No association by whatever name called shall function as a party, unless²⁰ –

(a) The names and addresses of its national officers are registered with the Independent National Electoral Commission;

(b) The membership of the association is open to every citizen of Nigeria irrespective of his place of origin, circumstance of birth, sex, religion or ethnic grouping;

¹⁷ Australian Electoral Commission, (2020). Deregistered/Renamed political parties. Retrieved from https://www.aec.gov.au/Parties_and_Representatives/Party_Registration/Deregistered_parties/index.htm

¹⁸ *Premium Times*, (n.d). UPDATE: Why court ruled that INEC has power to de-register political parties. Retrieved from <https://www.premiumtimesng.com/news/123313-update-why-court-ruled-that-inec-has-power-to-de-register-political-parties.html>

¹⁹ See Section 78 of the Electoral Act 2010 (as amended)

²⁰ See Section 222 of the 1999 Constitution (as amended)

(c) A copy of its constitution is registered in the principal office of the Independent National Electoral Commission in such form as may be prescribed by the Independent National Electoral Commission;

(d) Any alteration in its registered constitution is also registered in the principal office of the Independent National Electoral Commission within thirty days of the making of such alteration

(e) The name of the association, its symbol or logo does not contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria; and

(f) The headquarters of the association is situated in the Federal Capital Territory, Abuja.

4. Conclusion and Recommendations

This brief has discussed the de-registration of political parties in Nigeria by INEC and court judgment over ruling their de-registration. It concluded that, there was a need for the enactment of the Electoral Act, hence the Electoral Act, 2010 (as amended), which aims at addressing some of the uncaptured issues in the constitution such as reasons for the de-registration of political parties (refer to 3 above for conditions for de-registration of political parties) etc.

It is a welcome idea for them to deregister political parties who do not meet the main criteria to exist under section 222 of the constitution. However, they should ensure that they comply with the processes and follow the necessary steps for any party to de-register before such an action is carried out. This is to avoid any misunderstanding in the future. It is based on this that this brief therefore, advances the following recommendations;

- a. That INEC should exercise patience in its bid to de-register these political parties until the processes are complete i.e. until the various State Independent Electoral Commissions have conducted elections in their respective states as it is only then that INEC can determine whether or not a political party was able to fulfill the provisions of section 78 of the Electoral Act or not and;
- b. INEC should follow the due process before deregistering any political party to avoid legal issues/battles.
- c. Other Political parties should mobilize and affiliate themselves with the two strongest political parties to form two mega parties. This will reduce cost and the length of ballot papers during elections.
- d. Local parties should be formed at the local level like local governments, who can contest and win at that levels to avoid unnecessary long ballot papers. Also, because we do not need too many political parties at the national level polls.
- e. The State Electoral Commissions and SIEC structures should be brought under the single organizational framework of INEC. There should be a re-organization, at the State level, so that the State Independent Electoral Commission (SIECs) can be incorporated within the structure of the INEC to enable the country have a single election management body.