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POSTPONEMENT OF NIGERIA'S 2015 GENERAL ELECTIONS: INTERFACE OF LAW AND POLITICS

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ABSTRACT

This article examines the interface of law and politics in the postponement of initial dates of Nigeria's 2015 general elections by the Independent National Electoral Commission. It contends that the postponement was unconstitutional and recommends amendment of the Constitution and the Electoral Act to make clear provisions as to when elections can be postponed nationwide in Nigeria.

Keywords: Law, Politics, Democracy, Elections, Nigeria.

1. INTRODUCTION

Nigeria operates constitutional democracy that operates on periodic elections. By virtue of Nigerian constitutional provisions, national and states elections are conducted every four years, the electoral umpire being the Independent National Electoral Commission (INEC). The Fourth Republic elections in Nigeria have been conducted in 1999, 2003, 2007 and 2011. Another round of elections is due in 2015 and this has generated controversy more than all elections since 1999. The Federal and States elections were initially scheduled for February 14 and 28 respectively, but were subsequently postponed by INEC to March 28 and April 11 respectively as a result of security concerns raised by security agencies on account of insurgency in the north-east. This article examines the interface of law and politics involved in the postponement. It unveils the meaning of elections, electoral systems and frequency of elections before x-raying the legal regime of postponement of the 2015 general elections. It further discloses contending views about the postponement and also argues that INEC is empowered by section 26 of the Electoral Act, 2010 (As Amended) to postpone elections but such postponement can only be in respect of a particular area or areas within the country. This means that such power does not extend to postponement of elections in the whole country. Besides, the reasons for postponement of elections must be cogent and verifiable even in respect of areas affected. Similarly, the work contends that the postponement of the 2015 general elections was unconstitutional and illegal because the time frame for conducting the elections fell short of 120 days before expiration of office as provided by sections 76(2) and 132(2) of the Constitution (As Amended). The work concludes that there should be some public sympathy for INEC as it has no power over security which was the reason for postponement. Words of admonition are given to the government to put democracy first and should not allow politics to scuttle democratic process. The work finally recommends amendment of the Constitution and the Electoral Act to make clear provisions as to when elections can be postponed nationwide.

Sustainability of democracy all over the world depends largely on workability of elections. No matter the process of election, be it direct, indirect, electronic or on-line, people are always interested in who represents them at all levels of government. This is predicated on the belief that their expectations, in terms of good governance and the rule of law, will be met. Sadly enough, the Nigerian situation paints an absurd picture as we often celebrate election results without attaching importance to the vital elements that can make elections free and fair. Elections provide a peaceful, democratic means for societies to channel competition for political power and make collective decisions. By casting votes to select who will represent them in public office, citizens express preferences about the policies those representatives will pursue. However, this selection process can only achieve the desired result where there is fair play for all contestants. The need to conduct elections cannot be overemphasized in any democratic set up. The choice of leaders or representatives as mentioned above can only be termed as accurate when the process of election is free and fair. Several elections have been conducted in Nigeria right from the time of independence till date, despite military interventions, but it is saddening and disheartening that no single election, right from the First Republic, can be adjudged free and fair.¹

2. CONCEPTUAL FRAMEWORK

2.1 *Background To Elections In Nigeria's Fourth Republic*

Democracy was enthroned in Nigeria on the 29th day of May 1999, following a successful general elections that preceded that date. This followed a successful transition programme drawn by General Abduslami Abubakar, the then military Head of State who took over the mantle of leadership following the demise of General Sani Abacha in 1998. Chief Olusegun Obasanjo was the winner of the 1999 presidential election, consequent upon which he governed Nigeria for four years as constitutionally provided. He was re-elected in 2003 for another four year term which lapsed on the 29th day of May 2007. Late Alhaji Umaru Yar'Adua was elected as President in 2007 and was consequently sworn in on the 29th day of May of that year. Unfortunately, he died midway into his term of office and this led to the swearing in of the then Vice President, Dr. Goodluck Ebele Jonathan, who completed the term which lapsed on 29/5/2011. Dr. Goodluck Ebele Jonathan contested the 2011 presidential election and won on the platform of the Peoples Democratic Party. He was consequently sworn in as President and Commander in Chief of the Nigerian Armed Forces on 29/5/2011. His four year term of office ended on 29/5/2015. Following this, another general elections were due to be conducted. During all the elections mentioned above, National Assembly, Gubernatorial and Houses of Assembly elections were also conducted. It was then time to conduct another general elections against the 25th day of May, 2015. Several political parties have been warming up and have fielded candidates, with intense campaigns all over the country. The major contenders for the presidential election were the Peoples' Democratic Party and the All Progressives Congress. After series of events, the Chairman of the Independent National Electoral Commission (INEC), Professor Attahiru Jega, on the 7th day of February, 2015, announced postponement of the general elections from February 14 and 28 to March 28 and April 11 for Presidential and National Assembly and Gubernatorial and Houses of Assembly elections respectively. This has generated a lot of public comments and debate.

¹ Oguche S., "Elections and Electoral Problems in Nigeria: A Gastronomic Survey of Electoral Offences under the Electoral Act, 2010 and the Imperatives of Reform", CJPL, Vol. 1 Part 2, 2010, p. 33

2.2 Meaning Of Elections

Whenever and wherever the term “democracy” is discussed, it is inevitable discussing elections. Elections are necessary ingredients of democracy as it provides a platform for the people to make the vital and sacred decision as to how their affairs are run. Elections provide a peaceful, democratic means for societies to channel competition for political power and make collective decisions. Elections provide the most recognised platform for citizens to approve and disapprove of those who struggle for power, hence by casting votes to select who will represent them in public office, citizens express preferences about the policies those representatives will pursue. However, this selection process can only achieve the desired result where there is fair play for all contestants. The need to conduct elections cannot be overemphasized in any democratic set up. The choice of leaders or representatives as mentioned above can only be termed as accurate when the process of election is free and fair. Several elections have been conducted in Nigeria right from the time of independence till date, despite military interventions, but it is saddening and disheartening that no single election, right from the First Republic, can be adjudged free and fair. Thuggery, violence, rigging, destruction of lives and property, snatching of ballot boxes, bribery, false announcement of election results etc., have always marred elections in Nigeria, thereby making almost all the elections a sham and mockery of credible elections. There are constant and unending allegations and counter allegations of rigging in almost all election conducted so far in Nigeria, both at the Federal, States and Local Government levels.

Election is a set of activities whereby members of a community choose their leaders. The main purpose of an election is to put people into positions of leadership, by way of making preferred choices from available alternatives. At times, elections are conducted to approve or disapprove of important proposals made by the government. Such an election is often referred to as a referendum or a plebiscite.² Also, an election can be conducted to endorse or reject the recall of a serving political office holder accused of non-performance or misconduct. All these types of elections have been held in Nigeria at one time or another. There are five types of elections, namely, general election, by-election, referendum, plebiscite and recall. Each of them aims at endorsing or rejecting certain persons or public policies. Election is important, whether local or national. The number of voters who participate in an election vary from place to place. Election therefore creates a level playing field for everyone who is interested in contesting for public offices. Election processes help to reflect changing opinions and social concepts about citizenship and equality of individuals.³

From a minimalist perspective, elections are the first and most basic indicator of democracy. In Nigeria, however, elections have been one of the main problems of the democratization process. The country’s struggles for sustainable democracy, good governance, and development have been so daunting that all previous attempts at democratic transition have been futile. The collapse of the First (1960–6) and Second (1979–83) republics, and the abortion of the Third Republic through the criminal annulment of the 12 June 1993 presidential election, are clear indicators of the failure of previous attempts at democratization. After prolonged military rule spanning close to two decades (1983–99), characterized by the wanton violation and repression of the political, economic, and social rights of the people, the re-democratization process begun in 1999 elicited renewed expectations for the consolidation of democracy in the country.⁴ Commenting on elections and representation, it has been remarked in the following words:

² Oguche S., *loc cit*

³ Fotopoulos T., “The Meaning of Democracy”, available at <http://aceproject.org/ace-en/topics/ve/vea/vea01>. Accessed on 11/02/2015

⁴ Osaghae E.E., “*Democratization in sub-Saharan Africa: faltering prospects, new Hopes*”, *Journal of Contemporary African Studies* 17, 1 (1999), pp. 4–25.

Election as we have hinted is a major aspect of democracy. Elections, broadly conceived, refer to the process of elite selection by the mass of the population in any given political system. Although controversy rages among political thinkers about the nature of representation, there is one point of universal agreement; the representation process is intrinsically linked to elections and voting. Political representation is implicit in the very idea of constitutional government and elections are essential to the functioning of a truly representative government. Representatives, acting on behalf of the electorate make the legislative and executive decisions that voter in the aggregate could not possibly make for themselves, considering the sheer numbers of people involved.⁵

3. THE MECHANISM OF ELECTORAL SYSTEMS

There are different ways and procedures of conducting elections. These sets of processes taken together, determine the type of electoral system a community adopts or practices. There are three types of electoral systems- proportional representation, simple plurality and the Electoral College.

3.1 Proportional Representation

Proportional representation allots positions (according to performance) to different political parties or segments of the political community. This creates a situation whereby political offices are shared rather than cornered by a certain political or population group. It does not give room for winner-takes-it-all. Under proportional representation, every group is represented in proportion to its strength, thus giving every segment in the political space a sense of belonging and a stake in the polity. This system also creates room for negotiations and compromises after elections among political groups.⁶ It is a concept in voting systems used to elect an assembly or council. Proportional Representation means that the number of seats won by a party or group of candidates is proportionate to the number of votes received. For example, if 30% of voters support a particular party then roughly 30% of seats will be won by that party. Proportional Representation is an alternative to voting systems based on single-member districts or on bloc voting; these non-Proportional Representation systems tend to produce disproportionate outcomes and to have a bias in favour of larger political groups. This system tends to produce a proliferation of political parties. There are many different forms of proportional representation. Some are focused solely on achieving the proportional representation of different political parties while others permit the voter to choose between individual candidates. The degree of proportionality also varies; it is determined by factors such as the precise formula used to allocate seats, the number of seats in each constituency or in the elected body as a whole, and the level of any minimum threshold for election.

3.2 Simple Plurality System

The plurality voting system is a single-winner voting system often used to elect executive officers or to elect members of a legislative assembly which is based on single-member constituencies. This voting method is also used in multi-member constituencies in what is referred to as an exhaustive counting system where one member is elected at a time and the

⁵ Omodia S.M. and Egwemi V., "Party Politics and the Challenge of Political Representation in Nigeria", *International Journal of Business and Social Science* Vol. 2 No. 22; December 2011, p. 271

⁶ Oguche S., *op cit.*, p. 34

process repeated until the number of vacancies is filled. This system has been described in different ways such as first-past-the post, single member constituency and winner takes all. This system makes room for the emergence of one winner in any electoral contest. The candidate who scored a plurality or the majority of the votes is declared the winner. This is the model used in Nigeria. Both systems (proportional representation and simple plurality) involve direct electing of candidates by the voters.

3.3 Electoral College

A third model, which is not so popular, is the Electoral College system. Under this arrangement, the leader is elected through the combined process of open ballot and a series of electoral colleges. The electorate only elects one percent (1%) of the voters in the smallest political unit. Those elected now constitute the Electoral College for the next polling unit, until the leader emerges at the appropriate level. This process often starts from the ward, through the District or Local Government Area up to the highest level, depending on the type of election. Nigeria, at one time experimented on this system, with the introduction of the Option A4 Model. However, this option was not thrown open to the entire electorate, but was restricted to the selection of candidates for political contests, not for the election itself. The Electoral College system involves indirect elections.⁷

3.3 Frequency of Elections

The frequency of elections in most cases is determined by the tenure of elected officers as provided for in the Constitution, the Electoral Act, or other statutory instruments. At present, the Constitution provides for four-year tenure for the President/Vice President; the Governor/Deputy Governor; Members of the National Assembly (Senate and House of Representative) as well as members of the States' Houses of Assembly. The States Houses of Assembly have been constitutionally empowered to legislate for elections into Local Government Councils (Chairmanship and Councillorship). Different States' Houses of Assembly prescribe different tenures for their Local Government Councils. But on the average, elections into local councils take place every three years. Notwithstanding the fixed tenures for the various political offices, elections do take place mid-tenure, arising from certain unforeseen circumstances. An example of such is where a political office holder dies, or is incapacitated, or recalled, or when a competent court of jurisdiction nullifies an election. In such cases, the relevant electoral commission is empowered to conduct a by-election to fill any vacancy so created.⁸

4. ELECTORAL GOVERNANCE, PROCEDURES AND ENFORCEMENT ISSUES

Elections in Nigeria are governed by the Independent National Electoral Commission (INEC) established under the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).⁹ It is vested with legal personality in the sense that it is made a body corporate with perpetual succession, capable of suing and being sued in its name.¹⁰ It is Nigeria's Election Management Body (EMB), with statutory powers given to it. INEC has powers to:

⁷ *Ibid*

⁸ *Ibid*

⁹ Section 153(1) (f) of the Constitution

¹⁰ See section 1 of the Electoral Act, 2010 (As Amended)

- a) organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation;
- b) register political parties in accordance with the provisions of this Constitution and an Act of the National Assembly;
- c) monitor the organisation and operation of the political parties, including their finances;
- d) arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;
- e) arrange and conduct the registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this Constitution;
- f) monitor political campaigns and provide rules and regulations which shall govern the political parties;
- g) ensure that all Electoral Commissioners, Electoral and Returning Officers take and subscribe the Oath of Office prescribed by law;
- h) delegate any of its powers to any Resident Electoral Commissioner; and
- i) carry out such other functions as may be conferred upon it by an Act of the National Assembly.¹¹

Consequent upon the provision of paragraph (i) above, the National Assembly, through the instrumentality of the Electoral Act 2010 (As Amended), has given INEC additional powers to conduct voter and civic education, promote knowledge of sound democratic election process and to conduct any referendum required to be conducted pursuant to the provisions of the 1999 Constitution or any other law or Act of the National Assembly.¹² It is obvious from the above that the functions of INEC as provided in Part I of the Third Schedule are not exhaustive. The National Assembly is at liberty to add other functions to the EMB just as it did through the Electoral Act.

4.1 Legality Of Postponement Of Nigeria's 2015 General Elections

Going by the initial election timetable, the national elections (Presidential and National Assembly) and States elections (Gubernatorial and Houses of Assembly) were to be conducted on the 14/2/2015 and 28/2/2015 respectively. However, the elections were subsequently postponed on the 7th day of February 2015 as a result of interplay of certain factors. The announcement of the postponement was made by the Chairman of INEC, Prof. Attahiru Jega, at a Press Conference organised for that purpose. Prior to this date, Prof. Jega had addressed the Council of State¹³ where he unveiled the state of preparedness of the Commission with regards to the 2015 general elections. According to the INEC boss, for matters under its control, INEC was substantially ready for the general elections as scheduled, despite discernible challenges being encountered with some of its processes like the collection of Permanent Voter Cards (PVCs) by registered members of the public.¹⁴ Restating the preparedness of the Commission for conduct of the general elections, Prof. Jega said:

¹¹ Section 15 of Part I, Third Schedule to the CFRN, 1999 (As Amended)

¹² See section 2 of the Electoral Act, 2010 (As Amended)

¹³ This was on the 5th day of February, 2015.

¹⁴ See "Statement on the Timetable for 2015 General Elections by the Chairman, Independent National Electoral Commission (INEC), Professor Attahiru M. Jega, at a Press Conference on February 07th, 2015", available at <http://www.inecnigeria.org/?inecnews=statement-on-the-timetable-for-2015-general->

In the delivery and deployment of electoral materials, INEC is also at a comfort level in its readiness for the general elections as scheduled (see the presentation to the Council of State). The Commission's preparations are not yet perfect or fully accomplished. But our level of preparedness, despite a few challenges, is sufficient to conduct free, fair and credible elections as scheduled on February 14th and February 28th. Compared with 2011 when, within a short time, we conducted general elections that were universally adjudged free, fair and credible and the best in Nigeria's recent electoral history, our processes are today better refined, more robust and therefore capable of delivering even better elections.¹⁵

The above remarks by the INEC boss would ordinarily be heart-warming. It would be a note of encouragement to every listener interested in Nigeria's nascent democracy as well as the 2015 general elections. Unfortunately, the electoral Boss went on to say:

But as I mentioned earlier, there are some other variables equally crucial for successful conduct of the 2015 general elections that are outside the control of INEC. One important variable is security for the elections. While the Commission has a very good working relationship with all security agencies, especially on the platform of the Inter-agency Consultative Committee on Election Security (ICCES) since its inception in 2010, it has become pertinent for it to seriously consider the security advisory presented to it by the Security and Intelligence Services. I would like to reiterate here that INEC is an EMB and not a security agency. It relies on the security services to provide a safe environment for personnel, voters, election observers and election materials to conduct elections wherever it deploys. Where the security services strongly advise otherwise, it would be unconscionable of the Commission to deploy personnel and call voters out in such a situation.¹⁶

On this note, Prof. Jega further explained as follows: "Last Wednesday, which was a day before the Council of State meeting, the office of the National Security Adviser (NSA) wrote a letter to the Commission, drawing attention to recent developments in four Northeast states of Borno, Yobe, Adamawa and Gombe currently experiencing the challenge of insurgency. The letter stated that security could not be guaranteed during the proposed period in February for the general elections. This advisory was reinforced at the Council of State meeting on Thursday where the NSA and all the Armed Services and Intelligence Chiefs unanimously reiterated that the safety and security of our operations cannot be guaranteed, and that the Security Services needed at least six weeks within which to conclude a major military operation against the insurgency in the Northeast; and that during this operation, the military will be concentrating its attention in the theatre of operations such that they may not be able to provide the traditional support they render to the Police and other agencies during elections."¹⁷

Consequent upon the above, the Independent National Electoral Commission rescheduled the 2015 general elections by way of postponement as earlier mentioned.

elections-by-the-chairman-independent-national-electoral-commission-inec-professor-attahiru-m-jega-at-a-press-conference-on-february-07th-2015. Accessed on February 12, 2015.

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ *Ibid*

Justifying the postponement, the INEC boss went further to exonerated INEC as follows: "INEC not being a security agency that could by itself guarantee protection for personnel and materials, as well as voters during elections, the Commission cannot lightly wave off the advice by the nation's Security Chiefs. The Commission is specifically concerned about the security of our ad hoc staff who constitute at least 600,000 young men and women, together with our regular staff, voters, election observers as well as election materials painstakingly acquired over the last one and half years. This concern is limited not just to the areas in the North-eastern part of Nigeria experiencing insurgency; the risk of deploying young men and women and calling people to exercise their democratic rights in a situation where their security cannot be guaranteed is a most onerous responsibility. Under such circumstances, few EMBs across the world, if any, would contemplate proceeding with the elections as scheduled. No matter the extent of INEC's preparedness, therefore, if the security of personnel, voters, election observers and election materials cannot be guaranteed, the life of innocent young men and women as well the prospects of free, fair, credible and peaceful elections would be greatly jeopardised."¹⁸

As stated above, this postponement has generated heated debates and mixed reactions from individuals, political parties, civil society organisations, organised labour and other stakeholders in Nigeria as well as the international community. Some are of the view that postponement of the 2015 general elections was occasioned by lack of preparedness on the part of INEC. The holders of this view contend that it would be ironical for INEC to claim being prepared and ready for elections when it had barely met up to 50% of the prerequisites.¹⁹ According to this line of reasoning, rather than courageously admitting that the Commission was not ready for the February Polls, it chose to pass the buck to the Government by blaming security concerns expressed by the Service Chiefs and that INEC was nowhere near being ready to hold the elections in February, even if security situation was right.

4.2 The Permanent Voter Cards saga

The argument heaping the blame on INEC has it that millions of permanent voter cards (PVCs) have not yet been distributed by INEC. Although INEC moved the distribution of PVCs from the LGA level down to the level of wards, it was rather too late when it did. Contrary to the claim of Jega, as at February 5, PVC distribution were as follows:

- Registered. Voters – 68.8m
- Printed and Delivered – 66.3m
- Yet to be Delivered - 1.3m
- Stolen to be Replaced – 1.1m
- Collected – 45.09m (65.8% of registered voters)
- Not Yet Collected – 23.71 (34.2 of registered Voters).²⁰

The inevitable question that begs for answer is "*what then was INEC planning to do with the over 22 million Nigerians who were yet to collect their PVCs for no fault of theirs?*" The Commission simply planned to pass them off as Nigerians who are unwilling to collect their PVCs and those dead. This is most unfortunate since all television houses in Nigeria keep airing millions of Nigerians who throng the collection centres daily without success. It was openly alleged that some were made to pay bribes, some were even denied collection where it was perceived that such would-be voters are favouring the candidate from the 'wrong' political party, especially non-indigenes who could be sorted by names.²¹

¹⁸ *Ibid*

¹⁹ See Mefor L., "Was INEC Ready for the Elections?", *The Guardian* of Thursday, 12/2/2015, at <http://www.nguardiannews.com/editorial-opinion/columnist/197685-mefor-was-inec-ready-for-february-polls>. Accessed on 12/5/2015

²⁰ *Ibid*

²¹ *Ibid*

5. CONTENDING ARGUMENTS

As stated above, arguments have trailed postponement of Nigeria's general elections, both for and against the postponement. We shall take turns to address the contending arguments in their respective perspectives. Those in favour of postponement argued that it was unfair and inhuman to proceed with elections in the face of security challenges being faced in the north-eastern part of the country. The insurgency by the dreaded *Boko Haram* was cited as reason to postpone elections to allow the military and other forces fighting in that region to make substantial progress in restoring peace and security to the troubled region. On this note, a renowned professor of political science at the University of Nigeria, Nsukka, Professor Aloysius Okolie, said:

The postponement is necessary if we have to maintain the integrity of this federation. The don said only 'desperados' will oppose the decision. It is a welcome development to all well-meaning Nigerians though it might not be a welcome development to 'desperados'. The same people who want this election to go on will not like their children or relations to be posted to the tense highly security atmosphere area as returning officers, polling officers or assistant polling officers.²²

In line with the above reasoning, some Nigerians in the United Kingdom also reacted in favour of postponement. According to them, the postponement was a good development to avoid cause for disenfranchisement after the elections.²³ The Senate President, Senator David Mark, in a statement in Abuja described the postponement as a necessary step to avoid anarchy as a result of security lapses. The Senate President urged all Nigerians to embrace caution with a view to avoiding failure of the exercise. He said: "We all must take the path of caution in order not to jeopardise the process towards a successful exercise in the Nigerian project. It is a necessary step to avoid anarchy and chaos because of some shortcomings and insecurity fuelling the already charged atmosphere. If Nigeria must conduct peaceful, free, fair and credible election that will conform with international best practices, all stakeholders and participants must hold a common position, adding that any step not taken or subverted could produce a questionable result. That is why we must all be careful in what we do or say. I believe all Nigerians, both partisan and non partisan are passionate and indeed desirous of a successful election for the good of our nation. We need not do anything that would aggravate or overheat the polity. We must do our utmost best and contribute positively towards successful elections. Let us give peace a chance. Let us exercise restraint. Let us dutifully follow the laws and rules and make a success of the situation."²⁴

On the other hand, those who are opposed to postponement are of the view that the shift is inimical to democracy and cannot be justified by all standards. Contrary to the views of the Senate President, APC senators described the postponement as a teleguided move towards derailing democracy. The APC caucus in a statement said the ruling PDP masterminded the postponement because of fear of imminent defeat, adding that the move showed the

²² Kukogho, I.S., "Election postponement 'necessary', only desperados reject it — UNN Don", Pulse.ng News, available at <http://pulse.ng/student/jega-2015elections-insecurity-election-postponement-necessary-only-desperados-reject-it-unn-don-id3475135.html>. Accessed on 13/2/2015

²³ Bilikisu Abdulrazak Oduoye reported for Nigerian Television Authority, February 10, 2015. <http://www.nta.ng/2015/02/10/nigerians-in-diaspora-speak-on-postponement-of-elections/>. Accessed on 13/2/2015

²⁴ThisDayLive "Mixed Reactions Trail Election Postponement", <http://www.thisdaylive.com/articles/mixed-reactions-trail-election-postponement/201364/>, accessed on 6/3/2015

helplessness of INEC in the hands of persons who want to truncate the present civil rule. They further described as the fallout of connivance by PDP leadership along with INEC, is a diversionary tactic with the intention to undermine democracy and truncate people's desire for change.

“What we are seeing is a desperate and jittery response to the imminent defeat of the PDP. The postponement has shown the helplessness of INEC in the face of a malicious cabal bent on destroying the fabric of democracy. This decision is borne out of fear of defeat and malice against the people of Nigeria in the face of the overwhelming support the APC commands across the country. It is a diversionary tactic which undermines the aspirations of Nigerians and dims the hope for change in a country that in the past has seen bitter upheavals due to similar partisan posture of the election umpire.”²⁵

According to Governor Babatunde Fashola of Lagos State, the claim by the security agencies that they could not guarantee security for the elections as initially scheduled, illustrated the lack of preparedness for the polls on the part of the election management body. He noted that the rescheduling of the elections is “a low point in governance,” which is capable of undermining the nation’s democracy and investment. He further remarked thus:

I think Nigerians must be disappointed by the postponement of the polls from February to March because it seems as if INEC was ambushed to take that decision. The shift will have consequences for us as a nation; the credibility of our governance is regrettably diminished. I do not know of any serious democracy that has set election dates then change them. I think when a country sets a process in motion like this, it ought to know that there would be political and economic consequences. Investors watch what is going on. It is really disappointing and when you hear the Federal Government saying they cannot guarantee security, it is more disappointing. Security is the primary responsibility of the government and whether the nation holds election or not it is the duty of government to provide security. If countries like Afghanistan and Syria where there is war and internal conflicts still had elections, I do not see why we can’t. Again, we had elections in 2011 and some of these terror acts had started in 2010. So where was the ability to guarantee security then?²⁶

6. THE LEGITMACY OF ELECTORAL GOVERNANCE IN NIGERIA

The power of INEC to fix dates for election is provided for in the Constitution of the Federal Republic of Nigeria. In the context of presidential elections, it is therein provided that Elections to each House of the National Assembly shall be held on a date to be appointed by the Independent National Electoral Commission in Accordance with the Electoral Act.²⁷ However, such date shall not be earlier than one hundred and fifty days before and not later than one

²⁵ *Ibid*

²⁶ "Postponement of Elections Will Have Dire Consequences for Nigeria – Gov. Fashola" available at <http://www.bellanaija.com/2015/02/08/postponement-of-elections-will-have-dire-consequences-for-nigeria-gov-fashola/>. Accessed on 3/3/2015

²⁷ See section 76(1) of the Constitution

hundred and twenty days, or where the election to fill a vacancy occurring more than ninety days before such date; not later than thirty days after the vacancy occurred.²⁸

The Independent National Electoral Commission is one of the Federal Executive Bodies created by the Constitution of the Federal Republic of Nigeria, 1999, (as amended).²⁹ In order to give maximum effect to its powers and functions as an independent electoral management body, the same Constitution authorises and empowers INEC, like every other Federal Executive Body, to make its own rules or otherwise regulate its own procedure and such shall not be subject to the approval of the President.³⁰ However, the power of the Independent National Electoral Commission to fix the dates of elections is circumscribed within a constitutional framework. The powers are cast in stone and at the same time flexible.³¹ The Constitution gives INEC the exclusive right and power to appoint a date for the holding of an election to the office of the President, Governor of a State, each House of the National Assembly and State Houses of Assembly.³² Accordingly, it is provided therein that elections to the office of the President and Governor shall be held on a date not earlier than one hundred and fifty days and not later than thirty days before the expiration of the term of office of the last holder of that office. Sections 76(2) and 116(2) also apply to each House of the National Assembly and State Houses of Assembly subject to sections 64(1) and 105(1) of the Constitution. The Electoral Act 2010 (as amended) also gives INEC the prerogative of fixing the date of the elections.³³ There is therefore no ambiguity in the prerogative available to INEC to determine the dates of elections as part of its responsibilities. The controversy at this point in time centres on the power of INEC to postpone the date of general elections once fixed. The power to postpone an election is set out in the Electoral Act 2010 as amended thus:

Where a date has been appointed for the holding of an election, and there is reason to believe that a serious breach of the peace is likely to occur if the election is proceeded with on that date or it is impossible to conduct the election as a result of natural disasters or other emergencies, the Commission may postpone the election and shall in respect of the area, or areas concerned, appoint another date for the holding of the postponed election provided that such reason for the postponement is cogent and verifiable.³⁴

At this juncture, it should be noted that the 150 and 30 days provided for the conduct of elections is cast in stone while the window period between the two dates gives the Independent National Electoral Commission the discretion to determine the exact date for the conduct of the said elections. However, the discretionary leeway granted to the Independent National Electoral Commission in fixing the dates of an election is not absolute.³⁵ It should be noted that the moment INEC appoints a date for the holding of an election, the said date remains sacrosanct and unchangeable unless the events referred to in section 64(2) of the Constitution of the Federal Republic of Nigeria and section 26 of the Electoral Act, 2010(as amended) occur.

²⁸ Section 76(2). See section 5 of the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010

²⁹ See section 153 of the Constitution. The powers of INEC, as mentioned above, are set out and delineated in the third schedule to the Constitution.

³⁰ See section 160

³¹ See "Postponement Of The General Elections: Legal and Constitutional Issues [Things Nigerians Should Know]", Osun Defender, <http://www.osundefender.org/?p=216208>. Accessed on 9/3/2015

³² See Sections 132(1), 178(1), 76(1) and 116(1)

³³ See Section 30

³⁴ See Section 26

³⁵ Sections 30 and 26 of the Electoral Act, 2010(as amended) ties the hands of the electoral management body in this regard.

Following the postponement of the general elections, certain issues arise for consideration and determination. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that if the Federation is at war in which the territory of Nigeria is physically involved and the President considers that it is not practicable to hold elections, the National Assembly may by resolution extend the period of four years from time to time but not beyond a period of 6 months at any one time.³⁶

7. ELECTORAL EFFICIENCY AND THE BOKO HARAM EFFECTS

It is no longer news that Nigeria has been battling with terrorism and insurgency for quite some time now. In a report released in November 2013, the Office of the Trial Prosecutor (OTP) of the International Criminal Court “made profound findings regarding the Nigerian situation where it confirmed that the incessant attacks and exchanges between the *Boko Haram* Sect and security forces in Nigeria have attained the threshold of a non- International armed conflict. The implication of this is that, even if Nigeria is not directly at war, it is tactically and section 64(2) of the Constitution can be invoked. Nevertheless, a question that begs for answer is “*can Nigeria comfortably hold an election in the midst of these security challenges?*” With every sense of sincerity, the answer is in the affirmative. *Boko Haram* menace was on ground before the 2011 elections were conducted and that was at a period when the Nigerian military was actively engaged in internal security operations in almost 32 States of the Federation.

It is worthy of note that the postponement of Nigeria's general elections was not anchored on section 64(2) of the Constitution. Section 26 of the Electoral Act 2010 (as amended) is broader and more flexible and forms the backbone of INEC in terms of the postponement of the elections. The operative words in section 26(1) of the Act are “area, or areas”. In other words, the “serious breach of the peace” and the natural disaster or other emergencies” may be in respect of an area or areas only in which case it may be impossible to conduct an election in those areas. To qualify, the said “serious breach of the peace” and the natural disaster or other emergencies” must be cogent and verifiable. It is obvious that the wording of the above section of the Act appears restricted rather than being elastic, compared to a similar provision stipulated in Decree No. 50 of 1991. The said Decree 50 provides: “Where a date has been appointed for the holding of an election and there is reason to apprehend that a serious breach of the peace is likely to occur if the election is proceeded with on the date, the holding of the election may be postponed by the National Electoral Commission until some other convenient date to be appointed by it.”³⁷

The above provision of Decree No. 50 of 1991 has been subject of judicial interpretation and pronouncement.³⁸ In *National Electoral Commission & 2 Ors v. Alhaji Buba Aliyu and Anor.*³⁹, the Court of Appeal said: “It is clear to me that once a date for an election is fixed, it may only be postponed if there is fear of a serious breach of the peace. Section 10 of the Interpretation Act does not alter the situation...”⁴⁰ A comparative analysis of sections 121(1) of Decree 50 of 1991 and Section 26 of the Electoral Act 2010 (as amended) unveils that while Decree 50 envisages a valid postponement of an election when “...there is reason to apprehend that a serious breach of the peace is likely to occur if the election is proceeded with on the date...” without restricting such likely breach of peace to any specific area /areas, section 26 of the Electoral Act 2010 as amended stipulates that “...the Commission may postpone the election and shall in respect of the area or areas concerned, appoint another date ... holding of the postponed election provided that such reason for postponement is cogent and verifiable.”⁴¹

³⁶ Section 64(2) of the Constitution

³⁷ section 121(1) of the Decree

³⁸ See case of *Alhaji Ali Sa'ad Birnin Kudu v. Alhaji Buba Aliyu & 3 Ors* (1992) 3 NWLR (Pt. 231)

³⁹ (1992) 2 LREC 1

⁴⁰ Per Akanbi, J.C.A at p. 43

⁴¹ See Shittu, W., "The Legality of the Postponement of the Elections",

If the legal framework upon which the elections were postponed were Decree No. 50 of 1991, there would be no difficulty in exonerating INEC of wrongdoing in the context of the postponement. This is because of the obvious fact that section 121(1) of the Decree is flexible and gives the Election Management Body wide powers of postponement. Conversely, section 26 of the Electoral Act 2010 (as amended) is restrictive in scope. The powers of INEC to postpone elections under the present legal regime is indisputably restrictive and limited to postponement of such elections in areas where breach of peace is envisaged and not the entire country where there is relative peace and stability conducive for the conduct of elections. On this note, relying on security challenges, INEC could legally have postponed elections in only the affected areas, which is about fourteen (14) Local Government Areas out of seven hundred and seventy four (774) Local Government Areas in the country. Besides, even if the postponement by INEC was restricted to the areas affected by *Boko Haram* insurgency, the legality and validity of such would have been dependent on cogent and verifiable reasons being adduced by INEC.

The expression "cogent and verifiable reasons" contained in legislation have been judicially defined and interpreted in a plethora of cases. In *Ugwu v. Ararume*⁴², the Supreme Court remarked as follows: "cogent and verifiable reasons" can only mean a reason self-demonstrating of its truth and which can be checked and found to be true. The truth in the reason given must be self evident and without any suggestion of untruth. The reason given must be demonstrably true on the face of it so as not to admit of any shred of uncertainty."⁴³ While interpreting the meaning of "cogent and verifiable reasons" contained in section 34(2) of the Electoral Act, 2006, the Supreme Court, in the case of *Odedo v. INEC & Anor.*⁴⁴ held as follows: "It is manifest that the requirement under Section 34 (2) of the 2006 Act that cogent and verifiable reason be given in order to effect a change of candidates was a deliberate and poignant attempt to reverse the 2002 Act which led to a situation where disputes arose even after elections had been concluded as to which particular candidates had been put up by parties to stand election. The meaning of the word cogent as given in the shorter Oxford English Dictionary is stated to be constraining, powerful, forcible, having power to compel, assent, convincing. The same dictionary defines verifiable as that can be settled or proved to be true, authentic, accurate or real, capable of verification. In the light of the above, it seems to me that the expression "cogent and verifiable reasons" can only mean a reason self demonstrating of its truth and which can be checked and found to be true. The truth in the reason given must be self evident and without any suggestion of untruth. The reason given must be demonstrably true on the face of it so as not to admit of any shred of uncertainty."⁴⁵

It is clear from the above quotes that the reason(s) that can be termed "cogent and verifiable" must be such that a reasonable man, guided by the security challenges existing at a particular time in question, would view as posing threats to lives and property.

8. EXTENDED EVALUATION OF ELECTION POSTPONEMENT ISSUES

The Electoral Act, 2010 (As Amended) provides that "Where an election is postponed under this Act on or after the last date for the delivery of nomination papers, and a poll has to be taken between the candidates then nominated, the Electoral Officer shall, upon a new date being

<http://www.thisdaylive.com/articles/the-legality-of-the-postponement-of-the-elections/201980/>. Accessed on 8/3/2015

⁴² (2007) 12 NWLR (Pt.1048) 367

⁴³ Per Oguntade, JSC, at p. 465. See also *Amechi & Anor. v. Okoye* (2008) LPELR-5160(CA)

⁴⁴ (2008) LPELR-2204(SC); (2008) 17 NWLR (Pt.1117) 554

⁴⁵ Per Muntaka-Commassie, JSC. (P.106-107, Paras. F-F). See also *Akpan v. Bob* (2010) 17 NWLR (Pt. 1223) 421 S.C; *Amaechi v. INEC & Ors.* (2007) LPELR-9039(CA); *Bwacha v. Ikenya & Ors.*(2011) 3 NWLR 610; *Efet v. Independent National Electoral Commission* (2011) 7 NWLR 423 and *Ucha v. Onwe & Ors.* (2011) 4 NWLR 386

appointed for the election, proceed as if the date appointed were the date for the taking of the poll between the candidates".⁴⁶ Where the Commission decides to appoint a new date in accordance with section 26(1) & (2) of the Act, there shall be no return for the election until polling has taken place in the area or areas affected.⁴⁷ However, notwithstanding the above provisions, the Commission may, if satisfied that the result of the election will not be affected by voting in the area or areas in respect of which substituted dates have been appointed, direct that a return of the election be made.⁴⁸

Taking a bird-eye view of the provisions of the Electoral Act, 2010 (As Amended) as discussed above, it can be said with certainty that the Act envisages a situation where a part or some parts of the country may face security challenges that may make it impossible to hold elections in those areas. In such instances, elections can be held in the areas without any serious security threat or challenge and suspended in the areas having difficulties. Security threats or challenges in a part of the country cannot provide justification for postponement of election in the whole country.⁴⁹

It is clear from the foregoing that the *Boko Haram* insurgency in the North-east is a fact notorious in the public space and as such offers cogent and verifiable reasons for postponement of elections in the North-east. It is doubtful whether such insurgency can be a justifiable reason for election postponement in other parts of the country where there is relative peace and security. Clearly since there is no demonstrable evidence of insurgency in other parts of the country apart from the north-east it is difficult to be able justify postponement of elections in other parts of the country apart from the north-east.⁵⁰

It is incongruous to contemplate that because insurgents are occupying 14 or 17 out of 774 Local Governments in Nigeria, then elections can be suspended ad infinitum in the rest of the country pending the abatement of the insurgency. This will amount to a constitutional aberration. What the law says and contemplates is that the electoral management body should conduct elections in the rest of the country with the exception of the 14 or 17 Local Governments. Thereafter, the total number of registered voters in the area will be tabulated and if all the votes are added to the runner up and it tilts the result then a return shall not be made till elections are conducted in the area. If the votes are added to the loser and the supposed winner is still miles ahead, then a return shall be made.⁵¹

In the case of Presidential elections, if elections are not held in four of the States of the North East Zone and is held in the rest of the country, in the mathematical and geographical calculation of the votes, the electoral management body will determine the quarter of the votes cast in the election in two thirds of the States and the Federal Capital Territory based on the 36 States and the Federal Capital Territory. If one of the candidates secures the spread in 25 States and another secures the majority of votes in the States and secures the requisite spread in only 20 of the States, evidently, the geographical requirement of four states will affect the elections and INEC will not make a return for the election. However, if one of the candidates secures the spread in 25 States and another secures the spread in 16 States, if the four States are added to him, he will not secure the requisite spread in which case a return can be made for the election.

⁴⁶ Section 26(2) of the Act

⁴⁷ Section 26(3) of the Act

⁴⁸ Section 26(4) of the Act

⁴⁹ It will be doing violence to the Constitution and the law to insinuate or contemplate that if erosion occurs in a part of Nigeria covering two or three Local Governments, then presidential elections will be suspended in all parts of Nigeria.

⁵⁰ Shittu, W., *loc cit*

⁵¹ Okoye, F., "Postponement of the General Elections: Legal and Constitutional Issues", <http://www.thisdaylive.com/articles/postponement-of-the-general-elections-legal-and-constitutional-issues/201981/> Accessed on 14/3/2015

9. ARE THERE JUSTIFICATIONS FOR POSTPONEMENT OF GENERAL ELECTIONS?

If the insurgency by *Boko Haram* in the north-east poses security threats to the conduct of the general elections, what are the available options at the disposal of INEC? In the circumstance, the sensible thing for INEC to do was to have postponed elections to a later date in the north-east while proceeding with elections in other parts of the country in line with the spirit and letters of section 26 of the Electoral Act 2010 (as amended). Furthermore, the time frame for the conduct of elections into the offices of the President, Vice-President and other elective offices calls for consideration here. In this regard, it must be pointed out that the Constitution and the Electoral Act are in conflict. Prior to the amendment of the Constitution, section 132 (1) and (2) of the Constitution provided that “(1) An election to the office of the president shall be held on a date to be appointed by the Independent National Electoral Commission in accordance with the Electoral Act. (2) An election to the said office shall be held on a date not earlier than one hundred and fifty days and not later than one hundred and twenty days before the expiration of the term of office of the last holder of that office.”⁵² However, by virtue of the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010, Section 132 as stated above is amended and altered as follows: Section 132 of the Principal Act is altered- (a) In subsection (1), line 2, by inserting immediately after the word, “Commission” the words, “in accordance with the Electoral Act”, and (b) In subsection (2), lines 1 and 2, by substituting for the words, “sixty days and not later than thirty”, the words, “one hundred and fifty days and not later than one hundred and twenty”⁵³.

The consequence of the foregoing amendment is that the current section 132 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) provides that an election into the office of the president shall be held on a date not earlier than one hundred and fifty days and not later than one hundred and twenty days before the expiration of the tenure of the current office holder. Contrary to the constitutional provision above, the Electoral Act 2010 (As Amended), in the context of conduct of presidential poll, provides thus: “An election to the said office of the president shall be held on a date not earlier than ‘one hundred and fifty days and not later than thirty days before’ the expiration of the term of office of the last holder of that office.”⁵⁴

Conflict between constitutional provisions and electoral provisions on the same issue bordering on the conduct of the presidential poll is conspicuous from the above. Where such conflicts exist, constitutional provisions shall prevail. This position is buttressed by the Constitution itself which provides “if any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void.”⁵⁵ In *Okeke v. Securities and Exchange Commission and Ors.*⁵⁶, the Court of Appeal held *inter alia*:

“As the ultimate Grundnorm, the 1999 Constitution as amended is undoubtedly supreme, and takes precedent over and above all other enactments in this country. Thus, if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail. And that other law shall, to the extent to the inconsistency, be void. See Section 1 (3) of the 1999 Constitution, as amended.”⁵⁷

⁵² See section 11 of the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010

⁵³ See Section 11 of the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010

⁵⁴ See section 25(6)

⁵⁵ Section 1(3) of the Constitution

⁵⁶ (2013) LPELR-20355(CA)

⁵⁷ Per Saulawa, J.C.A. (P. 23, Paras. B-D)

It is trite law that where any statutory provision is inconsistent with the Constitution, the latter would prevail. This is the essence of the supremacy clause contained in section 1(1) of the Constitution, strengthened by section 1(3) thereof.⁵⁸

9.1 Illegality of the Postponement

As pointed out above, the powers of INEC to postpone elections under the Electoral Act is not wide enough to extend to postponement of elections throughout the country. Postponement envisaged by section 26 of the Electoral Act relates to a particular area or areas in the country. In *Agoda v. Enamuotor & Ors*⁵⁹, it was held that for there to be a postponement of elections, it must be shown that there was widespread violence. Consequently, in *Nwachukwu v. Eneogwe*⁶⁰, the Court of Appeal held that “the violence reported even by the PDP chairman was limited to one ward in the Local Government. The violence was not widespread to warrant a postponement of the election...”

The implication of the supremacy of the Constitution *vis-à-vis* the powers of INEC to postpone elections pursuant to section 26 of the Electoral Act is additional restriction on INEC to effect any such postponement within the time frame specified under the Constitution. Consequently, for INEC to validly postpone elections, such postponement must allow for conduct of elections within the purview of a time frame of a date not earlier than one hundred and fifty days and not later than one hundred and twenty days before the expiration of the tenure of the current office holder. Looking at the tenor of postponement announced by INEC, can it be said that the provisions of sections 76(2) and 132(2) of the Constitution of the Federal Republic of Nigeria, 1999, as amended by sections 5 and 11 respectively of the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010 have been complied with? Does the time frame provided by the Constitution, as highlighted above, still fall within the period left for INEC to conduct the presidential poll before the May 29 hand over date? The answers to both questions are certainly in the negative. The time left for INEC to conduct the presidential election is 63 days contrary to 120 days provided. The same applies to the National Assembly elections.

Following the above analysis, it becomes obvious that the conduct of INEC in the context of postponement of 2015 general elections is nothing but double illegality. A combined reading of the Constitution and the Electoral Act leaves no one in doubt as to the prerogative of INEC to postpone elections upon the highlighted conditions being satisfied. In the case of *Dibiagwu v. INEC*⁶¹ the Court of Appeal made the following useful remarks:

In the case of Barrister Caleb Ubale & 1 Or. Vs. Reuben Umaru Dadiya & 8 Ors. (2008) 15 NWLR (Pt.1111) 489 at 502, the Court of Appeal (Jos Division) in circumstances that are on all fours with the present case had to answer the question "whether the tribunal was right to order fresh elections in only two wards where elections could not hold on 14th April 2007 due to disturbances." Ndukwe - Anyanwu JCA, who delivered the judgment of the court, held that under Section 27 of the Electoral Act 2006 which is in pari materia with the provision of Section 26 of the Electoral Act 2010 (as amended) the Independent National Electoral Commission (INEC) has powers

⁵⁸ See *Onagoruwa v. I.G.P.* (1991) 5 NWLR (pt. 193) 593; *Momoh v. Senate of the National Assembly* (1981) 1 NCLR 21; *Attorney General of Bendel State v. Attorney General of the Federation* (1982) 3 NCLR 1 and *Kanada v. Governor of Kaduna State* (1986) 4 NWLR (pt. 35) 361

⁵⁹ *supra*

⁶⁰ (1999) 4 LREC/N pg. 454

⁶¹ (2012) LPELR-9831(CA)

to postpone elections and organize fresh election where elections did not take place. However, it has no constitutional powers to call for fresh elections in the wards where elections have taken place. In the particular case, that it was within the powers of the 3rd respondent (INEC) to postpone elections in the two Wards of Balanga South State Constituency where election did not take place and conduct fresh elections. However, it did not have the power to call for fresh elections in the three Wards already declared.⁶² (Bold and underlining mine for emphasis only.

As stated above, postponement of the 2015 general elections has generated heated debate. No matter the viewpoint anyone holds, it is glaring that such postponement has effects on groups, individuals, organisations, INEC and the nation. Some of the identified effects include lower turn-out for the exercise, waste of funds, little or no trust in the credibility of the elections, lesser international coverage, more time for mischievous politicians to execute their evil plans and inconveniences to voters who had made arrangements to travel to their polling units and those who had actually travelled. Despite the constitutional and statutory provisions analysed above, we must still sympathise with INEC over the predicament in which it found itself. INEC is merely an election management body that does not have control over security. A situation where it received a letter from those who have expertise in security matters that security could not be guaranteed during elections left it in a dilemma. In that case, what could reasonably be expected of it? On this note, Wahab remarkably observed thus:

“...Therefore if those knowledgeable and in charge of security matters rule that such security is not guaranteed what can INEC do in the circumstances? In an atmosphere of relative insecurity there are grave consequences to wit; it has a devastating human rights impact; it discourages political participation and denies Nigerians the opportunity of electing leaders of their choice apart from low voters turn-out in the security challenged areas. It is also difficult to control violence once it erupts and the consequences on the polity of such grave security challenges cannot be overestimated.”⁶³

At this juncture, we should pedal it soft with INEC in view of the predicament in which it found itself that necessitated postponement of the elections since security is outside the scope of its operation. This does not mean that the government should use security challenges in the north-eastern part of the country to scuttle democratic process.

10. CONCLUDING REMARKS

There is no controversy over the powers of INEC to fix dates of election and postpone same. Having carefully assessed the powers of INEC as contained in the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and the Electoral Act 2010 (As Amended), it has become obvious that postponement of the 2015 general elections by the EMB (INEC) is

⁶² Per Owoade, J.C.A. (Pp. 19-20, paras. D-C). See also *APGA v. Ohakim* (2009) 4 NWLR (pt 1130) 166; *Iliyasu v. Shuwaki & Ors.* (2009) LPELR-4305(CA); *Agoda v. Enamuotor & Ors.* (1999) 8 NWLR (Pt.125) pg.407 and *ANPP & Ors. v. Benue State Independent Electoral Commission & Ors.* (2006) 11 NWLR (Pt. 992); (2005) LPELR-7454(CA)

⁶³ Shittu, W., *loc cit*

illegal and unconstitutional from all dimensions. It is conceded that INEC has power to postpone elections but such power must be exercised within the limits constitutionally allowed. The present postponement is necessitated by more of politics than the reasons advanced. Nevertheless, the predicament of INEC should elicit public sympathy based on socio-economic, political, environmental and security considerations. It is recommended that the legislature should forestall future disaster by expressly stating circumstances under which elections can be postponed nationwide. This can be by way of alteration of the constitution or the Electoral Act. This would certainly save INEC the type of dilemma it found itself in the last general elections.

Finally, if the federation is at war to the extent that it is impracticable to hold elections, the President and the National Assembly can apply section 64(2) of the Constitution in extending the four year constitutional period by 6 months. This would have a different regime from postponement of elections which has been done without due regard to constitutional provisions.

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