

## Party Politics and Party Laws in New Democracies: the Case of Nigeria in the Fourth Republic, 1999-2011

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### Abstract

*This article discusses the body of laws and other regulations that guided the operation of political parties and party politics in Nigeria between 1999 and 2011 as a new democracy. Owing to the nature and scope of its functions, no single socio-political institution is as critical to governance and representation in a democratic state as a political party. It articulates policies, form government or opposition as the case may be, and generally serve as a bridge between the government and the governed in a democratic state. However, for a party to effectively perform these functions it needs a robust system of laws to guide and regulate its behaviour within the wider national laws. It is this system of laws that actually distinguishes a party from numerous other organized groups in a democratic state. The focus of this article is on identifying and discussing the major components of those laws that provided parties in Nigeria's Fourth Republic not only their legitimacy, but also legal and institutional frameworks in which party politics was generally practiced during this period.*

**Key Words:** new democracies, party laws, Nigeria, Fourth Republic, Electoral Act

### 1. Introduction

In about a year from now Nigerians will, in a nationwide poll, elect a new set of leadership at the state and federal levels. Political parties will play an important role in this process. They will animate the entire electoral process with their campaigns and rallies, and will push for new policy agenda. Most importantly however, parties will provide the only legal avenue through which politicians could be elected into public offices since electoral laws do not recognize independent candidature in Nigeria. Between 1999 when the Fourth Republic was inaugurated and 2011 when the last general elections were held, Nigeria as a multi-party democracy had enacted several laws that guided and regulated the behavior of parties participating in its electoral politics. This was not something new. Generally, parties rely on a system of rules to thrive and compete against each other in a democratic environment (Engelmann & Schwartz 1975, pp 3-9). This explains why democratic states design laws to regulate the activities of their parties especially on issues related to their finances, membership, internal governance, and candidates' selection process.

There is no significant difference in the way advanced and new democracies conceive and design their party laws. Both type of democracies are concerned with having parties that adhere to the minimum legal standards in how they operate, how they pursue their objectives and goals, and in how they interact with each other. In both cases, the objective is to formulate an acceptable legal framework to guide party politics. The purpose of this article is two-fold. First, it seeks to identify the relevant set of laws enacted to guide party politics in Nigeria's Fourth Republic. Second, it discusses the major components and provisions of these laws concerning the behavior, activities, and operations of political parties in Nigeria in this period. The objective of this investigation is to show that new democracies such as Nigeria are not only cognizant of the indispensability of political parties to issues of governance and representation, but also of the fact that without proper legislations parties would not be any different from many other organized groups operating in the liberal environment which democracy offers.

### 2. Party Laws: A Framework for Analysis

Party laws provide parties with the principles that regulate and guide their activities as organizations operating in a competitive environment. They facilitate engagement and interaction between parties at two levels.

On the first level, party laws make inter-party interactions predictable. Since parties tend to pursue similar objectives in a political system, a common set of rules guiding their conduct means that none of them can employ extra-legal ways to achieve its objectives. This guarantees the stability of the political system itself, and also encourages consensus on major political issues in a country. On the second level, party laws provide a common language that creates a channel of communication and contractual bond between a state and its parties. Because parties perform functions that affect the stability and development of a state, there is a need to integrate them into the overall objectives which a state pursues. States achieve this task by formulating rules and principles that regulate party activities to ensure that they remain in tune with their fundamental objectives (Muller & Sieberer in Katz & Crotty 2006, pp 436-38). In democratic states, the most fundamental of these objectives are promotion of democratic values such as liberty, equality, human rights, and free-market economy. To any liberal democratic state, these values are the end which it upholds and promotes.

Broadly, party laws encompass all aspects of party politics including legal status of parties, membership, finance, organization, ideologies and programs, rules of engagement during campaigns, rallies and elections (Avnon 1995). According to Kenneth Janda (2005), party law is a collection of state-issued rules and regulations concerning “legal status of parties that often specify what constitutes party membership, how parties must be organized, how they should campaign, how they must handle party funds, and so on”. Wolfgang Muller and Ulrich Sieberer (in Katz & Crotty 2006, p 435) define party laws as conscious legislations that regulate party activities within a political system. These scholars however failed to add that there are laws which do not directly seek to regulate party behavior, but indirectly affect the way parties behave. Thus, party laws presuppose a set of legislation consciously made by a country in order to regulate the activities of its parties. This includes legislations that affect party activities intentionally or unintentionally. Thus, legislations on suffrage, political associations, campaign finances, and press laws may, in indirect ways, affect parties and party politics.

Party laws vary from country to country, and even in a single country, may differ from one province to another, especially in federal states such as Australia (Smith & Gauja 2010). Generally, state constitutions, electoral acts, legislations dealing with political finances, voluntary organizations and other forms of political associations are the main bulk of party laws (Muller & Sieberer 2006, p 435). It is important to note that these are not exhaustive. There may be other sources of party laws beside formal legislations. For instance, Kenneth Janda (2006) sees administrative rulings and court judgments as additional sources of party laws in both advanced and new democracies. Given the experience of many democracies with organizations and societies such as the Tammany Hall in the New York State politics and the notorious Boston Clubs in the past, it is easy to understand the anxiety and the need for laws to regulate party politics.

According to Richard Katz (2004), party laws serve three major purposes. First, they mention the criteria which an organization follows in order to obtain statutory recognition as a political party. In other words, party laws specify the necessary requirements for party registration. Second, party laws define acceptable party activities in a political system. This concerns both the depth and scope of those activities including how they raise and spend funds, mobilize support during elections, and the type of policies they promote. Third, party laws define an acceptable behavior for parties including how they organize themselves, how they conform to accepted behavior in a state and how they select their leadership and nominate their candidates. These purposes underline the importance of party laws generally and show that while parties enjoy the freedom provided by liberal ideology to pursue objectives and promote specific values, still the need to ensure balance and stability within a state make adoption of certain standards to regulate party activities imperative. In addition to all of these, there is another importance worth mentioning here. Party laws ensure that citizens’ rights to join parties of their choices are not infringed upon because of their social status or circumstances of birth. These types of legislations have, over the years, protected citizens from parties as organizations, just as they protected parties from the state itself.

These purposes of party laws remain substantially the same in both advanced and new democracies. The major difference is not about the spirit or intents of the law, but on its application, adherence, and enforcement in these democracies. Experience shows that advanced democracies tend to adhere more to the principles of constitutionalism and rule of law than new democracies. In new democracies, elements of arbitrariness which is mostly the hangover from the past political order are visible in several facets of public life including party politics. This affects the efficacy of party laws and functioning of parties themselves.

New democracies are more vulnerable to the influence of extra-constitutional organizations and interests groups whose pervasive influence is seen in their power to decide who becomes member or leader of a party; who secures its nomination; and who is elected as the representative of the people on its platform. This wide gulf between advanced and new democracies might be owing to the undeveloped nature of political institutions and passive political culture in the new democracies.

It is important to point that party laws do not only aim to curtail negative influences of these extra-constitutional groups, but also aim to formalize all manner of arrangements that pertain to power relations between parties, public, and the state, especially new democratic states. In the next pages, this article focuses on identifying and examining party laws of the Fourth Republic. Nevertheless, to help explain accurately the context in which these laws developed, the article starts with a background exposition of party laws in Nigeria before the beginning of the Fourth Republic.

### ***3. Party Laws in Nigeria before 1999***

The first rudimentary elements of party laws in Nigeria were derived from the larger body of electoral laws, specifically the Nigerian Electoral Provisions Order-in-Council of 1958 and the Elections (House of Representatives) Regulative of 1958, enacted by the colonial administration in the immediate period preceding independence in 1960. These laws were meant to provide a unified legal framework for conducting the 1959 general elections. Although this framework did not require parties to register or meet certain preconditions before participating in the general elections, it nonetheless established the Electoral Commission of Nigeria (ECN) to prepare a voters' register, print and issue ballot, and conduct elections throughout the federation.

Since this framework did not require parties to register before they could participate in the elections, all manner of cultural, religious, tribal, and political organizations sponsored candidates in the elections. This framework also left room for the participation of independent candidates in the elections. Clearly, these laws imitated the pattern in Britain where parties operate under a system of electoral laws that recognize their importance while at the same time not making them a mandatory component of electoral politics. Thus, candidates could run on non-party platforms. One of the consequence of this framework was its omission of registration requirements for political associations encouraged the proliferation of all manner of parties in Nigeria in this period.

This framework remained in place until 1962 when the Federal Parliament replaced it with the Electoral Act of 1962. This Act that became the new legal framework for electoral politics in Nigeria was actually no more than a political statement from a newly independent country that it was capable of giving its electoral politics a legal framework. It did not make radical innovations or even introduce significant changes or additions on the body of legislation left by the colonialists. Parties, as important components of democracy, remained unregulated by law, leaving them free to pursue their goals, source for their funds, and nominate their candidates in whatever way they deemed convenient. Associations, religious and cultural, also remained free to transform into parties without any legal pre-condition attached. The January 15, 1966, military coup that toppled the First Republic led to the suspension of democracy and constitutional order in Nigeria via the Constitution Suspension and Modification Decree No. 1 of 1966. Effectively, this ended party politics in the First Republic.

Nigeria did not witness another attempt at party politics until 1975 when the Military Government of General Murtala Muhammed announced a new democratization program and established the Constitution Drafting Committee (CDC) to design a new constitution and recommend a new political order for the country (Muhammed 1980, pp 41-43). This government also mandated CDC to examine the desirability of parties in the new constitutional order, process of their formation and registration requirements. The recommendations made by CDC ten months later not only became the bulk of party laws in the Second Republic but also had far reaching impact on party politics in the subsequent republics, especially the Fourth Republic. In a move clearly meant to constitutionalize party politics in the Second Republic, CDC recommended banning of independent candidates from participating in any type of election in the new dispensation (Report of the Constitution Drafting Committee 1976). But the most far-reaching was the recommendation made by CDC on the process of party formation. A political association aspiring to register as a political party was required to: one, open functional offices in at least two-thirds of the states in the federation; two, have a national leadership that reflected the federal character principle of Nigeria; and three, have an open membership policy accommodating Nigeria's ethnic and religious plurality.

After debates and subsequent ratification of these recommendations by a Constituent Assembly (CA) set up for this purpose between October 1977 and August 1978, the Federal Military Government on September 21, 1978, adopted and promulgated the CDC Report as the 1979 Constitution of the Federal Republic of Nigeria.

This Constitution became the fundamental law that governed party politics during the days of the Second Republic between 1979 and 1983. It gave organs of the state such as the National Assembly and the Federal Electoral Commission (FEDECO) their statutory powers to legislate for parties and regulate their activities. Sections 201-209 of this Constitution touched on wide ranging topics related to party politics including prohibition of participation in electoral politics on non-party platform; number of parties that should be allowed to operate; their aims and objectives; and their composition and finances. It is however important to note that between September 1977 when the first structures for democratization including the Federal Electoral Commission (FEDECO) and political parties were established and October 1979 when the Second Republic commenced series of military decrees guided the tempo of the transition and served as the legal framework for party politics. For instance, the Federal Electoral Commission Decree No. 41 of 1977 established FEDECO and mandated it with registering parties. The Electoral Decree No. 73 of 1977 widened the powers of FEDECO to include supervision and regulation of party activities. In addition, this decree banned tribal, religious and cultural groups from registering as parties.

Although attempt was later made by Ibrahim Babangida regime between 1987 and 1993 to break with the politics of the past and give Nigeria new democratization structures including a two-party system, substantial part of the party laws were actually derived from laws of the Second Republic. The parties, NRC and SDP, were created by Babangida in order to function as truly democratic in their internal structure while projecting national identity. They were also intended to be egalitarian in nature, thus, accommodating all citizens irrespective of social status, ethnic background, or religious beliefs. Under Sani Abacha's democratization attempt of 1994-1998, the party laws were in most respect similar to those of the past. Their concern was focused on creating truly national parties that would be organizationally and financially viable (Katsina 2013).

#### ***4. Party Laws in the Fourth Republic, 1999-2011***

Nigeria's Fourth Republic began on May 29, 1999, with the inauguration of democratically elected governments at the states and federal level after nearly two decades of military rule, punctuated by two unsuccessful democratization attempts. The inauguration of the Fourth Republic meant that multi-party representative democracy became the new political order for the country. During the 1999 transitional elections, three parties: Alliance for Democracy (AD), All Peoples Party (APP), and Peoples Democratic Party (PDP) sponsored candidates for various elective offices. By 2011 when the fourth general elections were held, the number of registered parties had multiplied to over fifty. Of course not all of these parties had significant electoral strength. Within this period, two major sets of fundamental laws governed party politics. These provided parties with the legal framework that defined the requirements for their formation and registration; their membership; and their ideological and policy orientations. These fundamental laws were the 1999 Constitution of the Federal Republic of Nigeria and the Electoral Act with its series of amendments.

##### **4.1. 1999 Constitution and Party Politics in the Fourth Republic, 1999-2011**

The 1999 Constitution was promulgated via the Constitution of the Federal Republic of Nigeria Promulgation Decree, No. 24 of 1999, as the supreme law that governed the country and its political institutions. The circumstances that led to the adoption of this Constitution started after the death of General Sani Abacha on June 8, 1988, when the new Head of State, General Abdussalam Abubakar, announced a new transition program with May 29, 1999, as the date for swearing in of a newly elected democratic administration (Transition to Civil Rule Political Programme Decree No. 34, 1998). The government set up the Constitution Debate Coordinating Committee (CDCC) on November 11, 1998, to recommend a new constitutional form and order for the country (Abubakar 1998). This Committee recommended for re-adoption of the 1979 Constitution "with relevant amendments" (Tobi 1999). Acting on the advice of CDCC, the government on May 5, 1999 enacted the Constitution of the Federal Republic of Nigeria Promulgation Decree, No. 24 of 1999. This decision meant that the 1979 Constitution had, in effect and with slight alterations, become the 1999 Constitution of the Federal Republic of Nigeria effective from May 29, 1999.

This Constitution incorporated those enabling legislations passed by the military towards democratization of Nigeria including the Civil Rule (Political Programme) Decree No. 34 of 1998; Political Parties (Registration and Activities) Decree No. 35 of 1999; and Presidential Election (Basic Constitutional and Transitional Provision) Decree No. 6 of 1999. By 2011, this Constitution had been amended three times (See Constitution of the Federal Republic of Nigeria [First Alteration] Act, 2010; Constitution of the Federal Republic of Nigeria [Second Alteration] Act, 2010; and Constitution of the Federal Republic of Nigeria [Third Alteration] Act, 2010). Those sections and provisions that dealt with parties and their activities in the Fourth Republic, reflecting those of the Second Republic, remained unchanged. In general, this Constitution covered several aspects of party politics including prohibition of electoral politics outside of party framework; registration requirements; party constitution; aims and objectives; finances; and annual financial and internal audit report. Other issues addressed by the Constitution were ban on party militia; and the powers of the National Assembly to pass acts regulating party activities (Constitution of the Federal Republic of Nigeria, 1999, sections 221-229).

#### **4.1.1 Prohibition of Electoral Politics outside of Party Framework**

Constitutionalizing party politics was the most important component of party law provided in the 1999 Constitution. The Constitution prohibited participation in electoral activities except on party platform. Political activities in this sense included sponsoring and canvassing of votes for candidates, financial contribution to the campaign of any candidate. Specifically, Section 221 of the Constitution provided that “[N]o association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election”. Implicit in this provision is the recognition that parties are important components of representative democracy, whose stabilizing influence in new democracies lies in their role as bridges between the government and the governed, and in leadership selection, recruitment, and training.

#### **4.1.2. Party Formation and Registration**

Registration gives parties statutory recognition as lawful organizations pursuing legitimate goals in the public space. In many democracies, registered status for parties has many incentives such as subvention from the state, participating in designing ballots, and generally making greater inputs in electoral issues that are not available to non-registered political associations (Gauja 2010, pp 65-79). Additionally, registered parties tend to enjoy greater respect and trust from the electorates. This is because voter inclination mostly moves towards parties that show seriousness and commitment in the political system. Perhaps, this makes many democracies to require party registration before participation in their electoral processes. In Nigeria, it was illegal for unregistered associations to nominate and sponsor candidates for elections. Section 222 of the Constitution states that:

*No association by whatever name called shall function as a political party, unless- (a) the names and addresses of its national officers are registered with the Independent National Electoral Commission; (b) the membership of the association is open to every citizen of Nigeria irrespective of his place of origin, circumstance of birth, sex, religion or ethnic grouping; (c) a copy of its constitution is registered in the principal office of the Independent National Electoral Commission in such form as may be prescribed by the Independent National electoral Commission; (d) any alteration in its registered constitution is also registered in the principal office of the Independent National Electoral Commission within thirty days of the making of such alteration; (e) the name of the association, its symbol or logo does not contain any ethnic or religious connotation or give the appearance that the activities of the association are confined to a part only of the geographical area of Nigeria; and (f) the headquarters of the association is situated in the Federal Capital Territory, Abuja.*

Clearly, there are at least five broad preconditions which parties must fulfill before submitting in their applications for registration with INEC. An association must submit the names and addresses of its national leaders to INEC; its membership must be open to all adult Nigerians; a copy of its constitution must be kept with INEC; its name and logo must not have been designed with the intent of maligning any ethnic or religious group; and its headquarters must be located in the Federal Capital Territory, Abuja. These provisions that formed the basis for the existence and legitimacy of parties in the Fourth Republic not only prescribed terms for party registration, but also the nature of the parties that registered and participated in the electoral politics of Nigeria. In requiring parties to adopt open membership in which all citizens could freely join, it is evident that the party laws were interested in seeing the formation of broad-based national parties that institutionally accommodate Nigeria's pluralistic character.

#### **4.1.3. Party Constitutions and other Rules of Internal Organization**

Parties are complex organizations that accommodate various interests and cater to different constituencies. Therefore, they need a set of elaborate internal rules and regulations to manage their affairs. Party constitutions provide the major rules that guide party activities. Subsections 1-2, Section 223 of the Constitution of Nigeria required parties to adopt constitutions for the purpose of managing their internal affairs. In addition, the party constitutions should specify how they select their leaders at national level and demonstrate their commitment to internal democracy. The concern of the party laws here was guarding against sectional bias in the composition of party leadership at the national level. This explains why the relevant sections of the Constitution insisted that the composition of a party's national leadership must reflect the federal character principle of Nigeria.

#### **4.1.4. Aims and Objectives of Parties**

Party aims and objectives are the manifestation of the worldview which a party and its members share. These components give voters wide insights into the type of programs and policies a party plans to pursue if elected. Aims and objectives are therefore central to the character and identity of parties in multi-party democracies. Although the Constitution did not provide parties with their objectives, it nonetheless provided the broad outline of permissible goals which parties could pursue because they did not conflict with Nigeria's national objectives. Section 224 specifically stated that "the program as well as the aims and objectives of a political party shall conform with the provisions of Chapter II of this Constitution "that laid out the fundamental objectives and directive principles of the Nigerian state. Thus, parties could only formulate or promote objectives that conformed with broader national principles and objectives.

#### **4.1.5. Party Finances, Funding, and Financial Report**

The Constitution addressed three aspects of party finances. One, it stipulated that parties should always submit their books of account, which must be up to date indicating their sources of funds and expenditure to INEC for periodic inspection. Two, it banned parties from operating or managing funds and assets outside the borders of Nigeria. In the event a party received donation from a foreign source, the law required that party to inform INEC of the source and amount of the donation within three weeks. Three, it gave INEC the power to examine existing internal financial control mechanisms and or design new control measures to ensure accountability by the parties (Constitution of the Federal Republic of Nigeria, 1999, section 225, subsections 1-5).

Section 226 of the Constitution underscored the need to make public the audited annual financial reports of the parties. This section empowered INEC with the mandate to prepare and submit to the National Assembly parties' annual financial reports detailing their financial status. In a sense, this would be a diagnostic of the financial health and viability of the parties. It also empowered INEC to investigate parties and ensure that they comply with all financial regulations and other safety nets, which it designed in its capacity as the parties' regulatory agency (Constitution of the Federal Republic of Nigeria, 1999, section 226, subsections 1-3).

#### **4.1.7. Prohibition of Quasi-military Organizations**

The scope covered by the 1999 Constitution concerning party politics, as is clear by now, extended to the area of prohibition. Many of its sections banned parties from certain behavior deemed politically unacceptable in the country. One of those was forming any form of quasi-military organization. This provision might possibly be one of the most important regulations imposed on parties by the Constitution. The propensity of politicians to form and arm thugs for political intimidation and for harassing political opponents during campaigns in Nigeria are well known and documented (Human Rights Watch 2004; 2007). In fact, use of violence is one of the cheapest means politicians usually employ to attain their political objectives in Nigeria. Specifically, parties were prohibited from organizing or supporting any form of militia for the purpose of coercion and violence against political opponents. Parties must not employ or arm persons or groups in order to advance their political goals (Constitution of the Federal Republic of Nigeria, 1999, section 227).

#### **4.1.8. Powers of the National Assembly to Enact Party Laws**

These constitutional provisions on party politics were not exhaustive. They simply provide the broad outline of the legal framework that prescribed accepted behavior as well as proscribed the unacceptable for parties. Due to this; the Constitution empowered the National Assembly as the legislative arm of government of the Federal Republic of Nigeria to make additional party laws. In Section 228 of the Constitution, the powers of the National Assembly and the areas which they could legislate for were outlined.

They included passing laws to punish any party or party leader that deliberately violated any part of the Constitution; banning any person who knowingly helped a party violate any part of the Constitution from holding public office; deciding on the annual grant and subvention to parties to help them function effectively; and conferring on INEC additional regulatory powers for effective monitoring of parties. In exercising these powers, the National Assembly had enacted and amended a number of Electoral Acts between 2001 and 2010.

#### **4.2. The Electoral Act and Party Politics in Nigeria, 1999-2011**

The Electoral Act was the other fundamental law that governed party politics in the Fourth Republic. Provisions from this law complimented the 1999 Constitution and served as the framework that guided the conduct of elections and behavior of parties in this period. From December 6, 2001, when the 2001 Electoral Act became effective to 2011, the Act had been amended and or repealed many times by the National Assembly. The 2001 Electoral Act contained provisions such as the power of INEC to refuse registration to any political association and to regulate party activities in any way it considered fit. Provisions such as these apparently negated basic democratic principles and drew wide condemnation from politicians and civil society groups (Electoral Act 2001, section 74, subsection 1). Due to this, the Act was replaced with the 2002 Electoral Act in October 2002. It was enacted to rectify the defects associated with the 2001 Act (Electoral Act 2002, sections 152-153). The 2002 Act was later amended in May 2004 to provide for the establishment of an electoral tribunal to arbitrate in electoral disputes (Electoral Act [amendment] 2004).

On June 6, 2006, the National Assembly repealed the 2004 Electoral Act when it passed the 2006 Electoral Act (Electoral Act 2006, sections 165-166). The new act covered most of the important aspects of party politics including registration of parties and monitoring of their operations, mergers, financial status and disclosure, and regulation on behavior during campaigns and elections. In March 2007 the Act saw a minor amendment that gave INEC an extension to complete registration of voters (Electoral Act [amendment] 2007, sections 10 & 21). This Act remained in force until August 20, 2010, when it was replaced with the 2010 Electoral Act. Before the 2011 general elections, the National Assembly twice amended this Act. These were the December 29, 2010 (Electoral Act [amendment] 2010) and the January 27, 2011 (Electoral Act [amendment], [No. 2] 2011, section 9, subsection 5) amendments. These changes in legislations reflected the response to new challenges associated with democratization in new democracies. It also strongly suggested the continuing search for a robust system of party laws that would guide the conduct of party politics in the Fourth Republic.

The 2010 amended Electoral Act covered party formation, registration and de-registration by INEC; party symbols and their types; merger of parties and its preconditions; and notices of conventions and congresses at national and local levels. Other issues addressed by this Act were nomination of candidates and party primaries; party finances and election expenses. It also provided guidelines for the conduct of parties during campaigns, rallies, and elections, and bestowed on INEC additional powers to supervise party activities besides those originally given to it by the 1999 Constitution (Electoral Act [amendment] 2010, sections 78-102).

##### **4.2.1. Formation, Registration and De-registration of Parties**

Party registration and de-registration were the first questions addressed by the Electoral Act. It required that an association should submit its application at least six months before general elections to INEC which must be approved within thirty days provided it satisfied all registration requirements including paying the prescribed administrative fee (Electoral Act [amendment] 2010, section 78, subsection 1-6). Furthermore, the Act gave INEC the power to de-register a party that failed to win a single seat in the National or State Assembly elections. The implication of this provision is that while INEC could not deny registration to any association that met the necessary conditions, retaining registered status by a party depend on its electoral performance during general elections. Should a party fail to win even a single legislative seat, INEC could legally withdraw the certificate of that party (Electoral Act [amendment] 2010, section 78, subsection 1-6).

Making INEC to register every association that met the requirements of registration meant that at least theoretically the party system was pluralistic. However, in tying the continuing existence of a party with its electoral performance, the law curtailed the number of parties that could operate in the country. On the positive side, this provision reduced the propensity of politicians to establish smaller and weaker parties. On the other hand, smaller single-issue parties that could have animated the environment with deep ideological debates were denied the chance to emerge, since the emphasis was on electorally active parties. Overall, this provision was a gross negation of democratic principles of freedom of political association.

#### **4.2.2. Party Symbols**

Symbolism is central to the image of a party as a political organization. Party laws allowed parties in the Fourth Republic to design and or adopt symbols that best capture their essence and further their objectives. Nonetheless, section 82 of the 2010 Electoral Act prohibited parties from using symbols that conflicted with other existing symbols in the country; symbols that appeared offensive or objectionable to other groups especially religious and ethnic in the country; and using the coat of arms of the country or any other political entity as their emblems. It also prohibited parties from using symbols that were associated with agencies of government; armed forces and other uniformed services; regalia of traditional chiefs; tribal and ethnic groups; religions and cults; and portraits of persons, living or dead (Electoral Act [amendment] 2010, section 82, subsections 1-5).

#### **4.2.3. Merger of Parties**

Mergers, alliances, and coalition building between parties are part of the prominent features of party politics in multi-party democracies. Parties ally with each other against stronger opponents, or altogether merge to improve their prospects for victory during electoral contests. Subsections 1-6 of Section 84 of the Electoral Act required parties intending to merge to notify INEC of their plan at least ninety days before general elections through a joint request signed by their national chairmen, secretaries and treasurers showing resolutions of the individual parties taken at their special conventions approving the merger. The merging parties should also include the name, constitution, manifesto, emblem, and office address of the new party that emerged from the merger in their application package. If the parties satisfied these conditions and have paid the stipulated administrative cost, it became compulsory for INEC to approve their merger within thirty days. Perhaps to forestall a situation where INEC could come under pressure not to approve a particular merger, the Act provided that should the merger request be rejected without valid reason, the parties should proceed with their merger and consider it legally sanctioned (Electoral Act [amendment] 2010, section 84, subsections 1-6).

#### **4.2.4. Notices of Convention and Congress**

Party conventions and congresses serve two major purposes. One, parties use these platforms to elect their leaders and nominate their candidates. Two, parties use them also to amend their constitutions and other internal rules, review their progress, and ratify their major decisions. By tabling leadership appointment, candidate selection, and ratification of major decisions before their congresses for debates, parties display their commitment and respect to the rule of law and internal democracy. These platforms have not always been used in proper ways. Crook and unscrupulous politicians usually turn them into avenues for serving their selfish purposes. This situation is actually more acute in new democracies where party leaders use them to rubberstamp impunity and impose candidates on the party organization thereby truncating internal democracy. The Electoral Act, certainly with this experience in view, required parties to inform INEC of their plan to hold their conventions and congresses to ratify the selection of their leadership and nomination of their candidates. Parties would not therefore convene these types of gatherings or conduct these processes in secrecy (Electoral Act [amendment] 2010, section 85, subsection 1).

In addition, the Act gave INEC the power to participate in these meetings as an observer, with or without the knowledge of the parties concerned. Although parties had the ultimate power to ratify their leaders and candidates' selection not INEC, yet giving the Commission the right to observe these processes was meant to ensure that parties adhere to the minimum accepted principles of internal democracy. Party leaders would be less willing to temper or manipulate the processes substantially if they knew that INEC would likely participate in the exercise as an observer. Third, and perhaps the most revealing of the intention of the law, the Act required parties to adhere strictly to democratic principles in selecting or replacing their leaders and nominating their candidates. Thus, although parties were at liberty to determine the best methods of selecting their leaders and candidates, these methods must not violate basic principles of internal democracy and fair-play. The bottom-line is that parties must not be arbitrary in selecting their candidates. In other words, the methods adopted for candidate selection must conform to democratic principles (Electoral Act [amendment] 2010, section 85, subsections 2-4).

#### **4.2.5. Monitoring of Parties**

The power to monitor parties and their activities conferred on INEC by the Electoral Act was provided in Section 86. Although parties are autonomous organizations with corporate identities, provisions of this section subjected them to regular and statutory supervision from INEC.



Specifically, INEC had the power to monitor their activities and seek any information from them regarding their internal management and organization (Electoral Act [amendment] 2010, section 86, subsections 1-3). This provision effectively made INEC the party sheriff that monitors them to ensure they comply with the provisions of the party laws in their activities. This section of the Act had an additional component that specified the exact punishment that should be meted to a party which violated any provision of this Act. A party that did not adhere to the directives issued by INEC in pursuing its monitoring functions should be fined no less than N500, 000 by a court of competent jurisdiction (Electoral Act [amendment] 2010, section 86, subsections 4).

#### **4.2.6. Nomination of Candidates**

Candidates' selection is one of the most critical aspects of party politics especially in new democracies where the process is often tainted with fraud and violence. The commitment which a party puts into this process points to its overall commitment to democratic values as an institution. In most new democracies, intrigues and imposition of anointed candidates often mar this process. Not surprisingly, the Electoral Act spilled the most ink dealing with issues that were prescriptive, regulative, and prohibitive in their nature and scope concerning parties and candidates' selection process. Subsections 2-3 of Section 87 prescribed the modalities for nominating candidates for elective posts. Parties have the ultimate right to decide whether to use direct or indirect primaries. The concern of the Act here appeared to be focused on ensuring transparent primaries. The Office of the President, Senate, House of Representatives, Office of the Governor, House of Assembly, Council Chairman, and Councilors were the elective positions provided in the Act. Their constituencies were also specified by the Act. Parties that used indirect primaries need to ensure that elections by delegates hold throughout the constituency of the particular candidate. In the case of unopposed candidates, parties must hold special conventions at the appropriate levels where the aspirants would be endorsed by party delegates (Electoral Act [amendment] 2010, section 87, subsections 4, para. a-d).

In terms of prohibition, the Act barred political appointees from participating in their party primaries as delegates (Electoral Act [amendment] 2010, section 87, subsections 8). Before this amendment, incumbent executives at state and national levels relied often on sheer size of their political appointees as delegates to pick their party nomination during primaries. Most of the parties have provisions in their constitutions making serving public officials appointed on their platforms as automatic delegates to their respective party conventions. Therefore, by rejecting this practice, the Act created a fairly equitable playing ground between aspirants. Second, the Act prohibited INEC from accepting candidates from parties that failed to comply with these provisions in nominating their candidates. In other words, even though parties have the ultimate responsibility to decide which candidates bear their flags during general election, the Electoral Act wanted to ensure that party leaders did not abuse their offices by imposing their preferred candidates on party members.

From regulative angle, the Act recognized that no matter the best measures incorporated into a process, dissatisfaction with the outcome of primaries would always be inevitable. Hence, aggrieved and dissatisfied candidates had the right to seek for legal redress with the onus of proof on the complainants. However, the Act prohibited courts from issuing injunctions to stop the conduct of a primary election by any party or of the general elections by INEC. Disgruntled politicians usually play the spoiler during elections by conniving with corrupt judges to derail the entire process through spurious court orders and injunctions. Thus, by expressly banning any court in the country from entertaining legal suits that seek to prevent an election from holding, the Act curtailed those sharp practices. Candidates could sue their parties or INEC, but they were not at liberty to stop an election from holding through legal injunctions (Electoral Act [amendment] 2010, section 87, subsections 10-11).

#### **4.2.7. Party Finances and Election Expenses**

Legislation about how parties generate their funds, spend those funds and nature of their internal financial control mechanisms against fraud covered three areas. The first was the source of the party funds and the accounts it operated. This Act prohibited parties from operating accounts and maintaining assets outside Nigeria. Any party that received funds from outside Nigeria but failed to notify INEC of their sources, committed an offence the punishment of which might include fine or forfeiture of the funds in question (Electoral Act [amendment] 2010, section 88, subsection 1). The second aspect was that parties were required to give detailed annual financial reports to INEC specifying their financial status including earnings, expenditure, cash liquidity, assets and liabilities (Electoral Act [amendment] 2010, section 89, subsection 1-4). The aim was to enable INEC determine if parties complied with existing financial regulations or otherwise.

The third aspect covered in this Section was perhaps the most important. It addressed the issue of election expenses related to the following points. One, the Act empowered INEC to determine the overall expenses parties should incur during general elections in consultation with all registered parties in the country. Two, parties should submit their expenses to INEC in six months from the date of the general elections. Three, parties should submit these expenses with audited reports that provide information on the funds expended by parties as well as the commercial value of goods they received for election purposes signed by their auditors and counter-signed by their national chairmen. In other words, the law allowed parties to receive donations and organize campaign fund raisers, but the funds received from these sources must be fully accounted by the parties. Any party that violated any of these provisions committed an offence that would attract fine from INEC. Also, the Act required these reports to be published in national newspapers to give public an insight into the election expenditure of parties within any specific election period (Electoral Act [amendment] 2010, section 91, subsections 1-8).

#### **4.2.8. Conduct of Parties at Rallies and Campaigns**

Rallies and campaigns are the backbone of mobilization which parties use to create awareness among voters, disseminate their messages, rally support, and attack their opponents. Not surprisingly, campaigns and rallies were part of the major issues which the 2010 Electoral Act addressed. The Act appeared concerned with political decorum in the behavior of parties and their supporters, and with maintaining peace during campaigns. It prohibited parties from using slogans that were abusive to a particular religion, ethnic, or sectional group in Nigerian their campaigns. It also prohibited the use of slanderous campaigns and messages that would likely attract violent reaction from other political groups. Parties were also barred from holding rallies in religious places of worship (Electoral Act [amendment] 2010, section 95, subsections 1-8). The other prohibition in this section was on the use of militia by parties to intimidate and harass their opponents. The Act was clear and emphatic that parties must not organize, train or equip any type of militia or private security for assisting them to attain their objectives during campaigns, rallies or elections. Violation of any of these provisions would attract stiff sanctions and fines.

#### **5. Conclusion**

Generally, the importance and relevance of party laws in new democracies revolved around the need to ensure that parties conform to accepted behavior in their interactions. Without party laws, parties would not be different from private organizations or clubs in democratic states. This article traced the development of party laws from the First Republic and showed that legal framework in the Fourth Republic was, to a significant degree, influenced by those of the previous republics. In the Fourth Republic, the 1999 Constitution of the Federal Republic of Nigeria and the Electoral Act were the two fundamental laws that guided and governed party politics in general. The Constitution as the supreme source of all laws provided the elementary framework while the Electoral Act further offered legislations that defined other aspects of party politics including processes of party formation, symbols of parties, mergers, candidates' selection and party finances. It is clear from the analysis that although party laws in the Fourth Republic, especially the Electoral Act had undergone various changes, yet the basic principles and objectives remained substantially concerned with formulating legal and institutional frameworks through which party politics could be played in the country.

It is apparent that party laws in Nigeria were primarily concerned with the nature of parties that formed and operated in the country. The evidence of this was in the detailed provisions concerning the question of membership, aims and objectives, the registration of prospective parties, and on de-registration of electorally inactive parties. Experience in Nigeria and in other new democracies showed that there was a wide gulf between what the law said on the behavior of parties and what actually obtained on the ground. For instance, most of the parties that registered in the Fourth Republic paraded a national leadership whose composition had met the constitutional requirement of national character principle. In reality however these parties had very little structures, if any at all, in other sections of the country beside those of their founders. In most cases, they were moribund that only show signs of life during elections period. Once elections were over they naturally become inactive again.

These situations do not testify to the weakness of the legal framework that regulated party activities, but rather testify to the defective nature of the enforcement mechanisms that would ensure parties' compliance with these provisions. Much as these laws appeared robust or suited to the conditions of Nigeria's democracy, without the necessary mechanisms for enforcement, they will remain effective only on paper.

As a question of expediency and survival, parties pay more attention to the practical challenges within their environment than what the law says about their behavior and activities. To the parties, laws are important only to the degree they help them address their challenges and promote their goals in the political system. There is the need therefore, when reviewing these legislations as Nigeria matches towards another round of general elections next year, to take into consideration the issue of enforcement of the critical provisions of these laws. There is also the need for formulating laws that guarantee internal democracy within the parties and help them function effectively in the country.

### **References**

- Abubakar, A. 1998. 38<sup>th</sup> Nigeria's Independence Anniversary Speech, Abuja.
- Avnon, D. 1995. 'Parties' Laws in Democratic Systems of Government'. *Journal of Legislative Studies* 1(2).
- Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010.
- Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010.
- Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010.
- Constitution of the Federal Republic of Nigeria, 1999.
- Constitution of the Federal Republic of Nigeria, 1979.
- Constitution of the Federal Republic of Nigeria (Promulgation) Decree, No. 24, 1999.
- Constitution (Suspension and Modification) Decree No. 107, 1993.
- Constitution (Suspension and Modification) Decree No. 1, 1966.
- Electoral Act (amendment) (No. 2), 2011.
- Electoral Act (amendment), 2010.
- Electoral Act, 2010.
- Electoral Act (amendment), 2007.
- Electoral Act, 2006.
- Electoral Act (amendment), 2004.
- Electoral Act, 2002.
- Electoral Act, 2001.
- Electoral Act, 1962.
- Electoral Decree No. 73, 1977.
- Engelmann, F C.& Schwartz, M A. 1957. *Canadian Political Parties: Origin, Character, Impact*. Scarborough, Ontario: Prentice-Hall.
- Executive Power (Constitutional Amendment, Etc.) Decree No. 28, 1990.
- Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 12, 1994.
- Federal Electoral Commission Decree No. 41, 1977.
- FGN. 1976. Report of the Constitution Drafting Committee Containing the Draft Constitution, Vols. I&II. Lagos: Federal Ministry of Information.
- Gauja, A. 2010. *Political Parties and Elections: Legislating for Representative Democracy*. Surrey: Ashgate Publishers.
- Human Rights Watch. 2007. Nigeria, Criminal Politics: Violence, Godfathers and Corruption in Nigeria, Vol. 19(16a).
- Human Rights Watch. 2004. Nigeria's 2003 Elections: The Unacknowledged Violence. Retrieved June 15, 2006. <http://hrw.org/reports/2004/nigeria0604>.
- Janda, K. 2006. How Nations Govern Political Parties. Paper Prepared for the 20<sup>th</sup> World Congress of the International Political Science Association, Fukuoka, Japan.
- Janda, K. 2005. Political Parties and Democracy in Theoretical and Practical Perspectives: Adopting Party Law. National Democratic Institute for International Affairs (NDI), Washington, D.C.
- Katsina, A. M. 2013. 'A Contextual Analysis of Party System Formation in Nigeria, 1960-2011'. *Intellectual Discourse* 21(2).
- Katz, R S. 2004. Democracy and the Legal Regulation of Political Parties. Paper Prepared for USAID's Conference on Change in Political Parties. Washington, D.C.
- Muhammed, M. 1980. Crucial Deliberations for Viable Political Arrangement. In *A Time for Action: Collected Speeches of General Murtala Muhammed*. Lagos: Department of Information, Office of the President.
- Muller, W C. & Sieberer, U. 2006. 'Party Laws'. In R S. Katz & W. Crotty (Eds.). *Handbook of Party Politics*. London: Sage.
- Nigeria (Electoral Provisions) Order-in-Council, LN 117, 1958.
- Presidential Election (Basic Constitutional and Transitional Provision) Decree No. 6, 1999.
- Smith, R. & Gauja, A. 2010. Understanding Party Constitutions as Responses to Specific Challenges. *Party politics* 16(6).
- Tobi, N. 1999. Speech delivered by the Chairman of the Constitution Debate Coordinating Committee (CDCC) While Presenting the Committee's Report to the Head of State, General Abdussalam Abubakar, Abuja.
- Transition to Civil Rule (Political Programme) Decree No. 34, 1998.