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SCAN ARTICLE

The Legal framework for Political Party Representation under the Nigerian Law

Uchechukwu Esther Oloworaran*

Abstract

Political party representation is not only an imperative in any egalitarian society; it is one of the hallmarks of democracies. Such representation is largely determined by party structure, political ideologies, the degree of control exerted by party leadership and such intricacies. Political party representation could become a very complex issue due to competing interest and thus lead to internal wrangling, weakening of the party structure and sometimes disintegration of the body. It has also been the subject of very contentious litigation. Using the doctrinal research methodology, the focus of this paper is to appraise the adequacy and efficacy of the laws regulating political party representation. The paper, therefore, evaluates the provisions of the various legal instruments which regulate the activities of political parties to determine the true spirit embodied therein, and the level of compliance exhibited by the political parties. It examines the concept of political party representation in terms of what it entails; its scope of application and implication within the different political groups and the society at large, using PDP and its party constitution as a case study. The paper finds that party representation has largely been regulated by the legal regimes subject to party autonomy in determining its internal representation and governance.

Keywords: Political party, Party constitution, Party representation, Party participation

Introduction

A political party is a legal entity,¹ and as such, proper representation is necessary for its daily running and the attendant legal consequences for participation in governance. Generally, legal representation is a choice and never imposed on a person or a party; however, the scope of activities which a legal representative can perform is usually based on his position, and the definitions of the laws under which he operates. Hence, a legal practitioner working as a lecturer, an in-house attorney, in paid employment, and suchlike has at different times been regulated as to the level of their engagement at different times.

As it regards political parties, various issues determine representation, which the paper sought to address. Political parties are viewed as voluntary public associations that are self-regulatory, and as such, the provisions adopted in a guideline or constitution by such bodies are not only binding on the bodies but are the major determinant of their activities. This leaves internal controls to the standards adopted by such bodies without external influences. Determining the proper person to represent a party has always been a contentious issue, especially in cases where a corporate body is involved, and in cases where the person to be represented is inhibited or has not settled with a previous counsel.

One of the major challenges in party representation arises in a federal system, where the party may, as in the case of Nigeria, be possessed of three strata of authorities. The political parties in Nigeria would usually by the dictates of the law have the Federal, State, and Local government branches. The question which this paper sought to address is the bifurcation of powers and limit of influences within these strata.

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¹ Electoral Act, s 77; *Etim v Obot*(2010) 12 NWLR (Pt 1207)108 at 194-195H-A.

Nigeria, as a federal democracy, has adopted a multiparty system in the advancement of its politics. The trend of party politics experienced over the years has continued to show the tendency for one party to dominate over other parties at any given time resulting in what has been termed as strong or weak parties; and minimal opposition in the corridors of power. One such dominant power to reckon with in Nigeria today is the People's Democratic Party (PDP). Accordingly, the PDP constitution has been used in this paper as a case study in appraising the workings of political party representation especially as applicable to Rivers State.

What does Political Party Representation Entail?

The concise meaning of political party representation has remained elusive owing to the different perspectives from which it has been viewed and discussed by political theorists and analysts. However, its crucial place in politics generally and any democracy has remained unassailable. Party representation is borne out of the need to ensure equality through aggregation of interests, entrench democracy, promote good governance, accountability, and political stability.

Political party has been defined as the association of persons who are interested in canvassing for votes in support of a candidate for election and whose existence has been registered with INEC.² Irrespective of the nature of political parties found within a polity, whether conservative or revolutionary, one major feature is their participation in the exercise of political power, which could be by way of forming the government or acting as opposition.³ These roles are indispensable to the determination of the national policies, political and international alliances. The primary functions of political parties include fundraising, recruiting the political class, conducting election campaigns, educating the electorates, organizing the business of governance, and aggregating public interests and viewpoints in democratic states.⁴

The idea of representation which connotes that one or a selected few (either by proxy, election, or whatever means) puts forwards the ideas, convictions or demands of another person or group of persons represented in the open or acts as an agent is one which practice can be traced in antiquities. The Romans were the first to popularize this practice through its judicial system; although its use became widespread and acceptable within secular, religious and political circles with the progression of time.⁵

According to Castiglione and Warren,⁶ representation has three key features. Firstly, it invokes a principal agent relationship which is not necessarily restricted to territorial and formal basis but by which government can be seen as being responsive to the opinion and demands of the people. Secondly, it identifies with a place for political powers to be exercised responsibly and with a degree of accountability in a process where the citizens have some influence upon and exercise some control over it and thirdly, it allows for the right to vote for representation which is essential for political equality.

² Constitution of the Federal Republic of Nigeria, 1999 (as amended) Cap C23 LFN 2004 (CFRN)s 229, Electoral Act s 152.

³ Maurice Duverger, 'Britannica Politics and Political power' <<https://www.Britannica.com>> accessed 21 September 2024.

⁴ Aliyu Mukhtar Katsina Peoples Democratic Party in the Fourth Republic of Nigeria: Nature, Structure, and Ideology <journals.sagepub.com><<https://doi.org/10.1177/2158244016651910>> accessed 23 September 2024.

⁵ Federico Russo and Maurizio Cotta, 'Political Representation: Concepts, Theories and Practices in Historical Perspective'<https://www.elgaronline.com/collection/Social_and_Political_2020> accessed 10 September 2024.

⁶ Dario Castiglione and Mark E Warren, 'Rethinking Democratic Representation: Eight Theoretical Issues' A paper presented at the Centre for Study of Democratic Institutions, University of British Columbia, May 18-19, 2006.

The term ‘political party representation’ is used to describe the presence and participation of political parties in the political process. Such representation may assume the form of electoral representation wherein political parties can field candidates and vie for the various elective seats; legislative representation where the party has won seat to any of the legislative houses; government representation wherein the party is the one running the government through the executive officers and interest representation where the party is advocating for specific interests, groups or ideologies within the sphere of government. It thus refers to the process by which people get chosen to act in the interest of the community or sectors thereof.⁷ One form of representation which fails to get the attention it deserves is legal representation of the party, achieved through the appointment of party legal adviser by the Party.

Another integral part of representation which is usually underplayed or underscored is participation. Participation is the extent to which individual members of society take part or get involved in the activities in their societies.⁸ Partisan politics is an interesting aspect of representation since it allows participants the liberty to express themselves through their choice of association, ability to choose their representatives and an avenue for making their voice heard through demands for accountability.

Legal framework for Political Party Representation

Considering the diversity of Nigerians, their affiliations, and political interests, it becomes necessary that there be a legal framework for the purpose of entrenching democratic governance, accountability of government, financial discipline and integrity in the electoral processes. A close examination of the laws relating to political party representation discloses three core areas of emphasis: internal democracy, financial regulation, and political participation cum representation.

This is important both for the party system; the elected representatives in government; the common citizens who vote them into office and other key players in the field for the purpose of regulating the various aspects of politics which have come to stay as part of our political heritage. Laws regulating political parties’ activities include the Nigerian Constitution;⁹ Electoral Act;¹⁰ Independent National Electoral Commission(INEC)Regulations,¹¹ Party Constitution,¹² Party Rules, Regulations and Bylaws. Some of provisions of these laws have been subject of judicial interpretation, which forms a viable part of the *corpus lex*.

Constitution of the Federal Republic of Nigeria, 1999 (as amended)

The CFRN which is the grundnorm¹³ provides the basis for the establishment, functions, and powers of political parties as part of the governing structure in the nation. This is by virtue of section 221 which provides that besides a political party; no association can lawfully campaign

⁷ S.M. Omodia, ‘Party Politics and the Challenge of Political Representation in Nigeria’ (2011) (2) (22) International Journal of Business and Social Science 270-275.

⁸ Merriam Webster Online Dictionary, ‘Participation’ <<https://www.merriam-webster.com>> accessed 23 September 2024.

⁹ CFRN 1999 as amended.

¹⁰ Electoral Act No. 4, 2022.

¹¹ Political Parties (Registration and Activities) Regulation 2018.

¹² Constitution of the Peoples’ Democratic Party(PDP) 2017; Constitution of the AllProgressiveCongress (APC) 2022;Labour Party (LP) Constitution and others.

¹³*PDP v CPC* (2011) 17 NWLR (Pt 1277) 485 at 511, paras C-D.

for any candidate at any election or contribute funds to a political party or for the purpose of sponsoring any candidate at an election.

The activities of these political parties are made subject to the Independent National Electoral Commission (INEC), an administrative agency created by law to act as ombudsman for regulating all political parties and electioneering processes.¹⁴ These include conducting referendum where necessary for recall of candidates,¹⁵ constituency delimitation,¹⁶ regulation of parties,¹⁷ recruiting of staff,¹⁸ sorting and counting of ballots,¹⁹ issuing of election forms and so forth.²⁰ Its oversight function extends to revenue accruing to a political party, conduct investigations pertaining to the affairs of such party.²¹ It is also responsible for organizing public enlightenment necessary for sound democratic election.²²

Under the CFRN, an association cannot operate as a political party unless it is registered as such with INEC;²³ its membership is open to all Nigerian citizens without regard to their place of origin, circumstances of birth, gender, religion or ethnicity and the party constitution must also be registered in the principal office of INEC in accordance with prescribed form.²⁴ Such an association must have a symbol or logo devoid of any ethnic or religious connotation or imputation that its activities are restricted to only a part of the Federation.²⁵ The Association must have its headquarters within the Federal Capital Territory (FCT) Abuja,²⁶ although it can maintain party secretariats in each State at the various levels. It is also obligated to notify INEC of any amendment to its registered constitution by registering the amended copy within thirty days of making any alteration thereto.²⁷ Again; the programmes, aims and objectives of the political parties must align with the ideals enshrined in the Fundamental Objective and Directive Principles of State Policy; consisting inter alia of political, social, economic and foreign policy objectives.²⁸

The CFRN further provides for the leadership, membership, recognition and validity of party constitution and rules of political parties necessary for their internal governance and party structure.²⁹ By its dictates, principal officers and members of the Executive Committee or Governing body of any political party must be elected through a democratic process conducted at least once in four years³⁰ and should reflect the federal character of Nigeria.³¹

Political parties are prohibited from using its apparatus as breeding ground for thugs capable of instigating violence to be deployed during election as apparatus for promotion of any

¹⁴ CFRN, s 153, Pt 1, 3rd Sch para 15(a)-(i); Electoral Act No 4, 2022, s 1(2); s 6(1).

¹⁵ *Ibid*, ss 2c, 69, 110.

¹⁶ *Ibid*, ss 71, 72; *NCP & anor v National Assembly FRN & ors* (2016) 1 NWLR (Pt 1492) 1 at 20 paras E-Fs

¹⁷ CFRN, s 225.

¹⁸ *Ibid*, s 8(3), (4).

¹⁹ *Ibid*, s 63.

²⁰ *Ibid*, s 76.

²¹ *Ibid*, ss 225(1), (5), 226.

²² Electoral Act, s 2.

²³ CFRN, s 229.

²⁴ *Ibid*, s 222(a)-(c).

²⁵ *Ibid*, s 222(e).

²⁶ *Ibid*, s 222(d).

²⁷ *Ibid*, s 222(f).

²⁸ *Ibid*, s 224; ss 13-24.

²⁹ *Ibid*, s 223.

³⁰ *Ibid*, s 223(1)(a); 223 (2)(a).

³¹ *Ibid*, s 223(1)(b) and 223(2)(b).

political interest or objective or doing anything likely to cause a reasonable apprehension of such occurrence.³² They are also prohibited from retaining funds or other assets outside Nigeria and retaining funds received from foreign sources. All funds received from sources outside the Nigerian terrain must be fully disclosed to³³ and transferred to INEC within 21 days of its receipt.³⁴ The legislature is further endowed with the power to make laws for the purpose of penalizing actions deemed to undermine the ideals of political party formations.³⁵

Electoral Act, 2022

This is an Act of the National Assembly made specifically for the purpose of regulating elections at all levels of government in Nigeria, INEC being the recognized competent authority.³⁶ In addition to its constitutional duties, the Electoral Act charges INEC with the responsibilities of facilitating voters and civic education, promoting sound democratic election processes and conducting such referendum as may be required of it under the Constitution and federal enactments.³⁷ Section 77 provides for the registration of political parties as corporate body entities with the attendant benefit of its perpetual succession, capacity to sue and be sued, capacity to own and dispose of property and assets amongst others.

It provides for the necessary registration requirements for voters,³⁸ political parties,³⁹ finances and procedures for election participation. Under Part III thereof, it is clearly provided that a political association shall be registered as a political party with INEC only upon its compliance with relevant constitutional provisions and payment of the specified registration fee.

It further provides for the qualification for running for an elective office subject to the CFRN provisions, makes provision for the integration of technological advancement as exemplified by card readers and other smart devices during elections and political party primaries⁴⁰. It also provides for the timeline for submission of list of candidates, criteria for substitution of candidates, limit of campaign expenses, addresses omission of name of candidate or logo of political parties.

The Electoral Act extends its provisions to the nomination of party candidates for election, thus mandating any political party desirous of nominating candidates to run for elective position in government to hold primaries for aspirants to all elective positions.⁴¹ This could be by one of two ways: direct or indirect primaries. The third avenue shall be by way of adoption of consensus candidate.⁴² Direct primaries afford all qualified members of the party the opportunity to vote for their preferred candidate at all strata of the party, while indirect primaries use the delegates and congresses to achieve the purpose. It states that a political party shall not impose nomination qualification or disqualification criteria measures or conditions on any aspirant for

³²*Ibid*, s 227.

³³*Ibid*, s 225(3)(a).

³⁴*Ibid*, s 225(4).

³⁵*Ibid*, s 228.

³⁶ Electoral Act, the Preamble; ss 9, 83.

³⁷ *Ibid*, s 2.

³⁸ *Ibid*, s 1-3.

³⁹ *Ibid*, s 68(1)-(3).

⁴⁰ *Ibid*, s 47(2); *INEC v Peterside & ors* (2016) 17 NWLR (Pt 1512) 55 SC.

⁴¹ Electoral Act, s 84(1).

⁴² *Ibid*, s 84(2), (4)-(8), (9)-(15).

any election in its constitution, guidelines, or rules⁴³ except in accordance with the dictates of the CFRN.⁴⁴

It also provides for electoral offences and punishment. In furtherance of section 227 of the Constitution dealing with political thuggery; the Electoral Act penalizes the offence of political thuggery in terms of a monetary term ranging between N500,000 for first offenders and N700,000 for subsequent offenders and N50,000 for each day the default continues.

INEC Regulations

Although regulations and guidelines are by their nature subsidiary legislation, they are deemed to have the force of law if they are properly and duly made by an appropriate authority and are not in any way inconsistent with the provisions of the Constitution or any other extant law. The Constitution endows INEC with the powers to issue regulations and guidelines.⁴⁵ By virtue of this authority, INEC has issued various such instruments in furtherance of its duties which have binding effect on political parties and their members. Some of the regulations relate to registration of new political parties,⁴⁶ code of conduct for political parties,⁴⁷ conduct of elections,⁴⁸ party primaries⁴⁹ and other aspects of political party activities. Consequently, non-compliance with INEC Rules, Regulations and Guidelines has legal effects which are likely to adversely affect a political party in default.

Party Constitution

Nigeria, from its infancy, has operated a multi-party system which allows for diversity of political ideologies, party structure. One hallmark of their existence or establishment is a written constitution. In *Mamman v Bwacha*,⁵⁰ the Court of Appeal affirmed the power of political parties to establish their own rules when it stated that by the provisions of section 223(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), registered political parties are empowered to enact constitutions and make rules to administer the affairs of the party throughout Nigeria.

The validity of the constitution and rules of political parties necessary for their internal governance and party structure is constitutionally provided for and recognised.⁵¹ Accordingly, all political parties within the Nigerian polity are governed by their various party constitutions which provide for the supremacy of its provision subject to the CFRN and other laws over its members, organs, and officers.⁵² This is the standard practice the world over. Any provision contained in party Rules, Regulations and Guidelines which is at variance with the party constitution goes to a nullity. Again, matters arising within the party and considered internal affairs are not subject to litigation except as provided under the party constitution.

⁴³ *Ibid*, s 84(3).

⁴⁴ CFRN, ss 65, 66, 106, 107, 131, 137, 177 and 187.

⁴⁵ CFRN, s 153.

⁴⁶ Guidelines for the Registration of New Political Parties 2014.

⁴⁷ Revised Code of Conduct for Political Parties in Nigeria, 2018.

⁴⁸ Regulations and Guidelines to the Conduct of Elections 2022.

⁴⁹ INEC Guidelines for Party Primaries 2023.

⁵⁰ (2017) 1 NWLR (Pt 1547) 425 at 463, paras G-H.

⁵¹ CFRN, s 223.

⁵² PDP Constitution, art 2; APC Constitution 2014, art 2; and LP Constitution, art 7.

The party constitution has the prime of place in regulating the activities of a political party and determining its political representation. It is known to regulate all internal affairs of the party. Party constitutions generally provide for the name of the party, the associated insignia, its supremacy subject to the CFRN and any other extant law as well as binding nature on members, aims and objectives, membership, administrative organs, meetings amongst others. The nomination of candidates for elective positions, screening as well as voting is usually determinant on the internal rules and procedures adopted by a political party and embodied in their constitution and byelaws.⁵³

The Supremacy of Party Constitution on Issues of Political Party Representation: The PDP as a Case Study

The Constitution of the Peoples' Democratic Party (PDP Constitution) has twelve (12) chapters, consisting of 67 sections and four schedules (I-IV). Some of the key issues addressed by the constitution include party identity and aspiration,⁵⁴ membership,⁵⁵ party structure,⁵⁶ powers and functions of officers,⁵⁷ mode of election of officers,⁵⁸ funding,⁵⁹ disciplinary procedure,⁶⁰ appeals,⁶¹ miscellaneous provisions which include power to amend the constitution and interpretation.⁶² It is the document governing the activities of the PDP and subject to the dictates of the CFRN and any extant law in Nigeria; its provisions are made supreme and binding on all organs of the party.⁶³ By this supremacy clause, its provisions are not subject to external influences or interpretation.

The party constitution, thus, represents some sort of contract between PDP (or any other political party for that matter) and its members. The notion of supremacy of party constitution helps in maintaining stability within the party by striking a balance between the protection of party interest and promotion of self or sectional interest amongst party members. In *Pali v Abdu*,⁶⁴ the Supreme Court of Nigeria (SCN) pronounced on the supremacy of party constitution over its members thus:

A political party is like a club, a voluntary association. It has its rules, regulations and constitution. Members join the party of their own free will. By joining, they have freely given their consent to be bound by the rules, regulations, guidelines and constitution of the party. The rules of the party must be obeyed by all members of the party, as the party's decision is final over its own affairs... The party is therefore supreme and has the final say or decision. Members of a political party must understand and appreciate the finality of a political party's decision over its domestic or internal affairs. The court would only interfere where the party has violated its own rules.

⁵³PDP Constitution), art 50(1).

⁵⁴ PDP Constitution, art 1-7.

⁵⁵*Ibid*, arts 8-11.

⁵⁶*Ibid*, arts 12-33.

⁵⁷*Ibid*, arts 34-48.

⁵⁸*Ibid*, arts 49-50.

⁵⁹ *Ibid*, arts 51-56.

⁶⁰*Ibid*, arts 57-60.

⁶¹*Ibid*, arts 61-62.

⁶²*Ibid*, arts 63-67.

⁶³*Ibid*, art 2.

⁶⁴ (2019) 5 NWLR (Pt. 1665) 320 at 340-414, paras F-A; *Lau v PDP* (2018) 4 NWLR (Pt 1608) 60 SC at 133; *APC v Karf* (2018) 6 NWLR (Pt. 1616) 479 SC at 5526.

The PDP constitution provides for the structural organization of the body which is categorized into six levels: Ward, Local government, Senatorial district, State, Zonal and National levels.⁶⁵ For election purposes however, the Federal Capital Territory Abuja is deemed a State, while informal units such as the State House of Assembly Constituency, Federal Constituency and Senatorial District are set up to aid in mobilization of voters.⁶⁶ This represents the administrative style adopted by the party in the management of its affairs. The ensuing categorization takes into consideration such salient factors as convenience, proximity and flow of communication between party members and party leadership. It also gives one a peep into the hierarchical order.

The Constitution further provides for twenty organs of the Party which are responsible for decision making. These are Ward Executive Committee, Ward Congress, Local Government Area Executive Committee, Local Government Area Caucus, Local Government Area Congress, Senatorial District Working Committee, Senatorial District Caucus, State Working Committee, State Caucus, State Elders Committee, State Executive Committee, State party Congress, Zonal Working Committee, Zonal Executive Committee, Zonal Congress, National Working Committee, National Caucus, National Board of Trustees, National Executive Committee, and National Convention.⁶⁷ Each of the aforementioned organs within the party system is a distinct creation and independent unit under the party constitution, with the composition of members and functions expressly stated and defined therein.⁶⁸

All these organs of PDP consist of persons elected, selected, or appointed within the party to represent and serve the interest of the party at the various structural levels or who had occupied such position of stewardship.⁶⁹ These are party members, party leaders or political office holders who manage the affairs of the party, raise funds and implement the decisions of the body.

This paper engages political party representation from three perspectives: self-representation, interest group representation and party representation.

Self-representation

It has been established earlier in this paper that participation is a crucial part of political party presentation. Chapter 2 of the PDP constitution is instructive as it relates to membership of the party.⁷⁰ Section 8(1) thereof provides that membership of the Party is open to all Nigerians who have attained the age of 18 years, and who undertake to abide by the Constitution of the Party. This is in tandem with the inalienable right of freedom of association and expression without discrimination. A person interested in becoming a member of PDP must register at the ward where he or she hails from or ordinarily resides or carries on business and pay the prescribed registration and other fees before being admitted into the party.⁷¹

An application for membership must first be considered by the Ward Executive Committee, which may accept or deny same, and thus does not automatically qualify one but a

⁶⁵ PDP Constitution, art12(1).

⁶⁶ *Ibid*, art 12(2).

⁶⁷ PDP Constitution, arts 13(1)(a)-(t).

⁶⁸ *Ibid*, arts 14-33.

⁶⁹ *Ibid*, arts 14(1); 15(1); 16(1); 17(1); 18(1); 19(1); 20(1); 21(1); 22(1); 23(1); 24(1); 25(1); 26(1); 27(1); 28(1); 29(1); 30(1); 31(1); 32(1); 32(1);33(1).

⁷⁰ *Ibid*, Pt 1 and 2.

⁷¹ *Ibid*, art 8(4).

denial is subject to review by the next higher organ of the body.⁷² A registered member, however, is entitled to a membership card⁷³ and takes on certain rights, obligation and privileges which include the right to participate in all party activities,⁷⁴ right to vote and be voted for at party meetings and election.⁷⁵ Furthermore, members of the party who are residents of foreign nations with diplomatic ties to Nigeria may establish country chapters of the party provided they are at least fifty in number; although they are entitled to all the rights associated with membership only if registered at their respective wards in Nigeria and in good financial standing.⁷⁶

This idea of self-representation is therefore the characteristic that allows a person to belong to any political party of his choice or faction of it, present himself for nomination, seek support amongst party members, express his personal views and conviction at stakeholders meeting, campaign for and vote for any candidate of his choice amongst others. This level of representation is mostly found at the ward level, which has politically come to be known as the grassroots. It must however be noted that all self-interest must be subjected to party interest, and concessions must be made when necessary.

Interest group representation

This is akin to an advocacy group which projects and canvasses for the interest of specific groups or ideologies within the party system. This type of representation is usually in relation to persons considered vulnerable, gender specific, minority, particular community etc. It could relate to specific goal actualization, which may be educational, charitable, social, or economic empowerment and such like. The existence of this type of representation can also form a formidable pressure group capable of shaping both party and national policies.

Using the PDP Constitution for example, the existence of such interest group representation is exemplified in the person and office of the Woman Leader which can be found at all strata.⁷⁷ The role of the National Woman Leader is to mobilize and organize women; initiate and implement strategic programmes and policies aimed at endearing the party to the womenfolk and co-ordinating the activities of the Zonal and State Women Leaders.⁷⁸ There is a manifest intention within the PDP constitution to include and expand women participation in the activities and leadership of the PDP. The PDP Constitution provides for compulsory women representation within the Working and Executive committees, Board of Trustees (BoT) inclusive. Interestingly, PDP has seen a few females emerge contest elections and win at all levels of government (Ward Councillors, House of Assembly members, Deputy Governors to say the least); Rivers State is a very good example.

Similar provision can be seen with respect to the youths. The impact that youths can make in any organisation wherein they belong cannot only be seen but felt as they bring in their perception, strength, vibrancy, and innovation while advancing for their own peculiar needs. Room is made for youth participation through the office of the Youth Leader at the National⁷⁹

⁷² *Ibid*, art 8(5).

⁷³ *Ibid*, art 8(6).

⁷⁴ *Ibid*, art 10(1)(a).

⁷⁵ *Ibid*, art 10(1)(j).

⁷⁶ *Ibid*, art 18.

⁷⁷ PDP constitution, arts 14(1)(j), 16(1)(o); 19(1)(f) and (i); 21(1)(j), 24(1)(q); 26(1)(i), 27(1)(n); 29(1)(k), 31(1)(q).

⁷⁸ *Ibid*, art 43(1) and (2).

⁷⁹ *Ibid*, art 44.

and other levels of the party.⁸⁰ The duties of the Youth leader include mobilizing the youth for the attainment of party objectives. These two positions can be found at all levels or strata of the PDP.

A closer examination of the PDP Constitution also shows the compulsory inclusion of the persons considered vulnerable or handicapped in the society. The Caucuses which are riddled with the responsibility of deliberating on urgent and important issues affecting the politics and economy of the party at whatever level it is constituted are structured in such a way as to admit physically challenged persons into their meetings: one at the local government area level, two at the State level and three at the Zonal level.⁸¹ Six physically challenged persons are also compulsory members of the National Working Committee, each of whom shall be elected from the six geopolitical zones.⁸²

Another level of interest group participation can be seen in the attempt to bring in party representative from all geo-political zones in the country and in some cases all the States of the Federation. This policy aligns with the position of the CFRN earlier enunciated in this work wherein it was if members of Executive Committee and Governing Council must be determined along the line of federal character. Each of the representatives herein identified is able to canvass for and demand for the concerns and development of their constituency.

Party Representation

Styles of representation at party level have been defined by the proportion of representative within the parties who are partisans, delegates, or trustees.⁸³ This is usually determined by the degree of party leadership's control over the nomination and party socialization, the regularity of the party representation in government and proportion of delegates within the party. Party representation can be seen within the context of the Board of Trustees⁸⁴ which safeguards the ethics of the party; formulate the policies, programmes, and activities of the Party at the national level and is vested with the assets of the party amongst other functions. It is also apparent within the various Executive Committees, Working Committee and Caucuses which bind all party members by decisions made at Party Conventions, Congresses, and Caucuses through delegates.

Another form of representation at the party level is legal representation. This aspect of representation deals with the need of the party to be guided on all legal issues and to be represented in legal proceedings (be it court matters, arbitration or tribunal). The exigencies involved are met by the office of the Legal Practitioner provided at all levels of its structure by the PDP constitution.⁸⁵ The role of the Party Legal Adviser, who must be a legal practitioner, is indispensable as he does not only advise the party leadership on legal matters but represents the party and her members in court and interprets the laws, regulations and constitution of the party where there are ambiguities.⁸⁶ Beyond these, the legal practitioner may necessarily prepare or vet legal documents on behalf of the party and perform such ancillary duties as is usually associated with his trade. These he does with a view to protect the party's interests. It is important that note that while the office of the National Legal Adviser to the extent that he must

⁸⁰ *Ibid*, arts 14(1)(k), 16(1)(p); 19(1)(f); 21(1)(k), 24(1)(r); 26(1)(j), 27(1)(o); 29(1)(i), 31(1)(r).

⁸¹ *Ibid*, arts 17(1)(j); 22(1)(l), 27(5)(i).

⁸² *Ibid*, art 31(1)(t).

⁸³ Eva H Onnudottir, 'Political Parties and Styles of Representation' (2014) (2)(6) <journalsSagepub.com ><https://doi.org/10.1177/1354068814560934> accessed 26 September, 2024.

⁸⁴ PDP Constitution, art 35(1), (5).

⁸⁵ *Ibid*, arts 14(1)(p), 16(1)(m), 19(1)(e); 21(1)(e), 24(1)(o); 26(1)(f), 27(1)(m); 29(1)(j), 31(1)(o).

⁸⁶ *Ibid*, art 42(1)(a)-(c).

be at least 10 years post call before he can occupy the seat, such qualification or limitation depending on one's persuasion is not applicable to Legal Adviser at the other five stratas; at least not in the book.

Section 34 of the PDP constitution specifically provided for the place of National officers of the party 'who shall be men and women of integrity and demonstrable competence and shall perform the functions assigned to them in this Constitution'. It provides for the offices and expressly stipulates the functions of the National Chairman and Deputy, National Secretary and Deputy, National Treasurer and Deputy, National Financial Secretary and Deputy, National Organizing Secretary, National Publicity Secretary and Deputy, National Auditor, National Legal Adviser, National Women Leader And Deputy, National Youth Leader and Deputy.⁸⁷ Similar offices are created and the nomenclature replicated at the Zonal, State, Senatorial district, Local government and Ward levels for officers occupying such position, although the relevant organ represented must be attached as a prefix to the designation for the purpose of distinction and easy identification of the person/unit addressed. It is important to note all other officers at the Zonal, State, Local Government Area, and Ward levels, shall in relation to their respective functions, have the same powers as their corresponding National officers,⁸⁸ this we shall discuss succinctly.

Leveraging on the State Executive Committee (Executive Committee) which function is to identify and resolve political, social and economics of concern to the State; administer the party in the State and implement the decisions of the State Congress and directives of the National Working Committee, the National Executive Committee and the National Convention and to prepare the annual budget of the State Branch of the Party; an examination of the PDP Constitution gives one further insight into its composition of the body.

By virtue of section 24(1) of the PDP constitution, the State Executive Committee comprises of:

- (a) the State Chairman, who shall be the Chairman;
- (b) serving and former Presidents or Vice Presidents of the Federal Republic of Nigeria, if members of the party from the State;
- (c) serving and former Governors and Deputy Governors of the State, if members of the Party;
- (d) members of the National Assembly from the State, who are members of the Party;
- (e) principal officers of State House of Assembly who are members of the Party; and not more than six (6) serving members of the State House of Assembly spread across the State who are members of the party;
- (f) serving and former members of the National Executive Committee and serving members of the Zonal Executive Committee of the party from the State who are still members of the party;
- (g) serving and former members of the Board of Trustees from the State who are still members of the party;
- (h) the State Deputy Chairman;
- (i) the three State Vice Chairmen;

⁸⁷ *Ibid*, arts 35-43.

⁸⁸ *Ibid*, art 46.

- (j) the State Secretary and the State Assistant Secretary;
- (k) the State Treasurer and the Assistant State Treasurer;
- (l) the State Organizing Secretary and the State Assistant Organizing Secretary;
- (m) the State Financial Secretary and the State Assistant Financial Secretary;
- (n) the State Publicity Secretary and the State Assistant Publicity Secretary;
- (o) the State Legal Adviser and the State Assistant Legal Adviser, all of whom shall be legal practitioners;
- (p) the State Auditor and the State Assistant Auditor;
- (q) the State Woman Leader;
- (r) the State Youth Leader;
- (s) two ex-officio members, one of whom shall be a woman, from each of the three Senatorial District elected by the State Congress;
- (t) all elected Local Government Council Chairmen and Vice Chairmen who are members of the Party;
- (u) all elected Local Government Area Party Chairmen in the State;
- (v) former principal officers of the National and State Assembly from the State produced by the party who are still members of the party
- (w) All former State Working Committee members who are still members of the Party; but only former State Chairmen, Deputy Chairmen and Secretaries shall have voting rights; and
- (x) serving and former Chairmen and Secretaries of the State Elders Committee who are still members of the Party.

Elaborating on the nature of political party representation ingrained within the PDP, one can see within the State Executive Committee; a well thought out inclusive strategy to accommodate all classes of persons from all walks of life: males, females, youths, elders, professionals, politicians, administrative officers; thus, taking advantage of their wealth of experience. There is also an effort to cover geographical spread in terms of community representation. This is evident from the calibre of persons who may be admitted into the body. Most of these people are elected officers and political office holders who have either served or are serving their term. Professionals such as legal adviser and auditor are included for the purpose of guiding the party through processes requiring skills and expertise. These people act as party's spokespersons in their respective sphere of influence.

It is important to note that most of the other bodies within the PDP are similarly composed, with slight variations to more accurately define/reflect the strata involved and to accomplish the set target. One thing, however, is clear: a person must not only have been a member of the party but must remain in the party to be relevant or take advantage of any privileges or benefit accruing to members. This, in my view, is neither surprising nor discriminatory in view of the incessant defection of politicians from one political party to another, in pursuit of personal ambitions and protection of self-interest. This phenomenon has commonly come to be known as cross carpeting.

A cursory look at section 32 of the PDP Constitution which provides for the Board of Trustees (BoT), its membership and functions establishes without a doubt the submissions already made with respect to party representation made in this paper. Its membership includes selected, elected, and political office holders at the national level who are either serving or had served out their tenure, founding members of the party, Chairman of the Serving Governors'

forum, five members (of whom two must be female) from each of the geopolitical zones of Nigeria, one representative from each State of the Federation and past Chairmen and secretaries of the BoT. The BoT members as registered Trustees for PDP are responsible for upholding the ethic of the party, formulating party's policies and programmes at the national level, maintaining the assets of the party and mediating disputes between the executive and legislative arms of government amongst other duties.

The provision of article 46(1) of the PDP Constitution is deserving of attention as it is the basis of the bifurcation of powers at all levels of PDP and autonomy of the various units. It states:

Except where the provisions of this Constitution state otherwise, all other officers at the Zonal, State, Local Government Area, and Ward levels, shall in relation to their respective functions, have the same powers as their corresponding National officers.⁸⁹

Notwithstanding the clear provision of the said article 46(1), conflicts have sometimes arisen as to the true extent of autonomy granted to the lower stratus thereby. This has thus become the subject of judicial pronouncement in the case of *Akawo v PDP & 2 ors*;⁹⁰ wherein the Court, interpreting Article 46(1) of the PDP's Constitution, affirmed that the State Legal Adviser has the authority to appoint legal representation for the party at the State level. In the said case, Akawo as State Chairman of PDP sought an order of injunction restraining the Party and the National Chairman from dissolving, suspending, or truncating the tenure of the Rivers' State Executive Committee, the Local Government Area Executive Committees and the Ward Executive Committees until May 22, 2024, when their four-year term would expire, among other reliefs. This was following the decision of the PDP national body to dissolve same for alleged anti-party activities. The said Orders were granted by the court.

A similar issue also arose in the case of *Victor Oko-Jumbo & 2 ors v Martin Amaewhule & 25 ors*,⁹¹ wherein the claimant sought an order of the Federal High Court, Port Harcourt declaring the seats of the 27 lawmakers who purportedly defected from the PDP to APC vacant. At the hearing of the matter, the PDP National Legal Adviser (Kamaldeen Ajibade, SAN) by an interlocutory application challenged the appearance of John Musa SAN as counsel for PDP and the authority of the State Legal Adviser Kingsley Chukwu Esq (now SAN) to appoint him as legal representation for the party. He argued that he was the proper person to do the matter by virtue of his office. Relying on the earlier decision of the FHC, Abuja in *Akawo v PDP*; the court per Obele J held that the National Legal Adviser of the PDP lacks the authority to ask for the withdrawal of Joshua Musa SAN from the case as he was properly briefed. In its ruling, the court affirmed that legal advisers at different levels possess equal legal powers. The court therefore struck out Ajibade's application with cost and granted an order of injunction restraining the PDP National Legal Adviser from interfering with the from interfering with the State Legal Adviser's duties on behalf of the Rivers State PDP chapter.⁹²

⁸⁹ PDP Constitution, art 46.

⁹⁰ PHC/ABJ/CS/112/2023 (Unreported), Federal High Court sitting in Abuja, Judgment delivered on 20 September 2023; Ochogwu Sunday 'Rivers Crisis: Appeal was Authorized- PDP Legal Adviser Counters Party Leadership' Daily Post Online (16 July 2024) <<https://dailypost.ng/2024/07/16/rivers-crisis-appeal-was-authorized-pdp-legal-adviser-counters-party-leadership/>> accessed 23 September 2024.

⁹¹ FHC/PH/CS/90/2024 (Unreported) Federal High Court, Abuja Division, Judgment delivered on 31 July 2024.

⁹² PDP Constitution, art 42

These two decisions cited above represent the position of the law, and same has not been appealed. Both cases decidedly upheld the supremacy of the PDP Constitution which granted autonomy to the various units and did not make one subservient to the other. Again, although the issue of legal representation was specifically dealt with as it regards the State Legal Adviser; the cases can be relied on and applied *mutatis mutandis* in respect of all other officials of PDP whose offices are specifically mentioned in the party constitution as the said section 46(1) unambiguously provided for parity of powers between ‘all other officers’ and their counterpart at the national level with respect to their functions. The legal jurisprudence has thus been enriched by the industry of both counsel and the court.

Having dealt with the question of representation within a political party system, other relevant issues to be considered are ‘Who can contest election as party officers and political office holders?’ and ‘How are these officers elected to office?’ The answer to these questions can be found in the PDP constitution which provides for the nomination, screening and election of candidates. First, every registered member of the PDP who has satisfied all the criteria set down by law and within the party for nomination and election is eligible to contest for any of the offices of the party.⁹³ However, he must have been a member for about one year and six months and have good financial standing.⁹⁴ These conditions are not static and could be circumvented through a waiver by the appropriate Executive Committee. Party officers at the various levels are elected at the National Convention, or Zonal, State, Local Government Area and Ward Congresses convened for that purpose.⁹⁵

Subject to the provisions of the CFRN, Electoral Act, and the party constitution; nomination of candidates for elective positions at all levels are concluded through primaries conducted by National Executive Committee of PDP under the oversight of INEC.⁹⁶ The National Executive Committee is responsible for formulating the guidelines and regulations needed to facilitate the process.⁹⁷ Primaries are conducted for the Presidential candidates at the National Convention, gubernatorial candidates at the State Congress, senatorial candidates at the Senatorial constituency headquarters, House of Representative members at the Constituency headquarters and Local government council chairmen and House of Assembly aspirants at the Local government constituency headquarters.⁹⁸ Direct primaries, however, is used for nomination of ward officers, councillorship candidates and three delegates (one of whom shall be female) to the Local Government Congress and State Congress at a Congress held for that cause.⁹⁹ In both direct and indirect elections, only the candidate with the highest number of votes can validly be declared winner. This goes to entrench internal democracy.

By implication, all primary elections which are not accomplished by way of direct primaries are indirect and thus make room for voting through delegates. It would also appear that these delegates are themselves elected at the Ward level (which is the grassroots) through popular vote as direct primaries allows all card-carrying members of the party to right to cast their votes. Although the PDP Constitution had nothing on candidature by consensus; as though

⁹³ *Ibid*, art 49(2).

⁹⁴ *Ibid*, art 49(4)

⁹⁵ *Ibid*, art 47(2), 49(1)

⁹⁶ *Adegbuyi v APCand others* (2015) 2 NWLR (Pt 1442) 1 at 22 para H.

⁹⁷ PDP Constitution, art 50(1).

⁹⁸ *Ibid*, art 50(2); Electoral Act s 87; *Owuru v Adigwu* (2018) 1 NWLR (Pt 1599) 1 (SC) at 30-31, paras G-B; *Akpatason v Adjoto* (2019) 14 NWLR (Pt 1693) 501 at 519, paras A-D.

⁹⁹ PDP Constitution, art 50(3); *Braimoh & anor v Alaba & ors* (2014) 15 NWLR (Pt 1430) 321 at 370-371 para E-C.

to say that such a situation is never envisaged, in practice it does happen and where this is the case; the provisions of the Electoral Act must be strictly complied with.

The courts have severally held that the nomination and sponsorship of a party during elections is squarely within the internal affairs of a political party and therefore not justiciable,¹⁰⁰ except where the process falls foul of the provisions of the party constitution and bylaws, Electoral Act or the Nigerian Constitution. Accordingly, once a name has been submitted to INEC as a nominee of the party; INEC cannot reject or cancel the nomination or sponsorship of the candidate.¹⁰¹ Even the presenting party cannot withdraw or substitute that person without good reasons.¹⁰² The nominated candidate thus becomes the party's flagbearer, entitled to party sponsorship. The case involving Celestine Omehia and Rotimi Amaechi¹⁰³ is a typical example of the stance the courts would assume in such a situation. In that case, Amaechi who was nominated at the party primaries was abandoned by the party in favour of Omehia who eventually went to the polls, won the election and was sworn in the Executive Governor of Rivers State. Sequel to the ensuing legal battle which went up to the apex court, the SCN nullified the elections won by Celestine Omehia and by way of consequential order, declared Amaechi the valid candidate of the State and the Governor of the State. Even though the position of the law has developed beyond *Amaechi v INEC* herein to,¹⁰⁴ there is no gainsaying the fact that party primaries duly conducted is crucial in the determination of a candidate for an elective position. Indeed, by virtue of section 285(13) of the CFRN, no election tribunal or court shall declare any person a winner at any election in which such a person has not fully participated in all the stages of an election.¹⁰⁵

Conclusion

This paper concludes on the note that there is elaborate and conscious effort on the part of those who drafted the PDP constitution to foster national integration and be all inclusive in its sphere of influence by making room for all categories of person to not only belong to the party but to be part of its activities. It provides for equal distribution of power between the three tiers of government as a means of engendering harmonious co-existence and rotation of power amongst the power brokers in Nigeria. It also provides for internal democracy and accountability. The party ideology is evident in both the motto of the Party, 'Justice, Unity and Progress' as well as the slogan, 'Power to the People'.

However, the question of equal power distribution and gender participation within political parties and politics in terms of elective positions has continued to beg for answers despite the apparent 'all-inclusiveness' embodied in legislation and party ideologies. The answer to these two issues has largely been in the negative. This is in the trail of allegations of manipulation of

¹⁰⁰ *Faleke v INEC* (2016) 18 NWLR (Pt 1543) 61 at 134-135; *Adegbuyi v APC* (2015) 2 NWLR (Pt 1442) 1 at 22, para H, *Olofu v Itodo* (2010) 18 NWR (Pt 1225) 545 at 576 paras B-C.

¹⁰¹ *Ombugadu v CPC* (2013) 3 NWLR (Pt 1340) 31 at 71-72 paras H-A.

¹⁰² *Ibid*, 72 paras A-C.

¹⁰³ *Amaechi v INEC & Ors* [2007] 18 NWLR (Pt. 1065) 170; Unachukwu Stephen Chuka 'A Critique of Section 141 of the Electoral Act, 2010 (as Amended) and the Supreme Court Decision in the Case of Rotimi Amaechi v INEC & Ors (2008) 5 Nwlr (Pt. 1080) 227' (2013) (5) (1) *Port Harcourt Law Journal* 171.

¹⁰⁴ *Isah v INEC* (2016) 18 NWLR (Pt 1554) 175 SC at 225 paras E-G, *CPC v Ombugdu* (2018) 18 NWLR (Pt 1385) 66 SC at 144-145 paras G-A, *Adeleke v Oyetola* (2020) 6 NWLR (Pt 1721) 440 SC.

¹⁰⁵ *Enang v Asuquo* (2023) 11 NWLR (Pt 1896) 501 SC at 530-531 paras H-A, *Koko v Koko* (2023) 13 NWLR (Pt 1901) 249 SC

votes, lack of transparency, vote buying, political *godfatherism* and *thuggery*; all of which have continued to shroud and often mar elections in Nigeria. PDP has been fortunate to be the ruling party in Nigeria for a continuous period of 16 years (1999-2015) and remains the strongest opposition to any other party in power at any time. It is, however, not an exclusion to or immune to this situation. There is need to do more.



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