



**THE ROLE OF THE INDEPENDENT NATIONAL ELECTORAL  
COMMISSION (INEC) AND THE JUDICIARY IN THE ESTABLISHMENT  
OF SUSTAINABLE DEMOCRACY IN NIGERIA**

**BY**

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**A PAPER DELIVERED AT THE  
INTERNATIONAL CONFERENCE ON  
SUSTAINABLE DEMOCRACY IN NIGERIA: CHALLENGES AND PROSPECTS**

**ORGANISED BY THE  
FOUNDATION FOR GOOD GOVERNANCE AND DEVELOPMENT IN NIGERIA**

**HELD AT  
IMPERIAL COLLEGE, LONDON, SOUTH KESSINGTON CAMPUS  
ON SATURDAY 25TH, JUNE 2005**

The Nigerian politician is definitely a problem. But quite definitely also, the Nigerian politician is not the problem of politics in Nigeria.

The situation that we have come here to discuss has persisted because we are looking at the politician (just one of the problems) and treating him as the problem. But unfortunately, though a prominent element of the problem, he is neither the main nor the controlling element of the problem.

The main element of the problem of democracy in Nigeria is the way we are looking at the problem. This is something we need to change so that what we are looking at may also change. In the second position are the controlling elements of the problem and the third and least important is the political class which is only a direct manifestation of the existence of the first and dominant element, which is constituted by the entire polity, and the controlling element constituted by the segment of the polity which I have chosen to describe as the umpires of our democracy. So we find ourselves in a very precarious social situation in which we have the greater part of our concern focused on the effect rather than the cause. No problem can ever be solved in that manner.

It is as a result of the situation above identified that one must commend the Foundation for Good Governance and Development in Nigeria for the theme of this conference which, to my understanding, focuses on the way and means of establishing sustainable democracy in Nigeria. I must state that it is my belief that in spite of the substantially enormous challenges, the prospects of democracy are still very bright. That those challenges are so enormous and in-built in our system to the extent that they have stuck our journey to a democratic polity in Nigeria in the mud is trite. Consequently, the live issue is how to get out of the mud, with the very suspect prospect of successfully doing so.

Before one may proceed on this live issue, permit me to discuss the definition of “*democracy*” as we have it today. A former president of the United States of America, Abraham Lincoln, has been universally credited with defining democracy as “*Government of the people, by the people, for the people*”. But, with the greatest respect to the political scientists, one holds the view that that great statement, which is an excerpt from a speech made by the revered former president, was more of an exposition of the natural and expectable dividend of a democratic situation and not a definition of democracy itself. In other words, when and where democracy properly so called exists, the result will be the enthronement of a government of the people, by the people, and for the people. What then is democracy properly so called?

One holds the view that democracy is a system of social order in which those who govern are elected under agreed laws, those so elected govern in accordance with agreed laws, and both the governed and the governors subject themselves to agreed laws and institutions of the given society. It is submitted that where any of the three conditions above is missing, what is in operation is not democracy whether “*homegrown*” or “*imported*” because for democracy to exist it must be accepted as a way of life, a consensual cultural attitude of a people. Where the first condition of the definition above is missing, that is where there is no election of leaders in accordance with agreed Laws; there is no democracy at all. This includes where only a purported election has taken place. Where the second condition, that is where those elected refuse to govern in accordance with agreed laws, a situation which one describes as

totalitarian democracy (a polite description of institutionalized dictatorship) manifests; and where the third condition is lacking, that is where both the governed and the governors refused to subject themselves to agreed Laws and institutions, the situation, as in Nigeria, is potentially anarchical.

The misfortune of the contemporary Nigerian situation is that the three components are substantially lacking. Consequent upon this uncontested scenario, what we have in Nigeria today is not true democracy or a semblance of it but, at best, a totalitarian democracy with anarchical potentials. The need for all and sundry to appreciate this emerging nature of our situation can therefore not be overemphasized.

What then do we do individually and collectively so that we may pull our nation back from the precipice of a destabilized society?

The first step would be to seek ways and means of establishing a democracy (since we do not have it yet) before finding a way of sustaining it. To attempt to sustain what you have today in the name of democracy is to unwittingly perpetuate civilian dictatorship in Nigeria. A change in attitude is a sine-qua-non in the establishment of true democracy in Nigeria. How do we attain this inevitable change of attitude? The first way to do it may be found in what Dr. Wayne Dyer of the United States (2005) said:

*“We must change the way we look at things so that what we are looking at may change.”*

These great words are very relevant in our search for a change from totalitarian democracy to true democracy. Our focus must be redirected away from the players of the games of politics (the politicians) to the umpires of the game.

A look at the submitted definition above would reveal that each of the three elements, the combination or co-existence of all of which constitute ones understanding of democracy properly so called, is based on respect for the existing laws of the given society. That to me makes the judiciary a very important if not the most important institution in any democratic environment.

This is because democracy being political is a game of conflicting interests, right and obligations. The responsibility to resolve all conflicts of rights, obligations and interests in our polity is under section 6(6) (b) of our Constitution conferred on the judiciary which is an agreed institution. Consequently, it falls on the judiciary to ensure in any democratic setting:

- (a) *that elections are conducted in accordance with the electoral laws in a manner that reflects the will of the people;*
- (b) *that those elected conform with the laws as enacted by the legislature (agreed laws), not as they would have liked them to be enacted, in the performance of all aspects of their official functions and private lives; and*
- (c) *that nobody, whether the governed or the governor is, or claims to be, above the law.*

In this political game there are other institutions that are statutorily empowered to oversee the proceedings in order to eliminate or, at least, reduce the areas of conflict by ensuring that the participants perform in accordance with the rules and regulations of each proceeding as contained in our laws. These include the electoral commissions at the national and state levels, the security agencies like the police and the SSS, the official media, particularly the electronic media, at the national and state levels, the electronic broadcast controlling body, the National Broadcasting Commission (NBC), and all other such bodies that have roles to play to ensure fairness to all concerned in our political affairs. All these are “umpires” in their respective spheres of activity in the political game just as the judiciary is. But the peculiarity of the position of the judiciary is that while those named institutions hold a balance of rights and obligations as between individuals, the judiciary holds a balance between individuals and those other umpires, and even between the umpires themselves. In that position the judiciary becomes what may be called the “*umpire of umpires*”.

For better understanding of the thesis herein presented one would apply the situation in the management of the game Nigerians love most, that is football. The Independent National Electoral Commission (INEC) may be likened onto the ‘*center referee*’. Where the center referee fails to see an infringement the assistant referees (linesmen) are expected to raise their flags to draw his attention to the infringement. The ‘linesmen’ in the political circumstance are the security agencies. Watching the performance of the players, the center referee, the assistant referees are ‘*match commissioners*’ herein represented by the media. These are expected to file an unbiased report to the organizing association, say the Nigeria Football Association (NFA) or the FIFA, herein the Nigerian society.

In the event of a dispute over the way the game was played the adjudicating panel of the organizing association relies on the evidence from the match commissioner to assess the presentation of the direct participants in taking a decision on the match. This could be by way of canceling or sustaining the match, and/or sanctioning any of the direct participants namely either of the teams, the center referee, the assistant referee or the supporters of any of the teams. This adjudicatory panel plays role of the Judiciary. If this panel fails to firmly apply the rules of the game and enforce the sanctions therein then further matches of the competition will run into difficulties.

Where therefore it happens that, because of the misapplication or non-performance of statutory responsibilities, either as a result of the mistake of the head or of the mind, the populace and the political class lose faith in the institutional umpires, then the only legitimate option for the aggrieved would seem to be to take their social destinies in their own hands by way of self-help. Where the non-performance of responsibility stops with the umpires other than the judiciary, the situation remains controllable as the judiciary is empowered to sanction those institutions whenever and wherever they fail to apply the agreed laws in the way they are expected to apply them. The danger to the development of sustainable democracy in Nigeria lies in the possibility, or in fact looming probability, of the judiciary going the same way as the other institutions by negating their duties to uphold the laws of the land without fear or favour, affection or ill-will. This is because as our people say: If the cloth is dirty, you wash it with water; but if the water itself is dirty, what do you do?

The judiciary is like “*water*”, as it is the last human source of cleansing of the dirt that accumulates in human affairs in the society. Consequently, the institution must not sleep or slumber in its “*watchman*” role in the polity, lest we descend into a state of anarchy which is an unavoidable result of persons in the society being unwittingly encouraged to resort to self-help by official acts. The society must through seminars such as this, and through judicial proceedings continue to awaken and challenge the judiciary to realize the enormity of the responsibility it bears towards the sustenance of peace and stability in Nigeria. This, in my opinion, is the only way we can prevent the emerging threat to that state of peace and stability in our country. The members of that institution must at all times maintain their professional status of learning, honor and nobility in the performance of their judicial functions. It is thus genuinely alarming to note, if the truth must be spoken, that, save the Supreme Court of Nigeria which has consistently risen to the occasion in all the political questions that have so far arisen before it, every other segment of the Judiciary has performed regrettably below statutory and moral expectations, thereby leading the general public into believing or suspecting that legal issues which arose in election petition proceedings before those tribunals and several panels of the Court of Appeal were being resolved on the bases of intended results instead of on the basis of the law. One hopes that the Supreme Court continues to be an exception.

Apart from reasons which may be peculiar to the knowledge of those who wrote the judgements in those tribunals and panels of the Court of Appeal, one identifies Section 246{3} of the 1999 Constitution of the Federal Republic of Nigeria as being substantially contributory to the judicial anarchy that occurred after the 2003 elections. That section provides:

*“(3) The decision of the Court of Appeal in respect of appeals arising from election petitions shall be final”.*

It is submitted that to ensure order in elections and the resolution of subsequent disputes arising there-from, there should be substantial certainty on what the Law is on the various aspects of the process. The only way to prevent future inconsistencies and to harmonize the present cacophony of discordant judicial opinions now existing in the Law reports is to restore the right of appeal in Governorship and National Assembly election petitions to the Supreme Court by deleting Section 246{3} of the Constitution by way of amendment.

Another provision that needs to be visited with an amendment is Section 292{2} of the Constitution. This section, which is enough to intimidate the not very courageous officer, provides:

*“{2} Any person who has held office as a judicial officer shall not on ceasing to be a judicial officer for any reason whatsoever appear or act as a legal practitioner before any court of law or tribunal in Nigeria.”*

Surely, this is a sword of Damocles hanging over the head of every judicial officer. The obvious implication of this provision is that a judicial officer who is unlawfully and/or unfairly removed from office cannot practice his profession in order to survive in private life. The door is also foreclosed for resignation on principle by a judicial officer. In a situation where both the legislative and executive arms of government may, at one time or another, be under the overwhelming control of persons of the same political persuasion and interest,

steering clear of areas of possible disenchantment with a despotic government would, to many, make reasonable sense. It is therefore suggested that Section 292{2} of the Constitution be amended to limit its application to only judicial officers who cease to hold office on account of proved acts of corruption or other gross misconduct capable of bringing the office and profession to disrepute.

The other inhibition to the establishment of a sustainable democracy is the pessimism that is now manifested by a substantial segment of the polity. Unfortunately, and regrettably this manifestation is apparent more in the intellectual and political class than in the rural and less-educationally privileged populace who have continued to manifest more consistency and principles on issues than the more exposed and educated class. These socio/political pessimists are in two categories. The first comprises those who, having lost faith in themselves and society, have resigned themselves to the status quo by opting not to do anything about it even when directly aggrieved. This is what I call the complacency group. The second group comprises those who would rather condone what they know, believe and accept as wrong with a view to benefiting therefrom. They simply condone so that they may receive. These people I have chosen to describe for proper understanding as the “*food is ready politicians and intellectuals.*” They do not believe in cooking; they only believe in eating. Consequently all they care about is to find space in an already set dining table no matter who set it, where it is set, and what is set. For these people, who I believe are without vision or mission, the only objective is to be part of the eating at all times. If their party loses election, they must cross to the party that won; and where they belong to no political party they must cooperate with the one in government no matter the consequences. The two groups above identified, that is the “*complacency group*” and the “*food is ready group*”, are victims of the same syndrome which is the “*can’t do it*” syndrome. Those who suffer from this syndrome in Nigeria (and they are substantial in number) have unconsciously acquired an inbuilt resistance to change and are not willing to take any vital initiative to escape from an obviously evil situation even when the situation is in fact not acceptable to them. For them patriotic risk taking is out of the question. All they do is to adjust to the status quo because that is, in their opinion, the only way to survive an unfriendly environment. One submits that this is negativism in the absolute and cannot be beneficial to the present or future Nigeria.

As I said earlier this syndrome exists amongst the political class, the intellectual community, and unfortunately amongst most of the umpires of our democracy. But one insists that the danger to the establishment of a sustainable democracy lies in the existence of the syndrome in the umpire cadres of this democracy game.

The umpires of our democracy owe it as a patriotic duty to our dear nation to, at all times, remain substantially if not absolutely clean so that they may always be in a position to “cleanse” any dirty politician of the dirt on him or her whether self acquired or other induced. Unfortunately, the different segments of the umpire sector appear to be failing the nation. For example the National Broadcasting Commission Act (1992) provided authority for that commission to sanction by suspension or withdrawal of broadcasting license, any electronic medium or institution which lends itself to monopolization by any incumbent political officer or political party. The neutrality of the state owned media was of such importance that failure to uphold that status as a result of official political interference was made an ingredient of undue influence by the National Assembly under Section 129 of the Electoral Act 2002. But all of us are witnesses to the total exclusion of opposition access to state owned media in the respective states of the federation without prejudice to the political party controlling such states. Yet, not a single radio or television institution has so far been

sanctioned by the NBC. Also, in spite of the though unutilized judicial findings of numerous brutal killings during the last general election no single suspect has been arrested let alone being prosecuted in court by the Nigerian Police even when some of the killings in fact took place right inside police stations and in the presence of the police and soldiers. As for the Independent National Electoral Commission (INEC), Christian Chukwu the coach of the Super Eagles, would, as the center referee in a football match between Nigeria and another country, have been more neutral in the handling of the match than the INEC and the respective state election Commissions were in the last elections, and in respect of the election tribunals and the appeals there-from one states with regrets in summary that one's heart bleeds.

## **CONCLUSION**

With the above comments one concludes that for democracy to be established and sustained in Nigeria, a virile, knowledgeable, well-funded and independent judiciary that is fully aware of the strategic nature of its responsibility in the sustenance of peace and stability and neutral commission is sine-qua-non. All statutes actually consist of words written on pieces of paper and bound together. In that state they carry no value whatsoever. The only time those words on those pieces of paper bound together carry some value is when the content thereof are implemented and the sanctions therein are applied without discrimination, fear or favor. The onerous responsibility of giving effect to the content of the relevant statutes (our agreed laws), has been placed on the judiciary and its officers by our Constitution. It is therefore in the interest of our country that those upon whom such a strategic responsibility has been placed, as the only institution, which enjoys earthly finality in human affairs, appreciate that the way the responsibility is performed or executed collectively and individually, will make the difference between anarchy and social stability in contemporary and future Nigeria.

May God Almighty grant us the knowledge to understand justice, the wisdom to appreciate its importance and the courage to apply it at all times and at all cost.

Long live Nigeria.

## **About Mike Ahamba**



Chief Mike Ahamba is a legal luminary and Senior Advocate of Nigeria (SAN). He is the leading lawyer of General Muhammadu Buhari (rtd) in his fight against the fraudulent presidential election of 2003.