

FOUNDATION FOR GOOD GOVERNANCE & DEVELOPMENT IN NIGERIA

PRESS RELEASE

THE JUDICIARY AND DEMOCRACY IN NIGERIA

The 1999 Constitution of the Federal Republic of Nigeria has clearly and explicitly set out the scope and extent of powers of the three organs of government i.e. the legislature, the executive and the judiciary at the Federal and State levels. Under this arrangement each organ of government acts independent of the other. The framers of the Constitution never contemplated a situation where the executive may perform the function of the judiciary or the legislature exercising the powers of the executive or for that matter the judiciary wielding law making functions. They also never envisaged a situation where all government powers will be concentrated in one arm of the government, be it the executive, the legislature or the judiciary. There is wisdom in this arrangement, which is called the doctrine of separation of powers, since concentrating all powers in one hand can lead to arbitrariness and tyranny.

Unfortunately, however, since Nigeria returned to civilian rule and started operating the 1999 Constitution, this time the honoured doctrine of separation of powers has come under consistent attack by the executive arm of government, especially at the federal level. The Federal Government of Nigeria from 1999 - 2007 behaved with impunity and utter disregard to the provisions of the Constitution and to the concept of division of powers. The government in the process created the impression that the legislature and the judiciary were no more than mere appendages of the executive. In this affront to the doctrine of separation of powers by the executive, it is the judiciary that has borne the greatest brunt. There are several instances where the executive has interfered with the functions of the judiciary and prevented it from acting independently or impartially. In addition the executives were selective in obeying court orders; ignoring those that were not favourable to them. Although it should be admitted that sometimes this interference and usurpation of judicial powers and brazen disregard of court orders by the executives have been with the active connivance of some (corrupt) judicial officers.

It is gratifying to note however that of late the judiciary has started asserting its independence and acting impartially in the dispensation of justice. They have also shown that they are ready to weed out the bad eggs among them. This new posture of the courts started manifesting itself during the tail end of the tenure of President Olusegun Obasanjo. The courts, especially at the Federal level, played prominent roles in checking the undemocratic and overbearing style of governance of the President, General Olusegun Obasanjo and contributed in checkmating his blind ambition to continue in office and rule for a third term. On several occasions they ruled against his government and pronounced against his policies. All these judicial victories were possible because some of the judges chose the path of honour and stood by the oaths they took to dispense justice without fear or favour. In this regard, the decision of the Supreme Court to lead by example and to do away with unnecessary technicalities in dispensing justice has also contributed in emboldening some of the judges of the lower courts to deliver well-considered decisions that are balanced, impartial and devoid of technicalities.

As a result of all these, we at the Foundation for Good Governance and Development in Nigeria (FGGN), would like to believe that the country now has a judiciary that is ever ready to assert its independence and adjudicate impartially without taking directives from any quarters. The judiciary has shown exemplary courage in some of the judgments that they have passed recently especially those associated with election petitions. It has demonstrated that it is ready to overturn the results of some of the patently fraudulent elections that took place in April/ May 2007. Some of these decisions by the courts have sent shivers down the spines of all those impostors who stole the mandates of the electorates during the last general elections with the connivance of the INEC. These electoral thieves are now uneasy on their seats because they fully well know that it is just a matter of time before the courts restore to the rightful people their mandates. So far the courts have proved that they are capable of protecting the democratic processes by ensuring that the choices of the electorates at the polls are

FGGN Secretariat

6 Lineker Close

Castlefield, Stafford

Staffordshire, ST16 1AL, UK

Tel: +44 1785 244 636 E-mail: Secretary@fggn.org, info@fggn.org

Website: www.fggn.org

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respected and the result of this is that all of a sudden the common man is looking up to the judiciary for salvation.

However, it is still too early to pass a clean bill of health on the judiciary and on all the judges operating in our courts - from the State High Courts up to the Supreme Court. The judiciary has still in its midst some judges who are willing to be used to pervert the course of justice for a mess of pottage. This category of judges should not be allowed to continue as judicial officers for they have compromised their judicial oaths. The National Judicial Council should identify such judges and flush them out immediately. Nigeria's judiciary requires only men and women of integrity as judges who are prepared to rescue the country from the clutches of sit-tight tyrants in the name of leaders. The country needs only judges who are ready to sacrifice everything in order to prevent the country from drifting into anarchy.

We at the FGGN also hope that what has happened so far is not done to appease the international community by showing that some semblance of justice is being done, therefore buying respect and acceptance to the major beneficiaries of the April 2007 fraud, but that this is a judiciary that has come of age.

In this regard the nation is keenly watching how the various judicial challenges before the Election Petition Tribunals across the country are being played out. So far some of these Election Tribunals have discharged their functions admirably; although the greatest challenge for the judiciary is how it handles the presidential election petitions challenging the election of Umaru Musa Yar'Adua as President of Nigeria. The whole world is watching and following events at the Presidential Election Tribunal handling the election petitions of Muhammadu Buhari and Atiku Abubakar, the Presidential candidates of ANPP and AC respectively. The question on the lips of Nigerians is - will the Presidential Election Tribunal use the opportunity presented by these petitions and arrive at a decision that is fair, impartial, supported by facts and acceptable in law; a judgment that will be respected not only by the parties to the disputes but by all Nigerians? All that Nigerians expect

from the Presidential Election Tribunal members is a decision that must convince all the litigants and indeed all Nigerians that in arriving at their decision no extraneous factors were taken into consideration. Their decision must satisfy this old judicial adage: justice must not only be done but must be seen to be done.

It is in view of the foregoing that we at the Foundation believe that these elections petitions offer the judiciary the opportunity of writing its name in gold, these petitions afford the courts an avenue of showing to the whole world that Nigeria's judiciary has come of age; that ours is a judiciary that understands the doctrine of the separation of powers, respects it and protects it and is prepared to do all that is legally possible to assert its independence and uphold the supremacy of the Constitution. The judiciary must seize this opportunity with both hands to redress all the electoral wrongs perpetrated by the ruling government and INEC during the last general elections. This is what we and other Nigerians expect from the judiciary and it is only by doing that they can convince the citizens of Nigeria that the judiciary is indeed the last hope of the poor, the weak and the downtrodden.

The judiciary in Nigeria should always be guided by what one of the framers of the US Constitution said: That it is true that the judiciary neither has the power of the purse nor of the sword; that although it could neither field an army or the police to enforce its decrees nor could it withhold the budgets of the other branches of government it could yet show itself to be so politically independent, so protective of the peoples' rights, that both politicians and citizens would feel constrained to obey its decisions.

*Long Live the Federal Republic of Nigeria!
Long Live the Foundation for Good Governance
and Development in Nigeria!!*

For and on behalf of *the Foundation*:

Dr. Arabo Bayo
General Secretary

DrArabo@fggn.org
(Tel: +44 7900 588 384)

Dr Ibrahim Hassan
Acting Chairman,
Media & Publicity Committee
Ibrahim.Hassan@fggn.org
(Tel: +44 7852 269 689)

FGGN Secretariat
6 Lineker Close
Castlefield, Stafford
Staffordshire, ST16 1AL, UK

Tel: +44 1785 244 636 E-mail: Secretary@fggn.org, info@fggn.org

Website: www.fggn.org