

DEROGATION FROM THE TENETS OF CONSTITUTIONALISM AND RULE OF LAW: THE BANE OF POLITICAL AND ELECTORAL GROWTH IN SUB-SAHARA AFRICA: NIGERIA AS CASE STUDY

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Abstract

Politics and elections across the globe are propagated and guided by the principles of constitutionalism and the rule of law. This paper interrogates the derogation from constitutionalism and the rule of law in participatory democracy in Nigeria and sub-Sahara Africa. The constitution of the Federal Republic of Nigeria 1999 (as amended), Electoral Act 2022 (as amended), International Laws and treaties and legal instruments constitute the legal framework for politics and elections in Nigeria. This paper found that these laws and instruments are not strictly adhered to by the political actors in Nigeria and sub-Sahara African countries. The doctrinal research methodology was adopted in carrying out this research. It is concluded that the derogation from the laws and rules guiding politics and elections in Nigeria and sub-Sahara Africa has orchestrated bad governance, protracted election litigations and this has made politics uninteresting as it has heralded mediocrity in governance and adversely affected national growth and development. It is suggested that sanctions should be imposed on the persons responsible for the flaws in politics and elections in Nigeria; that the judiciary should rise up to the challenges and uphold the sanctity of the rule of law and constitutionalism; international and non-governmental organizations should wake up to the challenges and effectively re-double their efforts towards monitoring and observing elections; direct primaries, independent candidacy and electronic voting system should be entrenched in the Electoral Act

Keywords: *Constitutionalism, Derogation, Election, Politics, Rule of Law, Nigeria.*

1.0 Introduction

Politics and elections are global phenomena inherent in democratic societies the world over. These phenomena are synonymous in nature as they relate to acquisition of power and governance. Politics is regulated and guided by laws just like elections in every country or state. The constitution of every country stipulates the structure of her political sphere and participation. There are equally enabling Acts of Parliament that help in the regulation and conduct of politics and elections in every country.¹ Again, it is a notorious fact that elections and political activities are not only within the sphere of a particular state but it relates to international communities. Consequently, politics and elections across the globe is no longer the domestic affairs of a particular country but a global affair. However, the influence and interference of international

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¹ Electoral Act 2022.

Communities in the political affairs of a country is worrisome.² Thus, there are international instruments that help to guide and regulate the conduct of elections in every country especially states that are signatories to such instruments. It follows that politics and elections are subject to the rule of law and not really a porous game without regulations even if it can be regarded as a free for all game. Political actors and stakeholders ought to be bound by the rule of law and every other legal framework that regulates politics and elections. However, in Nigeria and other sub-Saharan African countries, some key political players derogate from the laid down laws or rules and display parochial attitudes and impunity in the political and electoral affairs in order to clinch to power. This deviation from constitutionalism and the rule of law has resulted in series of imbroglio which has bedeviled the political and electoral system in the countries thereby resulting in apathy among the elites and the ordinary citizens and this has heralded mediocrity across the board. In a nutshell, the non-adherence to constitutionalism and rule of law has hampered credible and ideological politics and elections in Nigeria. It is against this backdrop that politics and elections end up in lingering and protracted litigations. In Nigeria, pre and post-election matters flood the Courts and tribunals akin to the fact that politicians in the country do not always heed the provisions of the law. This is an aberration and it has opened the floodgate for election litigations in the country thereby creating an avenue for the courts or tribunals to act as umpires and decide who wins an election in any contest. The nagging problem is that Nigerian politicians do not politick or carry out their political parties' ideologies within the ambit of the law. If the rules are followed and things done in accordance with the provisions of the law in politics and elections, the courts would not be called upon to decide the winner of an election – that is the duty of the electorates who are the determinants of every election. The fulcrum of this paper is to analyze the role of constitutionalism and the rule of law in politics and elections in Nigeria. The purpose of constitutionalism is to limit both government and its institutions on one hand and the citizenry on the other hand.³ If both government and the citizens are limited and everyone submits to the whims and caprices of the law, electoral politics would be propagated peacefully without rancor and acrimony. The constitution is supreme over any other law, and any law that is inconsistent with

² Lori A. Ringhand, 'Foreign Election Interference: Comparative Approaches to a Global Challenge, 20 (2021) *Election Law Journal* https://digitalcommons.law.uga.edu/fac_artchop/1495 accessed 7 August 2025.

³ Read Helper, Nate Sullivan and Jeffrey Perry, 'What is the Purpose of Constitutionalism? <https://Study.com/academy/lesson/what-is-constitutionalism-definition-history-concept.html> accessed 7 August 2025.

the constitution is null and void.⁴ In Nigeria, the Electoral Act guides the conduct of elections.⁵ Other international instruments that regulate the conduct of politics and elections include the United Nations Universal Declaration on Human Rights (UDHR),⁶ International Covenant on Civil and Political Rights,⁷ International Convention on the Elimination of all forms of Racial Discrimination against Women, and other instruments. The purpose of these instruments is to ensure that credible, free and fair elections are conducted across the globe and to encourage full participation of the citizenry. The reason remains that political imbroglio and its aftermaths in a particular country go a long way to adversely affecting the international community economically and otherwise.

2. Constitutionalism and the Rule of Law

The activities of government are restricted in order to avoid disorder and tyranny. Every government has a structural base upon which its activities are legally executed. It follows that government's activities are regulated, restricted and guided otherwise, government would become too powerful and its policies would become harsh and unbearable to the citizenry. The meaning of constitutionalism cannot be properly evaluated without venturing into understanding the meaning of constitution itself. Constitution could be said to mean a document or law which 'set out the framework and principal functions of the organs of government within the state, and declares the principles by which those organs operate.'⁸ It could as well be said to mean the establishment of laws or rules which guides or regulates the activities of government.⁹ Constitution has also been defined as 'the fundamental and organic law of a nation or state, establishing the conception, character, and organization of its government as well as prescribing the extent of its sovereignty power and the manner of its exercise.'¹⁰ From the foregoing, it is clear that the constitution of a country establishes and regulates the organization and structure of such country's power and

⁴ Section. 1(1) and (3) Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as Amended).

⁵ Electoral Act 2022.

⁶ Article 21, Section 3 of 1948.

⁷ Article 2(2) ICCPR 1966; see also Article 10 thereof.

⁸ Desertation upon Parties (1973) cited in K.C. Wheare, *Modern Constitution*, 27; C.J. Okongwu and S. Ugbo, 'Constitutionalism in the Nigerian Democratic Setting' 4(2) (2022) *International Review of Law and Jurisprudence* 25.

⁹ Ibid.

¹⁰ B.A. Garner, *Black's Law Dictionary* 7thedn. (USA, West Group Publishing Co., 1999) 306.

sovereignty including political and electoral powers. The purpose of the constitution is to regulate and guide government, its functionaries and activities in carrying out its functions and responsibilities which must be within the ambit of the constitution and the rule of law. Constitution is written when it is embedded in a document as it is in the Constitution of the Federal Republic of Nigeria 1999 (as altered). It is unwritten when it is not contained in a single document, as it is in the United Kingdom's unwritten constitution. Rigid constitution is very cumbersome to amend,¹¹ while flexible constitution is not always difficult to amend sequel to its flexible nature. On the other hand, constitutionalism is to the effect that government activities should be restricted or limited to the dictates and provisions of the constitution.¹² It is more like the practice of the tenets of the constitution. The legitimacy of government rests on its adherence to the provisions of the constitution, therefore, government across the globe yield to the whims and caprices of the constitution and the rule of law and nothing more. When this is done, there would be peace and tranquility, and the people to whom sovereignty belongs would have confidence in government and its activities. It is submitted that non-adherence to constitutionalism results in anarchy and acrimony. The importance of constitutionalism is to examine the legitimacy of government and the activities or policies of the government and its functionaries or agencies. It is also submitted that government and its functionaries must note that there exist a social contract between government and the people, it therefore, behooves on government and the people in authority to ensure that this contract is not in any way violated. If government do, the probable consequence is that the contract becomes a nullity and this would not augur well with the society as it might metamorphous into anarchy or disorder.¹³

Government is limited in that it must do things and carryout the business of governance within the ambit of the laws, principles and procedures and within the ambit of the law. In Nigeria, the 'End Bad Governance protest' which commenced on the 1st August to 10th August, 2024 was to protest against the bad governance in the country which has orchestrated hardship, poverty and hunger.¹⁴

¹¹ Section 9 Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as Amended).

¹² (n.5).

¹³ András Sajó and Renáta Uitz, *The Constitution of Freedom: An Introduction to Legal Constitutionalism* (Oxford University Press 2017).

¹⁴ Amnesty, 'Bloody August: Nigerian Government's Violent Crackdown on #EndBadGovernance Protests' <https://reliefweb.int/report/nigeria/bloody-august-nigerian-governments-violent-crackdown-endbadgovernance-protests> accessed 8 August 2025.

The protesters demanded that President Ahmed Tinubu should do well to bring sanity to the government and the economy which has been bedeviled with corruption and bad governance. Despite the protest, the government although promised to change the narrative, but the situation has remained the same and even worse and undaunted. Constitutionalism therefore, supports the idea that sovereignty belongs to the people; that the constitution is supreme over any other laws; that the three organs of government are allowed to function separately; and that the judiciary possess its independence in order to ensure its sanctity; that the rule of law and the fundamental rights of the citizenry are upheld. Democracy compliments constitutionalism in that democracy restores sovereignty to the people and this enables the people to enforce their fundamental rights.¹⁵ When the rights of the people are guaranteed and enforced, and the activities of government are carried out within the confines of the law, it presupposes good governance, democracy, the rule of law and constitutionalism.¹⁶

What constitutionalism simply entails is that government and the citizenry must do things in accordance with the law and nothing more. Thus, in *ANNP v Benue state Independent Electoral Commission*,¹⁷ the Supreme Court of Nigeria held that the Nigerian Constitution is basically on the rule of law, and its tenet is that the scope of government activities must be done within the ambit of the law. It further stated that government must therefore conduct its activities within the ambit of the law. It is within the confines of the constitution to lay the foundation which constitutionalism tend to achieve. Again, the rule of law is to the effect that the law is supreme; everyone is equal before the law; the law ensures the fundamental rights and liberty of the people.¹⁸ It presupposes that both government and its functionaries and the citizens are accountable to the law and are not above the law, and they are equal before the law, just as they must ensure the dignity and fundamental rights of the individual.¹⁹ The security agencies must act within the provisions of the law and refrain from demeaning or degrading innocent citizens. It must however, be noted that the rule of law itself and constitutionalism are not absolute as they have some

¹⁵ Chap. I, African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act CAP. 10 LFN 2004; See also, Chap. IV CFRN 1999 (as Amended).

¹⁶ See, *Akulega v Benue State Civil Service Commission and Anor.* (2001) 12 NWLR (Pt. 728) 524 at 57.

¹⁷ (2006) 11 NWLR (Pt. 992) 617. S.C.

¹⁸ Info@edojudiciary.gov.ng, 'The Place of the Rule of Law in Democracy', <https://edojudiciary.gov.ng/wp-content/uploads/2016/10/The-place-of-The-Rule-of-Law-In-Democracy.pdf> accessed 3rd September, 2024.

¹⁹ Chapter IV CFRN 1999 (as Amended). Also, African Charter on Human and Peoples' Rights.

limitations.²⁰ The fundamental rights of individuals are not absolute but have some restrictions. For example, that the citizens have rights to protest does not mean they have right to loot as was witnessed during the ‘End SARS’ and ‘End Bad Governance protests’ in Nigeria in 2020 and 2024 respectively.²¹ The fact that the citizens have right to life does not guarantee such citizens to kill another person and refuse to face the penalties.²² That a person has freedom of movement does not guarantee him the right of unrestricted access into the White House in Washington D.C. in the United States of America or the Presidential lodge in Abuja, Nigeria. Freedom of association does not guarantee association with unlawful assemblies or prohibited organizations. It follows that where the right of an individual ends heralds the beginning of another’s right. Fundamental rights can therefore, be derogated from for the purposes of defence, safety of the public, public order, morality, public health, and again for the purpose of protecting or enforcing the rights of other persons.²³ The court has also held that ‘right to personal liberty is limited for illegal aliens’. In *Damisha v Speaker, House of Assembly, Benue State*,²⁴ it was stated that fundamental objectives and derivative principles are not justiciable, however, it is enforceable if an Act of the legislature provides for its enforcement. It must be emphasized that fundamental human rights are rights which stands above the ordinary laws of the land and which is antecedent to the political society. Despite this connotation or coloration, it is submitted that fundamental rights are not absolute as seen above.

3 Politics and Elections in Nigeria

Politics and elections go hand in glove in every society or organization. Politicking heralds elections as there is no election without politics. What this implies is that politics lay foundation for every election be it in a government or any association or organization. Politics is ‘the science of the organization and administration of the state; the activity or profession of engaging in political affairs’.²⁵ A political party is described as ‘an organization of voters formed to influence the government’s conduct and policies by nominating and electing candidates to public office’.²⁶

²⁰ Section 33 (2) a-c CFRN 1999 (as Amended).

²¹ BBC News, ‘EndSars Protests’, <https://www.bbc.com/news/topics/cezwd6k5k6vt> accessed 8 August 2025.

²² Ibid.

²³ *Yetunde Ogungbesan & Ors v Hon. Minister of Health & Social Services* (1995) FHCLR 168 @ 190.

²⁴ (1983) 4 NCLR 625.

²⁵ *EFCC v Reini* (2020) 9 NWLR (Pt. 1730) 489.

²⁶ (n.7), 1179.

Political power is ‘the power vested in a person or body of persons exercising any function of the state; the capacity to influence the activities of the body politic.’²⁷ From the foregoing, it can safely be said that politics in a state is to acquire power in order to organize and administer the state. Politics involves a contest and this is where elections are conducted democratically within the tenets of constitutionalism and the rule of law. As stated earlier, politics is regulated by laws including the constitution of the land which is supreme over any other law; electoral laws enacted by the legislature or any enabling laws; and some international instruments.

3.1 Historical Perspective of Politics in Nigeria

Historically, after the World War I, it is evidenced that external influences began to penetrate Africa for the purpose of nationalism. The need for self-determination for Africans became very serious and this spurred some Africans in the agitation for self-governance and determination which orchestrated the quest for nationalism among Africans.²⁸ The Pan-African Congress was held in Paris between 1918 -1919, and it was convened by Blaise Diagne. The resolution reached in that conference bordering on the right of Africans and their participation in the government of their respective countries. In 1923 and 1927, other conferences were held to foster nationalism in Africa.²⁹ Nationalism is simply the right to participate in the government of one’s nation to the exclusion of others; it is all about the interest of a people for self-governance; an ideology centered on the promotion of the interest of a particular people in a nation. Notable Africans, such as Nnamdi Azikiwe of Nigeria and Kwame Nkrumah of the Gold Coast, now Ghana actually brought a wonderful impetus in the nationalism struggle in West Africa.³⁰

In 1922, the Nigerian National Democratic Party (NNDP) was formed by Herbert Macaulay in Nigeria, who was described as the doyen of nationalism in Nigeria. NNDP was the pioneer political party in Nigeria. The nationalists’ movement heralded the political awareness and the desire for self-governance. It also enhanced the enthronement of independence in Nigeria and many African countries. Before independence, some political parties were founded, and they include: National Council of Nigeria and the Cameroun (NCNC), led by Nnamdi Azikiwe; the Northern Peoples’

²⁷ Ibid

²⁸ E. Melami, *The Nigerian Constitutional Law*, 3rdedn. (Lagos: Princeton Publishing Co. 2007)102.

²⁹ Ibid.

³⁰ Ibid.

Congress (NPC), led by Ahmadu Bello; and the Action Group (A.G), led by Obafemi Awolowo. One significant observation about the political parties is that the NCNC was dominated by eastern Nigerians, the NPC had Northern Nigerians as majority of its members, and AG had western Nigerians (Yorubas) as dominant members of the party, thereby showcasing the ethnic diversity in the politics of Nigeria from the onset. This portrayed the ethnic diversities and the heterogeneous nature of Nigeria politics.

In 1959, elections were held, and it happened that none of the political parties won the majority, and this culminated in an agreement entered into between the NPC and NCNC to form a government. Sequel to this arrangement, Tafawa Balewa became the Prime Minister and Nnamdi Azikiwe, the Governor General. After independence in 1960, Nnamdi Azikiwe emerged as the President while Tafawa Balewa of the NPC emerged the Prime Minister. The NCNC later joined the AG, reasons being that the census exercise was over-blotted in favour of the Northern Nigeria. Another political party known as the United Progressive Grand Alliance (UPGA) led by Obafemi Awolowo was formed. The second republic began in 1979 with a new constitution known as the Constitution of the Federal Republic of Nigeria, 1979. This Constitution adopted the USA's presidential system of government and jettisoned the Westminster system of government which was in existence during the first republic (1960-1966). Prior to the 1979 elections, some political parties were formed. They include: Greater Nigeria's People's Party (GNPP), National Party of Nigeria (NPN), People's Redemption Party (PRP), Nigeria Advanced Party (NAP), Nigeria People's Party (NPP) and Unity Party of Nigeria (UPN). In 1983, Alhaji Shehu Shagari won a controversial presidential election conducted that year, and the military coup d'état by Buhari truncated that republic. The third republic came with the ill-fated political experiment of General IB Babangida, through the Constitution of the Federal Republic of Nigeria, 1989, between 1992 and 1993. And the 4th republic came in consequent upon the drafting of the Constitution of the Federal Republic of Nigeria 1999 (as Amended). New political parties were formed and elections were conducted in 1999, and that election was won by Olusegun Obasanjo of the People's Democratic Party (PDP). In 2007, Umaru Musa Yar'Adua won the presidential election conducted at the expiration of Obasanjo's regime. Mohamadu Buhari succeeded Goodluck Jonathan after the completion of Yar'Adua's regime. In 2023, Bola Ahmed of the All Progressive Congress took over the over the mantle of leadership.

It has been observed that leadership imbroglio has been the bane of Nigeria's political growth. A common attribute of Nigerian politicians is crossing from one political party to another and this has gone a long way to showcasing that politics in Nigeria lacks ideological concept. This attitude is apt to describe the crop of politicians that Nigeria parade. Nigeria is popularly known as the 'giant of Africa', it is expected that as the giant of Africa, she should demonstrate an exemplary leadership prowess worthy of emulation in sub-Sahara Africa. Thus, in *Abubakar v Yar'Adua*,³¹ the Supreme Court stated that 'politics is not a dirty game ... it is a decent game, only some Nigerians make it dirty'. The apex Court further stated that the problem with Nigeria politics is the gain from it. The Court also suggested that 'politics should be made less attractive'.³² It is against this backdrop that so many scholars and stakeholders are clamouring for the restructuring of the entity known as Nigeria so as to give the country a facelift.³³

3.2 The Role of Political Parties in Nigeria

Every individual has right to peaceful assembly and association. Thus, the constitution of Nigeria provides that:

every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party trade union or any other association for the protection of his interests; provided that the provisions of this section shall not derogate from the powers conferred by this constitution on the Independent National Electoral Commission with respect to political parties to which that commission does not accord recognition.³⁴

The same constitution provides that elected officials shall be members of and be sponsored by political parties.³⁵ It provides that no association except the political parties shall have powers to canvas for votes for any candidate in any election.³⁶ And no other association shall function as a political party.³⁷ The constitution also requires the political parties to organize periodical elections for their principal officers and members by democratic means.³⁸ Again, it provided that the

³¹ (2009) LRCN (vol. 166)1.

³² Ibid

³³ A. Epelle and K. Nweke 'The Challenges of Political Restructuring in Nigeria's Fourth Republic: A Prognosis Analysis' 2019) 152(4) *European Journal of Scientific Research* 370 – 383.

³⁴ Section 40 CFRN 1999 (as Amended).

³⁵ Ibid, see section 68(1)(g).

³⁶ Ibid, s. 221.

³⁷ Ibid, s. 222.

³⁸ Ibid, s. 223 (1)(a).

executives and members of a political party should reflect the Federal Character.³⁹ The Independent National Electoral Commission (INEC) possesses the power to de-register any political party on the ground that it did not meet any registration requirement; when the political party fails to win at least 25 percent of the votes cast in one state in a presidential election; one local government of the state in a governorship election; one ward in a chairmanship election; one seat in the National or State House of Assembly election or; one seat in the councillorship election.⁴⁰

The Electoral Act⁴¹ is an Act of the National Assembly with the aim of regulating the conduct of Federal, State and Local government elections. It is the responsibility of the political parties to conduct primary elections and submit the list of their candidates to the Electoral Commission not later than 180 days before the date for the general election.⁴² A political party may adopt direct, indirect and consensus candidates during its primaries.⁴³ The Court has held that the conduct of primaries is a domestic affair of a political party. Thus, in *Onuoha v Okafor*,⁴⁴ it was held that it is the business of a political party to conduct its primary elections. But where the provisions of the Electoral Act or the constitution are violated it was held in *Ukachukwu v PDP*,⁴⁵ that an aspirant can institute an action to challenge the violation of such laws. Where a candidate who participated in a primary election in a political party reasonably believes that the information deposed to in an affidavit by another candidate is false, he can bring an action in a Federal High Court against such candidate.⁴⁶ Also, substitution of candidates in a political party can only be made except in the case of death or withdrawal by the candidate. And the political party shall within 14 days of the death of a candidate conduct a fresh election to produce another candidate.⁴⁷ In *Okolie v Peoples' Democratic Party (PDP) & 2 Ors*,⁴⁸ it was held that the whole of section 87 of the 2011 Act, now section 84 of the Electoral Act, 2022 is to guide political parties on how to conduct primaries to select or nominate its candidates. An aspirant has been stated to mean a person who contested in

³⁹ Section 14 CFRN.

⁴⁰ Ibid, s. 225A.

⁴¹ Electoral Act, No. 61 of 2022.

⁴² Section 29(1) the Electoral Act 2022.

⁴³ Ibid, section 84(4),(5) and (9)(a).

⁴⁴ (1983) 2 SC NLR 244.

⁴⁵ (2014) 17 NWLR (Pt. 1435)

⁴⁶ Ibid Section 29 (5).

⁴⁷ Ibid, Section 33.

⁴⁸ Unreported Appeal NO.CA/OW/264/2019.

the primaries and he is a candidate in the primaries.⁴⁹ An aspirant was equally defined as ‘a person with a strong desire to achieve a position of importance or to win a competition’.⁵⁰ An aspirant must participate in the election he contested.⁵¹ The election that brings a candidate is the primary election, which the Court has defined as ‘a preliminary election in which a political party’s voters nominate the candidate who will run in the general election’.⁵² Often times, primary elections are not conducted by the political parties. Rather than conduct primaries, the political parties indulge in undemocratic selection of candidates and this has resulted in cancellation of results of primary elections by the Courts. Thus, the Court of Appeal in *People’s Democratic Party v Alhaji Ibrahim Ali Amin & Anor*⁵³ held that:

the point to note here is that if a well-organized congress were held contrary to the assertion of the plaintiffs, there will be a result of the state ward congress showing the three delegates were appointed per ward – the defendant should have presented a result and particulars of the state ward congresses and failure to do so has the consequence that if such a result were available it be contrary to the 1st defendants aversion... that on its own is not capable of proving that there was primaries held in the local government in the absence of ward congresses elections, the point is that if there are no ward congress election where delegates are elected, then invariably you cannot have a state primary election for the party.

All political parties in their various party’s constitutions make provisions for failure to exhaust the internal dispute resolution mechanisms of their political parties. This means that all aggrieved party members should first submit themselves to dispute resolution mechanisms of the parties before resort can be made to the Courts or Tribunals. In *Onyeabor Igbo v Anthony Obinna Abili & 2 Ors*,⁵⁴ it was held that section 87(9) now Section 84(12) of the Electoral Act 2010 now 2020 (as amended) provides that:

⁴⁹ See *PDP v Sylva* (2012) 13 NWLR (Pt. 1316) 85 @126.

⁵⁰ *Ibid.*

⁵¹ *Eze v PDP & Ors* (2018) LPELR – 441907.

⁵² *All Progress Congress (APC) & Anor v Hon. John Halims Agoda & Anor* (Unreported App. NO. CA/B/124 delivered on 1st April 2019).

⁵³ Unreported App. CA/K/126/2019 delivered on 18-4-2019.

⁵⁴ (2019) LCN/13400 (CA).

Subsection 9 now (12) Electoral Act 2010, now 2020 (as amended):

Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of the provisions of this Act and the guidelines of a political party has not been complied... with, in the selection or nomination of a candidates of a political party of election, may apply to the Federal High Court or a State or FCT High Court for redress... By virtue of the above provision, where the complaint of an aspirant is on failure to comply with the Electoral Act, Constitution or guidelines of the party, he can always resort to the Court for adjudication.

It follows from the decision of the Court above that the provision embedded in all the political parties' constitutions to the effect that members should utilize the peaceful resolution mechanism within the political parties is subject to the provisions of the constitution and Electoral Act. A person who did not participate in all the stages of an election cannot properly question the Court's order that the Electoral Commission issue a Certificate of Return to the candidate who came second and participated in all stages of the election.⁵⁵

In every democratic society, elections are conducted to usher in persons who will take the mantle of leadership. Elections are not only held for the purpose of leadership in government but also in corporations and other organizations. It is simply the process of determining or making a choice of persons that can be in a position of authority. It is normally executed or perfected by means of vote. The Black's Law Dictionary defines election as:

The exercise of a choice; especially, the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies... the doctrine by which a person is compelled to choose between accepting a benefit under a legal instrument or retaining some property right to which the person is already entitled; an obligation imposed on a party to choose between alternative rights or claims...⁵⁶

Elections are at best the manifestations of, or at worst attempts to uphold the practice of human rights.⁵⁷ As stated earlier, elections are guided by the laws of the land and international laws and

⁵⁵ See, *Haruna Bello v APC & Ors* (2019) NLPER – 47777(CA).

⁵⁶ *Ibid*, (n.21).

⁵⁷ Compendium of International Standards for Elections' (2ndedn Elanders Graphic Systems AB (Sweden) 2007). Publication of the European Commission cited in O.P. Okonkwo, 'Over a Decade of Uninterrupted Periodic

instruments. These instruments seek to institutionalize and probably internationalize the standards in elections across the globe. But would this be possible going by the principle of sovereignty of a state? The naked truth is that the infraction resulting from elections in one country adversely affect other countries one way or the other. Overall, elections are no longer the sole business of a particular country but that of the globe.

4. The Role of International Communities in Elections

This article has stated earlier that sovereignty belongs to the people through the constitution where government and the citizenry derive all powers, rights and authority.⁵⁸ It is further provided that the participation by the people in their government shall be ensured in accordance with the provisions of the constitution.⁵⁹ Notwithstanding these provisions of the constitution, there are international election standards which are regarded as universal principles and guidelines to promote genuine democratic election processes the world over. These standards emanated from protocols, declarations, treaties, and other international instruments which protect democracy and the rights of the citizens. The standards do not compel any country to adopt any laws or process in elections, but what it seeks to achieve is to establish and entrench a standard in every election in order to achieve credible, free and fair elections. One may wonder why a sovereign state should adhere to an international standard in the conduct of the state's election having regard to the state's constitution and electoral laws. It is submitted that the world has turned a global village, as stated earlier, any political crises in one country adversely affects another economically and otherwise. It therefore, follows that elections in every country be monitored and observed for the purpose of ensuring that certain international standards are upheld and guaranteed.

The United Nations (UN) Universal Declaration of Human Rights⁶⁰ provides that 'the will of the people shall be the basis of the authority of government'. It follows that elections must be held by means of secret ballot. The International Covenant on Civil and Political Rights (ICCPR) stated that 'every citizen must be given the opportunity without discrimination on the ground of gender, race, sex, language, to vote during elections'.⁶¹ The right to have interest and participate in public

Elections in Nigeria: Challenges in Complying with International Standards' (2017) *Juriscop, Ebonyi State Journal of Law*, 151.

⁵⁸ Section 14(1) CFRN 1999 (as Amended).

⁵⁹ Ibid, 14(1)(c).

⁶⁰ Article 21 1948.

⁶¹ ICCPR 1966.

affairs by voting in elections is guaranteed as fundamental right.⁶² The UN Covenants and Declarations to protect and promote the rights of marginalized peoples; Inter-governmental bodies in Africa, Asia, Europe, Middle East and others, made provisions on the standard of elections. Such standards include free participation of the electorates; information about the contestants; provision for secret ballot during voting; reasonable legal framework or standards; freedom of association by contestants; campaigns and interface between the contestants and the electorates; protection of the media; adequate security to protect voters.⁶³

The UN Security Council; International Covenant on Civil and Political Rights 1966; Convention on the Rights of Persons with Disabilities, 2006; Convention Against Corruption 2003, African Charter on Democracy; Elections and Governance, Economic Community of West African States Protocol on Democracy and Good Governance 2001; and other international and regional organizations, have made provisions for election standards in order to ensure peaceful, free, fair and credible elections. Despite the intervention of all these organizations and legal instruments, elections in various parts of the world especially in sub-Sahara Africa and Nigeria in particular is bedeviled with acrimony and rancor devoid of standards, and this is why such elections ends in Court and tribunals. In Nigeria, almost all elections are challenged in courts or tribunals. The reason behind this is that the laws governing elections are not complied with during elections. Elections in Nigeria and sub-Saharan Africa is marred with corrupt practices and irregularities such as rigging, vote buying and selling, snatching and stuffing of ballot boxes and high scaled corruption within the electoral body. The problem is both individual and institutional. The people in authority exhibit impunity and undermine the laws in order to clinch to power at all cost. This is a nagging issue that has befallen Nigeria and it has gone deep into the fabrics of Nigerians and Africans who believe that the purpose of being in power is to amass wealth for their generations yet unborn. This line of reasoning by the political class is archaic, demonic and very inimical to socio-economic and national development. The desperation for power and the conduct of political parties during primary elections, selection of unpopular candidates purportedly loyal and related to the well to do citizens in the polity has led to apathy and eroded confidence in the political system of the country thereby breeding mediocrity in the polity.

⁶² UN General Comment 25 on ICCPR, Article 25.

⁶³ National Democratic Institute, 'Applying International Election Standards' www.ndi.org accessed 20 June 2025.

5.0 Conclusion

This paper has adumbrated the tenets of constitutionalism and the rule of law as it affects politics and elections in Nigeria and sub-Saharan Africa. Constitutionalism and the rule of law tend to pursue similar goal and objectives. What the two phenomena seek to achieve in principle is that every activities of government and the citizenry should be within the ambit and confines of the law and nothing more. It is submitted that politics and elections in Nigeria and sub-Sahara Africa are not propagated within the confines and ambit of constitutionalism and the rule of law. Consequently, the resultant effect is that it has led to a dastard and adverse political and electoral aftermaths in sub-Sahara Africa. The will of the people which ought to be the basis of the authority of government, by the expression of sovereignty in periodic and genuine elections through a universal and equal suffrage held in a secret ballot is eroded and this make politics and elections in Nigeria and sub-Sahara Africa uninteresting and breeds apathy among the elites. What is obtainable is a situation where a set of gangsters engage in occupational fraud and profiteering towards amassing wealth for their children, cronies and family members to the detriment of the people. The latest categories of persons who have taken over the political space are fraudsters, otherwise known as ‘yahoo boys’ and drug traffickers who have illegally and fraudulently amassed wealth and decides to hide under the canopy of politics. One wonders how this crop of persons can be productive in governance. For all intent and purpose, politics is not geared toward money making venture from government but it is for the purpose of governance and service to humanity. It is concluded that there is the need to abide by the tenets of the rule of law, constitutionalism and the rules of engagement as it relates to politics and elections in Nigeria and sub-Sahara Africa in order to sustain participatory democracy and achieve political and socio-economic advancement otherwise, the country would remain in socio-political doldrums and trauma. The military coups in Burkina Faso, Chad, Gabon, Guinea, Mali, Niger and Sudan, in recent time, could be attributed to poor governance and unacceptable politics and aftermath of massively rigged elections in those countries.⁶⁴ The ‘End SARS Protest,’ ‘End Bad Governance Protest’ and the call for military take-over in Nigeria was a result of bad governance which has occasioned socio-political and economic problems in Nigeria and the aftermaths of all these are hunger and poverty in the land. Unfortunately, nothing has changed even after the protests as the economy remains in shambles.

⁶⁴ Redation Africa News, ‘Africa: The 7 Military Coups over the Last Three Years’, <https://www.africanews.com/2023/08/30/africa-the-7-Military-Coups-over-the-last-three-years/> accessed 1 September 2024.

There is no gainsaying the fact that there is no perfect politics and elections in any part of the universe but suffice to state categorically that politics and elections must be propagated in accordance with the rule of law and constitutionalism in order to reflect the will of the people.

6. Recommendations

Having stated all these, justice would not be said to have been done to this discourse if no recommendations are made. The following recommendations are therefore, made and it is hoped that these recommendations would help in taming political and election pitfalls in Nigeria and sub-Saharan Africa. It is recommended thus: a special Election Marshall should be established to apprehend those who perpetrate fraud and rigging during elections; there shall be established a special Court or tribunal across the states of the federation of Nigeria to try electoral offenders; the judges in such Court(s) must be persons of proven integrity in the society. Second, international and local non-governmental organizations should endeavor to set up monitoring and observation teams to monitor and observe elections in Nigeria and should be able to make their reports public within a reasonable time. Third, sanctions should be imposed on persons and countries who are signatories to treaties that do not adhere to such treaties and legal instruments concerning politics and elections in those countries. Fourth, the judiciary must rise to the challenge and ensure that the sanctity of the rule of law and constitutionalism is upheld when called upon to do justice in political and electoral matters; the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act 2022 (as amended) should be further amended to provide for independent candidacy in every elections in Nigeria; section 84 of the Electoral Act 2022 (as amended) should be further amended to read that all primary elections should be by direct primaries only; political parties that contravene this provision shall be made to pay a fine of fifty million naira and such elections should be nullified. Fifth, electronics voting system should be adopted in all the elections and results transmitted from various units to collation centers; stiff penalties should be meted at any security officer and members of the electoral body found culpable of electoral malpractices; and the INEC should be empowered to organize local government elections across the country.