The Role of the Bar and the Bench in the Consolidation of Democratic Rule in Nigeria's Fourth Republic, 1999–2007

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There is a unique relationship between the bar (lawyers) and the bench (judges) that exists in no other profession. However, this relationship is fraught with the hazards of tempers that sometimes seethe in the stormy billows of the courtroom and of antagonisms that occasionally arise from the loss that must, inevitably, be sustained by one side as every legal battle ends. Yet, the desirable future of a nation may well depend on the proper balancing of such relationship and upon an understanding by the lawyer and the judge that without mutual assistance and respect of each toward the other neither can carry out his assigned role, despite great learning and dedication to duty. In the dispensation of justice, the role of the bar and the bench is intertwined and remains very crucial. In Nigeria, however, the bar and the bench, unlike their counterparts in developed climes, operate in a different normative realm that exerts enormous pressures on them to respond, not just to the traditional demands for legal services, but also to the nation's desire for social equilibrium, political stability and democratic consolidation. Therefore, after decades of brutal military dictatorship and a brief spell of civil rule, this paper critically examines the role of the bar and the bench in the consolidation of democratic rule, especially in the arbitration of electoral disputes, from the inception of Nigeria's Fourth Republic in 1999, to 2007, when the country witnessed the first successful civilian-to-civilian transition in her political history. The paper argues that since the attainment of political independence in 1960, up to 1999, the image of the bar and the bench have been soiled as a result of their role in the adjudication of electoral disputes. It posits that since the return of multi-party democracy in 1999, the bar and the bench have continued to play an increasingly assertive role as arbiters in the country's democratic politics in general and its electoral disputes specifically. It concludes that even though the country is yet to enthrone a flawless framework for electoral justice, the increasing reliance of political stakeholders on the courts to decide electoral disputes and issues of public interest has led to a gradual reinforcement of the integrity and confidence in the bar and the bench as impartial arbiters and vital instruments of political stability and democratic consolidation.

[Nigerian Judiciary; Judicial Activism; Electoral Disputes; Military Rule; Nigeria's Fourth Republic]

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Introduction

The bar and the bench have very strong shared backgrounds, as the bar is the nursery for the bench. As noted by the Supreme Court in *Atake vs. Attorney General of the Federation*, a retired judge is a legal practitioner.[2] The roles, functions, jurisdiction, and duties of both the bar and bench are complementary to each other. And, without the bar, the bench cannot function; if at all it can exist. In the same vein, without the bench, the bar will be like a rudderless ship. However, although the bar and the bench are two parallel bodies, they should not be seen hob-knobbing with each other, because judges are expected to do justice judicially and judiciously. Hence, if they are to do justice in every case, lawyers as ministers in the temple of justice are expected to assist judges to do justice in every case. This joint responsibility is reflected in the words of the Master of Rolls, Lord Denning, when he said: *"One of the most safeguards of liberty is the presence of a strong and independent body of advocates who will speak fearlessly on behalf of their clients regardless of the consequence to themselves. If a man who is charged with an offence is to have a fair trial, it is essential he should be able to feel that his case will be put before an impartial advocate who will say all that is to be said on his behalf."*[3]

It is axiomatic that respect for the rule of law is essential to the effective operation of popular government or democracy. In fostering this principle, the role of the bar and the bench is crucial. For, it is in the courts that citizens primarily feel the keen, cutting edge of the law. In other words, democracy cannot survive in any country without the contribution and active participation of the bar and the bench. Historically, in Nigeria, the bar and the bench have assumed a crucial role in the scheme of governance, which underscores the need for a proper understanding and evaluation of their contributions and, or limitations, about consolidating democratic governance. The increasing reliance on the courts to decide major issues of policy and public interest has also brought into sharp focus new dimensions about the role of the bar and the bench in the pursuit of social equilibrium, political stability, and democratic consolidation.

The history of the bar and the bench in Nigeria is a chequered one. In the early days of the legal profession in the country, the judiciary was shrouded in certain myths; impartiality, competence, detachment, that is, above political and other unsavory influences likely to compromise

2 Law Pavilion Electronic Law Report-SC.5/1982.

3 A. T. B. DENNING, *The Road to Justice,* London 1988, p. 12.

justice, and incorruptibility. Also, at the outset, the process of appointing members of the bench was credible. As such, those who found their way to the bench were persons of impeccable integrity. The bar, at this period, was also comprised of men and women of impeccable integrity. Hence, both the bar and the bench commanded the awe and respect of the Nigerian society. During this period, the bench, through the support of a virile bar, was detached, intractable, not easily influenced and always straight as a ramrod, guided by the desire to do justice and that only.[4] However, some of these myths are no longer palpable. The competence, impartiality and incorruptibility of judges are now being questioned openly. The judiciary in particular is in very dire straits. It has failed to live up to its constitutional role as the bulwark of justice.[5]

Nigeria as a country professes, or at least, strives towards the practice of liberal democracy. The latter can be defined as a procedural system involving open political competition with multi-party, civil and political rights guaranteed by law, as well as accountability, operating through an electoral relationship between the citizens and their representatives. Therefore, electoral process is crucial to the practice of liberal democracy. Open, regular, and competitive electoral politics, in which the result is uncertain and indeterminate *ex ante*, is a core element of liberal democracy. Liberal democracy and competitive electoral politics are so intimately intertwined that one cannot be separated from the other. An election under such a democratic system must be free and fair. And it is now generally accepted that an independent judiciary to interpret electoral laws is one of the most fundamental conditions for the holding of free and fair elections.

Democratic governance was restored in Nigeria in 1999, after 16 years of uninterrupted military rule. Since then, the bar and the bench have continued to play an increasingly assertive role as an arbiter in the country's democratic politics in general, and its electoral politics specifically. Despite efforts at institutional reforms, particularly in the judiciary, Nigeria's Fourth Republic has been characterized by weak and ineffectual institutions, corrupt judiciary and recrudescence of primordial ethnic and religious sentiments. This study, therefore, historicises the role of the bar

4 R. KAILASH, *Legal Ethics, Accountancy for Lawyers and Bench-Bar Relations*, India 2004, p. 23.

5 F. NYEMOTU, *Meeting the Challenges of Sustainable Democracy in Nigeria*, Ibadan 2002, pp. 20–24.

and the bench in the consolidation of democratic governance in Nigeria from advent of democratic governance in 1999, which marked the commencement of the Fourth Republic, to 2007, when Nigeria witnessed the first successful civilian-to-civilian transitional government in her political history. This is with a view to evaluating the extent to which the bar and the bench have been able to live up to the nation's desire for democratic consolidation during the period of study. The historical research method was adopted, while the interpretive design was used. The study relies on the use of primary and secondary sources. The primary data derived mainly from a critical review of selected landmark electoral dispute cases that came before the courts between 1999 and 2007.[6]

The Bar and the Bench in Nigeria up to 1999

The role of the bar and the bench in the consolidation of democracy in Nigeria up to 1999 must be situated within the context of the country's socio-political evolution. The stability and quality of a democratic constitution is largely determined by the level of importance attached, and power given to it.[7] This can be measured broadly, using three acclaimed criteria. First, is whether the judiciary is independent, that is, it must not be beholden to any special interest or to either of the other two arms of government. The competence and integrity of the bench is the second criterion. In other words, judges must be competent, learned and of high integrity to command universal respect and approval. The availability of adequate facilities and personnel forms the third criterion.[8] However, the bench in Nigeria before 1999, was not defined by any of these criteria.

Although the different Nigerian Constitutions up to 1999, speak eloquently about judicial independence, judges, in fact, remain beholden to the Executive arm of government. For instance, judges at all levels of the Judiciary – High Courts, Courts of Appeal, and the Supreme Court – are appointed and promoted by the Executive branch, sometimes without

6 Especially cases where elections were nullified by the courts, and cases where court decisions led to change of government such as: Osunbor vs. Oshiomhole (2008) 56497 (CA), Agagu & ors vs. Mimiko & ors (2009)49488 (CA), Peter Obi vs. INEC & Ors (2007) SC.

7 L. MBANEFO, *The Role of the Judiciary in Nigeria Now and in the Future*, Lagos 1976, p. 3; B. O. NWABUEZE, *Constitutional Democracy in Africa: Structures, Powers, and Organising Principles of Government*, Lagos 2003, pp. 44–50.

8 E. A. DAVIES, The Independence of the Judiciary in Nigeria: Problems and Prospects, in: *African Study Monograph*, 10, 3, 1990, p. 20.

screening and, or confirmation by the Legislature.[9] The Executive also controls some of the facilities needed by the Judiciary, such as housing, transportation, and support staff.[10] The power of appointment gives the Executive branch a considerable level of influence over the Judiciary and leaves judges vulnerable to manipulation and control. Hence, feelings of vulnerability are deep, pervasive, and often unallayable among judges, whose career advancements, as well as access to facilities like housing and transportation depend on the Executive.[11]

In the First Republic, particularly in the build-up to the Federal elections of 1964, the country was engulfed in constitutional crisis, as a result of which several cases were filled in courts. These cases were about the allocation and exercise of constitutional power in the regions and in the center.[12] The partiality or positive inaction of both the bar and the bench during this period encouraged those who governed to become lawless and irresponsible. Both the bar and the bench could not differentiate their social roles as pillars of the law from their roles as ethnic leaders and party-political figures.[13] The inability of both the bar and the bench to resist political pressure and interference severely circumscribed the image and integrity of the courts in the First Republic. Many Nigerians began to feel, rightly or wrongly, that the justice administered in the courts was influenced by extra-legal consideration. Confidence in the ability of the courts to decide political issues impartially was consequently undermined, to the point that there was a general disinclination to take complaints to them.[14]

Convinced that they would not get justice from the courts for the rape of their rights to choose who should govern them, the people naturally resorted to self-help as the only remedy open to them. In the circumstance, violence broke out, and life became insecure in the streets of Ibadan, Ife, Mushin, Agege and other parts of the Western Region of the country.

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9 Section 238 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

10 K. WHYTE, *The Place of the Judiciary in the 1999 Constitution*, All Nigerian Judges' Conference, Abuja 2000, p. 20.

11 C. J. OTTEH, Restoring Nigerian Judiciary to its Pride of Place, in: *The Guardian*, April 13, 2004.

12 IDEA, *Democracy in Nigeria: Continuing Dialogues for Nation Building*, Lagos 2000, p. 20.

13 A. O. POPOOLA, *Politics of the Nigerian Judiciary*, in: Proceedings of the 32nd Annual Conference of the Nigerian Association of Law Teachers, held at the Nigerian Institute of Advanced Legal Studies, Lagos, on May 10–13, 1994, p. 45.

14 Ibid., p. 46.

"Operation Wet-i-e" (meaning "soak in petrol and burn") was in full swing. Cars of known party stalwarts were set ablaze, and unpopular Customary Court Presidents were slaughtered in public.[15] The upshot was the military takeover of January 1966. This marked the end of Nigeria's first experience at parliamentary democracy. It follows, therefore, that neither the bar nor the bench could be exonerated in the crises that culminated in the eventual collapse of Nigeria's first experiment of democratic rule.

On assumption of power in 1966, the military junta suspended most of the provisions of the 1963 Constitution, while the surviving provisions derived their efficacy from decrees, thereby establishing the supremacy of military decree over the Constitution.[16] The fusion of the legislative and executive powers in the supreme military authorities curtailed the scope of judicial independence.[17] Hence, contrary to the concept of the independence of the judiciary, the military showed great interest in ensuring that they controlled the judiciary. This directly impinged on the activities of the bar and the bench. For instance, Decree No 5 of 1972, provided that the Chief Justice of Nigeria would *"henceforth be appointed and dismissed by the Head of the Federal military government at his discretion"*. Subsequently, the military proceeded to compulsorily retire the incumbent Chief Justice, T. O. Elias via a radio announcement.[18]

However, despite the difficult and sometimes dangerous condition in which the bar and the bench had to operate under the military rule, they were, in several instances, able to prevent the roof of the temple of justice from carving in. A classical example in this regard is the celebrated case of *Lakanmi & Another vs. A.G of Western Region & Others*.[19] In Western Nigeria, the military government issued Edict No. 5 of 1967, and thence set up a tribunal to investigate the assets of certain former public officers. E. O. Lakanmi and his daughter Kikelomo Ola, were among those whose assets were investigated. The tribunal ordered the confiscation of certain of their property and ordered them not to operate their bank accounts. Father and daughter approached the High Court at Ibadan seeking some

15 Ibid.

16 NWABUEZE, *Military Rule and Constitutionalism in Nigeria*, Michigan 1992, p. 20; see also, Federal Military Government (Supremacy and Enforcement of Powers) Decree of 1970.

17 Ibid.

18 A. OYEBODE, Is the Judiciary Still the Last Hope of the Common Man?, in: A. OYEBODE, (ed.), *Law and Nation Building (Selected Essays)*, Lagos 2005, p. 131.

19 *Nigerian Weekly Law Report*, 1, 1989, p. 621.

relief. It had denied them. They went on to the Appeal Court, which dismissed their case for lack of jurisdiction. The matter ended at the Supreme Court and was heard by Adetokunbo Ademola, the then Chief Justice of Nigeria, and four other Justices of the Supreme Court.[20] After submissions by counsels, the Supreme Court, on April 24, 1970, allowed the appeal, declaring the decrees and edicts *ultra vires*, null and void. The court said further that the military take-over of government on January 15, 1966, was not a revolution and that the provisions of Decree 45 of 1968, amounted to a usurpation of the judicial powers of the courts.[21]

The military was livid. A few days later, it promulgated the Federal Military Government (Supremacy and Enforcement of Powers) Decree of 1970. In sum, the decree barred the courts from entertaining questions pertaining to the validity of decrees and edicts. Thenceforth, successive military administrations have found it expedient to make the same orders; barring the courts from questioning the validity of decrees and edicts, or actions taken consequent upon them. As a result, under military rule, the bar and the bench faced very severe and harsh realities, making them to oscillate between their concerns for their personal safety and their commitment to the defence of rule of law and protection of civil liberties. The dilemma of the bar and the bench as ministers in the temple of justice, under military rule in Nigeria is encapsulated by Ademola, JCA (as he then was), when he declared that *"in matters of civil liberties in Nigeria, the courts must blow muted trumpets"*.[22]

The Second Republic was heralded by the shadow of bitterly fought election petitions. On the eve of the inauguration of the Shehu Shagari-led civilian administration in 1979, the Supreme Court had to decide whether Shagari, the President-elect, had been duly elected. In that case the Supreme Court was to decide whether two thirds of 19 states is 13 or 12 and two-thirds. In the end, the court ruled that two-thirds of 19 states is twelve and two-thirds instead of 13. In other words, the Supreme Court annulled one third of the votes cast for Chief Obafemi Awolowo, the petitioner, and the three other candidates in Kano State, but left all the votes cast for Alhaji Shehu Shagari in the same state intact. The decision of the Supreme Court in the Awolowo case, as well as in the avalanche

20 Lakanmi & Ors. vs. A.G of Western Region &Ors.1989 1 NWLR 621.

21 Ibid.

22 Wa Ching Yao vs. Chief of Staff Suit No. CA/L/25/85 13 (1990), 2, *Nigerian Weekly Law Report*.

of election petitions during the Second Republic portrayed blatant partisanship in the adjudication of electoral disputes.[23] There were also serious allegations of corruption against some of the judges and lawyers involved in these cases.[24] These evoked negative comments and emotional expressions of diffidence in the integrity of both the bar and the bench. It became apparent to the general intelligent public that some of the judgments emanating from the courts were unreasonable and catalyst for political crisis. Consequent upon the announcements of the final results of the election, a large number of election petitions were filed before the various Election Petitions Tribunals.[25]

In the end, an appreciable number of the verdicts handed down by the courts horrified Nigerians as much as the election results themselves. The verdicts, in several instances, constituted a rape on democracy perpetrated through the courts.[26] It showed that despite mounting public criticisms, the judiciary repeatedly demonstrated a tendency, especially in high-profile and election cases, to lend its process in the service of the powerful, well-connected, and wealthy citizens. Indeed, of all the elections ever held in this country up till that time, none had put the judiciary as much on trial as the 1983 general elections. In these circumstances, the second coming of the military on December 31, 1983, via a coup d'état led by General Muhammadu Buhari, was seen by many as deliverance from the rule of politicians who have fostered themselves on the people through the collaboration of the courts.

Under the General Muhammadu Buhari-led military junta, which held power from December 31, 1983 to August 27, 1985, the judiciary was further humiliated, when judges were drawn and appointed to serve in inquisitorial tribunals under military officers with little or no knowledge of the law. While the travesty of justice was being enacted in these tribunals, the judges sat silently, apparently out of fear of their removal.[27] However, the bar at this time, spearheaded the judicial activism and protest the subordination of judges under military officers. At the end of an emergency meeting held in Lagos, in March 1984, the bar, under the auspices of its umbrella body, the Nigerian Bar Association, NBA, resolved that no

23 A. OLISA, *The Judiciary in the Second Republic 1979–1984*, Lagos 1984, p. 32.
24 POPOOLA, p. 45.
25 Ibid.
26 O. A. YUSUF, *Transitional Justice, Judicial Accountability and the Rule of Law*, London 2010, p. 21.
27 Ibid., p. 22.

lawyer in Nigeria should appear before any of the military tribunals.[28] Encouraged by the posture of the bar, Hon. Justice Yahaya Jinadu quit the bench upon the disobedience of his judicial order by the Buhari/Idiagbon junta.[29] Suffice it to state, that in spite of intimidation and harassment by the junta, the bar and the bench, in some cases, remained courageous and dogged with regards to the promotion of the rule of law.

General Ibrahim Babangida's palace coup on August 26, 1985, purportedly sought to mitigate the hardship imposed on the nation by the Buhari dictatorship. Initially, he repealed some of the more oppressive decrees, while the Recovery of Public Property (Special Military Tribunals) Decree was amended such that judges became chairmen of the military tribunals.[30] This initial seeming favorable disposition of the Babangida regime towards the promotion of rule of law and respect for civil liberties turned out to be a façade. No sooner had he settled in office than the natural inhibition of the regular Nigerian military dictator began to manifest itself.

The confrontation between the bar and the bench on one hand, and the military regime of Ibrahim Babangida on the other, reached its peak with the arrest and detention, without trial, of four human rights activists and a student union leader in May 1992, on trumped up charges. The disposition of the bar was that of defiance. It filed two separate suits challenging the arrest and illegal detention. During the trial, twenty-two orders were made by various courts for the release of the detainees; nineteen were expressly disobeyed by the government, while three were overtaken by events.[31] As a result, the bar called on its members to withdraw their services from courts across the country beginning from Monday, June 8, 1992.

The boycott recorded a total success in the Ikeja and Lagos Divisions. On their part, the judges were cooperative and instantly directed their court Registrars to adjourn pending cases to future dates and terminated proceedings.[32] Eventually, the military government arraigned the detainees

28 D. O. AJAYI, *A History of the Nigerian Bar Association, NBA, 1960–2010*, Ph.D. thesis, Department of History, University of Ibadan, 2016, p. 76.

29 Ibid., p. 77.

30 POPOOLA, p. 45.

31 A. OLANREWAJU, *The Bar and the Bench in Defence of the Rule of Law in Nigeria*, Lagos 1992, p. 121.

32 Banke Owoade, 72 years, Retired High Court Registrar, (Personal Communication), Lagos, [2017– 07–14].

before Justice Mwada Balami of Abuja Magistrate Court on the charge's conspiracy and treasonable felony on Monday, June 15, 1992. At the end of the trial, a sound, fearless, in-depth, and courageous ruling was delivered by his worship, Magistrate Mwada Balami. In his ruling, the Magistrate re-affirmed the commitment of the bar and the bench to the rule of law with regards to the fundamental human rights of citizens, and that it was the duty of the bar and the bench to ensure that the State is subject to rule of law and due process.[33] The ruling reverberated across the country and culminated in victory for the bar and the bench in Nigeria in their assiduous struggle in enthroning the rule of law.

After an eight years transition to civil rule programme, and in what can be described as one the defining moments in Nigeria's political trajectory, the late M. K. O. Abiola and Babagana Kingibe, both Muslims, won a sweeping victory in the June 12, 1993, presidential elections under the platform of the Social Democratic Party. The annulment of the election, which would have ushered in the Third Republic, and which has been widely adjudged the freest and fairest to be held in Nigeria before or since independence in 1960, was facilitated partly by the inglorious roles of the bar and the bench. The annulment plunged Nigeria into turmoil and retarded its political progression.[34] It would be recalled that immediately after the end of the national convention of the Social Democratic Party, SDP, held in Jos in May, 1993, members of the bar representing an association known as Association for Better Nigeria, ABN, approached the Abuja High Court asking for the invalidation of the results of the convention on grounds, inter alia, of corruption and electoral malpractices.[35] Before this case was heard, the National Electoral Commission, NEC, which was a party to the suit, went ahead, regardless, to make preparations for the presidential election on 12 June, 1993. Fearing that the election would be conducted before its case could be heard, the ABN asked its lawyers to file, at the Abuja High Court, a *Motion on Notice*, praying for an injunction to stop the NEC from conducting the election, which was scheduled for June 12, 1993. In a night-time ruling, Justice Bassey Ikpeme of the Abuja High Court, suspended the electoral process. However, the NEC refused to recognize this decision and rather proceeded not only to conduct the

33 *Gani Fawehinmi and 4 Ors. vs. Attorney General of the Federation*, Nigerian Law Reports, /28/4/2000 SC.

34 D. O. AJAYI, British Colonial Policies and the Challenge of National Unity in Nigeria, 1914–2014, in: *Southern Journal for Contemporary History*, 47, 1, 2022, pp. 18–20.

35 Ibid., p. 18.

election, but also to announce the results in 14 out of the 30 States.[36] As a result the ABN went back to the Abuja High Court and obtained another injunction stopping the NEC from continuing with the announcement of the results. Interestingly, the NEC this time recognized and obeyed the injunction of the High Court.[37]

The conduct of the bench and the bar gave the military government of Ibrahim Babangida sufficient excuses to annul the election. Thereafter, General Ibrahim Babangida, rather than continuing with a military government, "stepped aside" and appointed a civilian, Chief Ernest Shonekan, to head an illegal "Interim National Government" (ING), composed mostly of civilians. Again, the Honorable Chief Justice of the Supreme Court of Nigeria administered the oath of office to the appointed 'Interim President'; thereby according to a degree of legitimacy to an interim government that was unknown to the Constitution or any other law of the land. After 82 days in office, the ING was overthrown in a palace coup led by General Sani Abacha, who became the new military ruler. His dictatorship, which lasted from 1993 to 1998, was to become more brutal than anyone before it. Abacha's sudden demise in June 1998, paved the way for the emergence of General Abdusalami Abubakar, who midwifed the return of the country to civilian rule in 1999. The increasing level of corruption at the bar, and on the bench became an issue of national concern.

As part of efforts to address the rot in the judiciary, the General Sanni Abacha led military regime embarked upon some reform initiatives. On December 29, 1993, it set up the Justice Kayode Eso Panel on the Re-organization of the Judiciary. The Panel's Report indicted 47 judges for sundry corruption charges and recommended their dismissal. However, for over seven years after it submitted its report to the Federal Government, most of the recommendations of the Kayode Eso Panel were not implemented by the regime of Sani Abacha that set it up. Also, probably pre-occupied with the transition to civil rule programme, the General Abdul-Salami Abubakar military regime that succeeded Sanni Abacha did not implement the report either. As a result, most of the indicted judges continued to sit on the bench.

It is clear from the foregoing that by 1999, the capacity and integrity of the bar and the bench as the safeguards of the rule of law and instruments

36 Ibid., p. 19.
37 Ibid., p. 20.

of democratic consolidation have been severely circumscribed. Rather, the twin-pillars of the judiciary have often been caught in contradictory trajectories between vulnerability in practice and independence in theory. This is a reflection of the prebendal character of Nigerian state, prolonged military rule, and the concomitant weak institutionalization of democratic political institutions and culture.

The Bar, the Bench, and the Consolidation of Democracy in the Fourth Republic, 1999–2007

The 1999 Constitution, which was promulgated on the eve of the inauguration of the Fourth Republic, introduced certain unique provisions aimed at enhancing the independence and integrity of the bench. The Constitution provides for the establishment of two independent regulatory institutions, namely, the National Judicial Council, NJC, and the Federal Judicial Service Commission (FJSC).[38] The Constitution empowers the NJC to investigate judges accused of wrongdoing and recommend appropriate sanctions to the President, or state governors. The NJC has the mandate of recommending judges for appointment and promotion and enforcing the procedures laid down for judges, especially the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria. In the same vein, judges are now to be appointed by the President, not only subject to the confirmation of two-third majority of the Senate, but also based on the recommendation of the NJC, which in turn, receives nominations from the FJSC. Also, the NJC, according to the constitution, shall not be subject to the direction or control of any other authority.[39] On the other hand, the FJSC, oversees the general welfare of judges. And, to guarantee their independence, both the NJC and FJSC are headed by the Chief Justice of Nigeria, CJN, and comprise some of the most senior members of the bar. Between 1999 and 2004 alone, no fewer than five senior judges were dismissed for corruption and abuse of power, following investigations by the NJC.[40]

In the same vein, in 2002, President Obasanjo appointed a committee, headed by Justice Bola Babalakin, in 2002, to review the Kayode Eso Panel Report. However, by then, only six of the 47 judges originally recommend-

38 Chapters 20(a) and (b), Third Schedule, 1999 Constitution of the Federal Republic of Nigeria (as amended).

39 Section 158(1), 1999 Constitution of the Federal Republic of Nigeria (as amended).

40 *Newswatch*, February 9, 2009.

ed for sack lost their jobs.[41] The quantum of evidence that accompanied the report had been lost. Of the 100 copies of the report by the first panel, the government could not produce one for the use of the review panel.[42] Within the eight years period that the Eso panel report was allowed to gather dust, three of the indicted judicial officers had died.[43]

The first challenge for the consolidation of democracy at the advent of civil rule in 1999 was the notion of an imperial presidency that had little regard for the tenets of democratic principles. Although democratically elected, the President conducted himself in military tradition as a General that brooked no opposition and took prisoners. The Federal Government under Obasanjo, frequently disregarded decisions of the courts, particularly the Supreme Court about rulings relating to disqualification of candidates for elections and impeachment of opposition governors. The courts were flooded with petitions. Rulings were handed down but not obeyed or enforced.

The integrity of the bench was further enhanced by the unprecedented vigilance and profound awareness of civil society groups, human rights advocates, democracy activists and politicians. Seizing the opportunity provided by the liberal political and constitutional dispensation occasioned by the advent of the fourth Republic, these groups intensified their monitoring of the activities of judges. In several instances, their petitions, particularly on matters bordering on the adjudication of post-election disputes, have led to investigations, many of which culminated in the dismissal of several judges.

Given that the prospects of national elections in Nigeria have always been a cause of panic and anxiety, coupled with the fact that previous attempts to transit from one democratically elected government to another were truncated by military coups, the stakes in the 2003 general elections in Nigeria were particularly high. For one, a successful election would represent the country's first civilian-to-civilian transition, thereby leading to the longest span of civilian democratic rule in Nigeria's political trajectory. To ensure a hitch free exercise, the electoral body

41 YUSUF, p. 54. The six who were axed were; Dahiru Saleh, Chief Judge of Abuja High Court; George Uloko, Chief Judge of Plateau State; Moshood Olugbani of the Lagos High Court and M.D. Goodhead of the Rivers State High Court.

42 AJAYI, p. 26.

43 They were: A. I Obiesie, Anambra State High Court; Ligali Ayorinde, Chief Judge of Lagos State and Bassey Ikpeme, Abuja High Court, who gave the ruling purporting to stop the popular June 12, 1993 presidential election.

took steps and put arrangements in place to harmonise the constitutional provisions and the enabling electoral laws. Despite this, however, some bottlenecks were thrown into the process. Court cases were filed with respect to the different aspects of the electioneering process, such as the number of political parties and the conditions of their registration. There were also questions about whether the elections should hold in a day or spread across several days. In the end, the judiciary adjudicated all matters arising from the preparatory arrangements for the elections to the satisfaction of the parties concerned.

Although the elections proved less violent than widely anticipated, the intervention of the judiciary and the efforts of the Independent National Electoral Commission (INEC) were not sufficient to make the elections credible or acceptable to all parties. Like previous Nigerian general elections, the 2003 exercise was characterized by violence, intimidation of voters, ballot-box stuffing, vote buying and other forms of irregularities.[44] Several new irregularities also emerged. A major manifestation of these was the outbreak of an intense intra-elite conflict, such as disputes between some political aspirants and their "godfathers" over the modalities of sharing public resources. The concomitant to this was the substitution of the names of political parties' candidates duly submitted to the INEC with those of persons who were never part of the primary elections within the same political parties. The result of this was that individuals who had not participated in the elections were declared winners.[45] The unprecedented scale of malpractices and irregularities that characterised the 2003 elections was underscored by the sheer number of complaints to the judiciary that arose from the elections. In all, a total of 574 petitions, covering all categories of elections, were filed before the courts.[46]

The stakes in the 2007 general elections were very high. For one, it followed eight years of tumultuous democracy, the longest in the history of post-independence Nigeria. More importantly, it was the first time in the history of the country to witness a civilian-to-civilian transfer of power. As the date set for the 2007 elections approached, electoral conflicts assumed even more dangerous dimensions, as the Constitution was routinely violated by politicians in their desperate bid to annihilate per-

44 F. A. OYEKANMI – O. SOYOMBO, *Society and Governance: The Quest for Legitimacy in Nigeria*, Lagos 2010, p. 26.

45 This was the situation in Peter Obi vs. INEC & Ors (2007).

46 Electoral Reform Committee, 2008, p. 23.

ceived political foes. In the end, the 2007 general elections were adjudged to be the worst in the history of elections in the country. The elections were characterised by widespread irregularities and malpractices, as well as extraordinary high level of political violence. The task of righting some of wrongs that pervaded the elections and the resolution of the disputes arising from the attempted removal of elected officials in flagrant violation of the Constitution became that of the judiciary, now seen as the last hope of the politically oppressed. The judiciary determined a total of 1,291 election petitions arising from the 2007 elections.[47]

Setting the pace for the bar, and in protest the continued disobedience of rule of law and court rulings, between 2003 and 2007, with particular regard to the illegal impeachment of state governors, the umbrella body of lawyers in Nigeria, the Nigerian Bar Association, NBA, declared a boycott of Nigerian courts by its members on March 13 and 14, 2006. The boycott was a success. All courts in Nigeria were deserted by lawyers. In the same vein, the severely flawed 2007 elections also received a one-day boycott of the courts by the NBA on May 18, 2007. Eventually, the Federal Government then committed to comply with court rulings in the future, though it did not fully comply with its words. The high number petitions that went to court may be regarded, to a very large extent, as an index of a growing confidence among politicians in the integrity of the judiciary, now seen as the bulwark of democracy.

Although an appreciable number of cases decided by the courts between 2003 and 2007, were mired in controversy, especially in terms of the blatant contradictions that characterised the pronouncements of courts of different jurisdictions on identical cases, the Supreme Court was at its best to ensure the promotion of rule law and the consolidation of democracy. Hence, all the illegal impeachments of state governors, for instance in Plateau, Ekiti, Oyo and Anambra were reversed by the apex court.

Conclusion

On 29 May 1999, Nigeria returned to multi-party democracy after 16 years of uninterrupted military dictatorship. Nigeria's political trajectory since the attainment of independence in 1960, up to 1999, had been characterised by fraudulent elections, violent political crises and conflicts, and military coups. The country's previous attempts to transit

47 Electoral Reform Committee Report, 2008, p.123.

from one civilian administration to another via transitional elections were truncated by military coups. Elections were often dogged by allegations of massive rigging and violence. And the idea of resorting to the courts to resolve electoral or political disputes was thought to be a fruitless exercise because the courts were perceived to bias and partial. The involvement of the bar and the bench in the determination of election disputes in the country before the advent of democratic rule in 1999, therefore, left sad memories in the minds of many Nigerians. Judges sitting on election petitions have been accused of bias and partiality. Pressures on judge by politicians and public office holders have also affected the determination of election petitions. In the same vein, the popular image of the Nigerian bar prior to 1999 was that of parasitic elite. Indeed, the bar was perceived by many to be among those that wrecked the ship of the nation during the First, Second and Third Republics were lawyers.

However, as demonstrated in this study, since the advent of democratic dispensation in 1999, the bar and the bench have continued to play an increasingly assertive role as arbiters in the country's democratic politics in general and its electoral disputes in particular. There has been an appreciable behavioral shift among political stakeholders. A tangible manifestation of this is the phenomenal increase in the number of electoral disputes cases filed before the courts and the judicial decisions that have upturned the results of several fraudulent elections and restored to office, state governors wrongfully removed. Therefore, even though the Nigerian judiciary has not fully succeeded in solving the problem judicial corruption, or enthrone a flawless framework for electoral justice, it has undergone a major transformation, becoming a reliable partner in the country's historic struggle for the consolidation of democracy via a fairer electoral process. Also, while some continue to indulge in violence and political brigandage, many others now prefer to use the judicial channels to resolve their electoral or political disputes. The increasing willingness of political elites to seek judicial avenues for the resolution of conflicts is an index of the gradual reinforcement of the integrity and confidence of the bar and the bench as impartial arbiters and veritable instruments of political stability and democratic consolidation. This has helped in sustaining the life span of Nigeria's Fourth Republic.