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Constitutional Protection of the Power of the Electorate over the Elected in Nigeria

Chinenye Okafor*

Abstract

In every democratic dispensation, the voters in a state are vested with the power to elect candidates they feel are best suited to pilot the affairs of the state. While the electorate constitute the majority and the elected the minority, often times, it appears that the electorate are at the mercy of those they have elected into office. This is however an illusion as the electorate who possess the votes to enable the elected ascend office also possess the power to remove them from office for non-performance. The Constitution of every democratic state provides the foundation upon which persons are voted into office and also regulates the removal of such persons from office. In Nigeria, while elections are conducted regularly, there is an apathy on the electorate to exercise their franchise and constitutionally guaranteed rights to remove non-performers elected into office. This work examines the constitutional provisions regulating the entry into and removal from office of persons occupying elected positions in order to help educate the electorate and general populace on the need to ensure that those voted into office do not betray the trust reposed in them. The doctrinal method of legal research was employed in this work.

Introduction

Professor Wade wrote that every act of Government power that affects the legal duties and liberties of any person, must be in accordance with the law, to be valid. Government's activities must be conducted within a framework of defined rules and regulations and disputes involving the legality or illegality of Government actions must be decided by courts independent of the Government.[1] The Court of Appeal in *Dapianlong v. Dariye*[2]held as follows

> I wish to observe that our country cannot develop politically and economically unless we respect the rule of law. Where the constitution is torn into shreds by the action or inaction of those who are charged with responsibility of upholding it, the net result is that a culture of lawlessness is sowed into the psyche of the people. The end does not always justify the means.

In the case of *Ugwu v. Ararume*,[3] it was noted that "Laws are not made for the fun of it but for the betterment of the society, if obeyed. And Nigeria is a nation of constitutional democracy under the rule of law, where the law is supreme to all and sundry". Nigeria, presently, is a federation comprising 36 states with the Federal Capital Territory sited in Abuja. The 1999 Constitution of the Federal Republic of Nigeria[4] is currently in use as the ultimate law of the land. The Constitution of the Federal Republic of Nigeria is the supreme law of the land.[5] Any

*Chienye I Okafor, Lecturer, Faculty of Law, Nnamdi Azikiwe University; Prof C E Ibe, Faculty of Law, NnamdiAzikiwe University, Maureen Ugwu, Lecturer, Faculty of Law, Nnamdi Azikiwe University

[1] HW Wade "The Basis of Legal Sovereignty" (1955) (*Vol 13) 2 C.L.J. 172*

[2] (2007)8 NWLR [pt.1036] 239,330

[3] (2007)12 NWLR [pt.1048]367 at 486

[4] Constitution of the Federal Republic of Nigeria 1999 (as amended) hereafter cited as CFRN 1999.

[5] CFRN 1999 S.1(1); **A.G. Federation v. Abubakar** (2007)8 NWLR (pt.1035) 117; **Ansa v. R.T.P.C.N**. (2008)7 NWLR (pt.1086) 421.

other law inconsistent with the Constitution will, to the extent of that inconsistency, be declared null and void.[6] All other laws in the land derive from the Constitution.[7]

In Nigeria, power is shared on a bi-cameral basis between the federation and the federating units. The legislative powers are shared between the National Assembly and the States House of Assembly.[8] However, the National Assembly, unlike the States' Houses of Assembly, is composed of two legislative chambers, the Senate and the House of Representatives. The matters on which either of or both state and national legislative houses are to legislate on are contained in the legislative lists.[9] The executive powers in Nigeria are shared between the Federal Government and the States' Government.[10] While all the members of the Legislature, be it federal or state are elected into office, the elective offices making up the executive are the offices of the President. Vice-President, Governor and Deputy Governor.

The Executive Arm

Section 130[11] establishes the office of the President of the Federal Republic of Nigeria. The President is designated by the Constitution as the Head of State, the Chief Executive of the Federation and the Commander in chief of the Armed Forces of the Federation.[12] In order to be qualified to contest election into the office of President, a person must satisfy the following conditions:

a. The person must be a citizen of Nigeria by birth.

b. The person must have attained the age of forty years.

c. The person must be a member of a political party and sponsored by that party.

d. The person must have been educated up to at least school certificate level or its equivalent.[13]

Sections 132 to 134 of the Constitution[14] contains provisions on how a person may be elected into the office of president and specifies the importance of the voting process. Section 141[15] establishes the office of the vice-president while sections 142 stipulates that a candidate nominated for election to the office of president shall not be deemed as validly nominated unless he is nominated along with a candidate from the same political for the office of vice president.[16] The offices of Governor and Deputy Governor respectively are established under sections 176 and 186 respectively. The provisions governing the election into the offices of the governor and the deputy governor are similar to the provisions governing elections into the offices of president and vice president with the notable exceptions being that the Governor is the Chief Executive of

[6] CFRN 1999 S.1(3): **Timothy v. Oforka** (2008)9 NWLR (pt.1091) 204
[7] **Orhiunu v. F.R.N**. (2005)1 NWLR (pt.906) 39
[8] CFRN 1999, S 4(1) and (6)
[9] CFRN, 1999 Second Sch, part 1 & 11
[10] CFRN, S.5(1)(2)
[11] CFRN 1999 S 130(1).
[12] *Ibid* (2).
[13] *Ibid* S 131.
[14] *Ibid*
[15] *Ibid*
[16] *Ibid*

a State and a person must have attained the age of thirty five years before they can be eligible to contest elections.[17]

The Legislative Arm

Section 47[18] establishes a National Assembly for the Federal Republic of Nigeria and provides for its composition into a Senate and House of Representatives.[19] Sections 48 and 49 stipulates the number of senators and members of the House of Representatives required to represent their various constituencies at the National Assembly.[20] Sections 65 and 66 stipulate the necessary qualifications for a candidate wishing to contest election into the National Assembly while sections 71 to 78 provide for the elections proper.[21] The Houses of Assembly for the various states in the federation are established by Section 90 of the Constitution while sections 106, 107 and 112 to 117 stipulate the qualifications required of the various candidates and contain provisions regulating the elections.[22]

The importance of the electorate and indeed the voting process cannot be over emphasized. For a candidate to attain the elective office contested, he must acquire a majority of the votes case at the election. Thus, the power to elect persons into the offices outlined above lie with the voters who are also the electorate. The decision as to who will occupy a particular office is the decision of the voters *via* the polling booth. Similarly, there are constitutionally stipulated provisions regulating the removal of these elected persons from office in the situations as provided for under the constitution. It is this procedure that this work aims to highlight. This power of electing and indeed removing the elected from office is constitutionally guaranteed and aimed at ensuring that those elected into office serve the needs of the electorate that put them in office rather than pursuing their own selfish interests to the detriment of those that elected them into office.

The Power to Remove from Office

The process of removal from office depends on which particular office is involved. The Constitution contains provisions for how elected persons may also be removed from office by the same people who elected them. As will be highlighted below, while the electorate exercise direct power over members of the National Assembly, their power over the executive arm is indirect and is dependent on how far they are willing to exercise their power over the legislative arm. This work is directly concerned with situations in which the electorate can ensure that those voted into elective office are made to vacate the office.

Power of the Electorate to Recall Members of the Legislative Arm

Section 69[23] states as follows

A member of the Senate or of the House Representatives may be recalled as such a member if-

[17] See *Ibid* S 176(2); S 177; S 178; S 179 and S 187
[18] *Ibid*
[19] *Ibid*
[20] *Ibid*
[21] *Ibid*
[22] *Ibid*
[23] *Ibid*

(a) there is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one-half of the persons registered to vote in that member's constituency alleging their loss of confidence in that member;

(b) and the petition is thereafter, in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member's constituency.

Pursuant to the above section, a member of the National Assembly may be removed where his constituency alleges a loss of confidence in the member. It should be noted that reasons for the alleged loss of confidence ought not to be given. In fact, it does not matter whether or not the member is an active member in the house or even active in his constituency, or that he is even engaged in projects meant to develop the constituency, once his constituency members feel they no longer have any confidence in the said member, a petition, signed by more than one half of the persons registered to vote in that constituency is presented to the Chairman of the Independent National Electoral Commission and a referendum is conducted by the commission to vote on whether or not the petition ought to be approved. Where the petition is approved by a simple majority of the registered voters within that constituency, then the member is recalled from his elected position in the National Assembly.

Section 110[24] contains similar provisions for a member of the State House of Assembly. As will be shown below, these provisions can be utilized by members of a constituency trying to strong arm the Chief Executive of a state or the federation. For instance, in situations, where it is sought to impeach the Chief Executive and majority of the members of a particular constituency are in favour of commencing removal proceedings but the member of the National or State House of Assembly, representing them is reluctant to be part of such proceedings or lend a voice to same, he could be strong armed into playing ball or face the danger of being recalled. Similarly, a member constantly embroiled in scandals could be recalled through this procedure. The importance of this provisions is that it enables the electorate wield a certain level of power over their members elected into elective posts and in whom they have lost confidence. This is a constitutionally guaranteed power and highlights the importance of the electorate in any democratic society.

Removal of the Executive Arm

There are several situations in which it may become desirable or even necessary to remove a sitting president or governor before the expiration of their tenure. These include gross misconduct, ill health or incapacity to perform the functions of the office. A president can either be removed by the National Assembly or by members of the executive council. However, unlike in the case of a recall of a member of the National Assembly, members of the electorate have no direct control over the removal of the president but can however exercise an indirect control via their direct control over members of the national assembly representing them. The work focuses on removal of a chief executive by the National Assembly as it is more relevant to the issues discussed.

[24] *Ibid*

Section 143 of the Constitution[25] provides thus:

(1) The President or Vice-President may be removed from office in accordance with the provisions of this section.

(2) Whenever a notice of any allegation in writing signed by not less than one-third of the members of the National Assembly:-

(a) is presented to the President of the Senate;

(b) stating that the holder of the office of President or Vice-President is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified, the President of the Senate shall within seven days of the receipt of the notice cause a copy thereof to be served on the holder of the office and on each member of the National Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office to be served on each member of the National Assembly.

(3) Within fourteen days of the presentation of the notice to the President of the Senate (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice) each House of the National Assembly shall resolve by motion without any debate whether or not the allegation shall be investigated.

(4) A motion of the National Assembly that the allegation be investigated shall not be declared as having been passed, unless it is supported by the votes of not less than two-thirds majority of all the members of each House of the National Assembly.

(5) Within seven days of the passing of a motion under the foregoing provisions, the Chief Justice of Nigeria shall at the request of the President of the Senate appoint a Panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party, to investigate the allegation as provide in this section.

(6) The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person and be represented before the Panel by legal practitioners of his own choice.

(7) A Panel appointed under this section shall –

(a) have such powers and exercise its functions in accordance with such procedure as may be prescribed by the National Assembly;
And

(b) within three months of its appointment report its findings to each House of the National Assembly.

(8) Where the Panel reports to each House of the National Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.

(9) Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report at the House the

[25] *Ibid*

National Assembly shall consider the report, and if by a resolution of each House of the National Assembly supported by not less than two-thirds majority of all its members, the report of the Panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.

(10) No proceedings or determination of the Panel or of the National Assembly or any matter relating thereto shall be entertained or questioned in any court.

(11) In this section –
"gross misconduct" means a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts in the opinion of the National Assembly to gross misconduct.

Obviously, the removal of a chief executive is not a matter to be taken lightly hence the cumbersome procedure to be adopted as provided for in the Constitution. Unlike in the procedure for recall of a member of the legislative arm, details of any allegation against the president or vice president must be given and said details must be investigated before a decision to commence removal proceedings is taken. However, the section does leave the question of what constitutes 'gross misconduct' to be determined by the National Assembly and this is where the electorate can wield its power.

A president is not only the chief executive officer of his nation but also the commander in chief so, in circumstances where he uses the apparatus of office to engage in acts which can be considered international crimes under international law for instance, where he orders the armed forces of the nation to invade the territory of another sovereign state, citizens of the state, who wish to avoid the international sanctions that will follow said act, could apply some pressure on members of the National Assembly from their constituencies to ensure that the president desists from said international crimes of face the danger of being removed. This is the indirect power an electorate can wield over the Chief Executive of a State. Section 186 contains similar provisions in respect of a governor.[26]

The Power of Voting at Elections

Although the Constitution confers a lot of powers and privileges on the various arms of governments and on persons occupying elective posts within the said arms, none of these powers with respect to the elective positions will amount to anything without the process of an election. This is why some of the most important offices in the nation are only filled through the electoral process. Elections make a fundamental contribution to democratic governance. Because direct democracy, a form of government in which political decisions are made directly by the entire body of qualified citizens is impractical in most modern societies, democratic government must be conducted through representatives. Elections enable voters to select leaders and to hold them accountable for their performance in office. Accountability can be undermined when elected leaders do not care whether they are reelected.[27]One of the most critical ways that individuals can influence governmental decision-making is through voting. Voting is a formal expression of preference for a candidate for office or for a proposed resolution of an issue.[28]The Universal

[26]*Ibid*
[27]https://www.britannica.com/topic/election-political-science/Functions-of-elections accessed on 22/12/2021
[28]http://hrlibrary.umn.edu/edumat/studyguides/votingrights.html accessed on 22/12/2021

Declaration of Human Rights, adopted unanimously by the United Nations General Assembly in 1948, recognizes the integral role that transparent and open elections play in ensuring the fundamental right to participatory government. The Universal Declaration of Human Rights[29] in Article 21 states:

1) Everyone has the right to take part in the government of his/her country, directly or through freely chosen representatives.
2) Everyone has the right of equal access to public service in his country.
3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret ballot or by equivalent free voting procedures.

The role that periodic, free elections play in ensuring respect for political rights also is enshrined in the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human Rights, the Charter of the Organization of American States, the African (Banjul) Charter on Human and Peoples' Rights and many other international human rights documents.[30]

As stated above, the right to vote is enshrined in the Constitution and the importance of the electoral process emphasized by the fact that pursuant to the Constitution, the highest offices in the land can only be attained through the electoral process and through the votes of the electorates. This, it is the electorate that have the say on who is elected into these offices, this is a constitutionally guaranteed right and is also recognized by various international instruments. This right places the power of determining who occupies an elective office in the hands of the electorate, the voters.

Conclusion

Until the electorate recognize that the Constitution has given them power over the elected, they will continue to vie those occupying elected office as one would view an overlord. Nigeria is a nation of various tribes and is afflicted with various ills associated with such a multi-cultural society. Nigeria is also however, afflicted with the problem of having the few in power lord it over the majority who elected them into power. The ignorance of the majority has led to the illusion that the minority cannot be called to order or held accountable but however, as shown above, the power of the majority over the elected derive from the supreme law of the land. The electorate should be educated on the extent of the power they hold and the need to use same responsibly by electing qualified and responsible people into elective posts.

[29] The United Nations Universal Declaration of Human Rights 1948
[30] http://hrlibrary.umn.edu/edumat/studyguides/votingrights.html accessed on 22/12/2021