



## Has it Ended in Tears? Party Constitutionalisation and Strengthening of Constitutional Democracy in Nigeria<sup>1</sup>

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### Abstract:

Political parties have remained critical actors in modern representative democracy. In most democratic countries, they are codified into national constitutions to safeguard their operation and provide a congenial context for inclusive democracy and civilized party politicking. This study examines the nexus between party constitutionalisation and the strengthening of party democracy in Nigeria's Fourth Republic. By focusing on three areas of party constitutionalisation, the paper seeks to contribute to existing body of knowledge on the prospect of constitutional codification of political parties as an instrument for deepening constitutional democracy and constitutionalism in Nigeria. Essentially a qualitative study, the paper largely relies on the literature and formal legal documents including the 1999 Constitution of the Federal Republic of Nigeria as sources of data while it adopts zero-sum approach as its theoretical framework of analysis. The paper finds that while the legal instruments contain elaborate and ambitious provisions aimed at achieving inclusive democracy, civilized/violence-free politicking and accountable party organization, a combination of factors has constrained the achievement of these democracy-enhancing objectives. In conclusion, the paper suggests some measures capable of achieving intended consequences of party constitutionalisation.

### Keywords:

Political parties;  
constitution; party  
constitutionalisation;  
democracy; Nigeria.

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## *Introduction*

In all electoral democracies, political parties are formed to contest elections into available elective offices with the aim of constituting government and exercising state power. The centrality of political parties to democratic governance is underscored in two important ways. First, no functioning democracy could meaningfully operate without the presence of political parties as parties represent the vehicles through which the preferences of the masses are brought into the electoral arena. Second, political parties present the electorate with a choice to pick from a range of electoral candidates that aspire to elective office (Jinadu, 2014).

Across democracies, both consolidated and emergent, political parties perform certain basic functions namely, aggregating citizen interests, constituting post-election government, generating/promoting policies/programmes, serving as training grounds for future political leaders and selection of personnel to serve in government for the purposes of policy formulation and execution (Deme, 2014).

More than seven decades ago, Schattschneider averred that political parties are the pillars of democracy without which a modern representative democracy can not operate as a functional system of rule (Schattschneider, 1942). Later scholars and analysts (Diamond, 1999; Lipset, 1959; Dalton, 1985) endorse Schattschneider's thesis of indispensability of political parties to democratic rule such that there is a consensus in the literature that no functioning democracy can endure without party organization (Sandbrook, 1996; Rahat, Hazan and Katz, 2008; Deme, 2014; Jinadu, 2014). Even studies that attempt to advance the argument of feasibility of democratic rule without formalized and stable political parties as experienced in six Pacific Island states of Kiribati, Nauru, the Federated States of Micronesia, Palau, Tuvalu and the Marshall Islands, concede to the fact that the very non-existence of political parties within these polities fundamentally vitiates the functioning of these 'partyless' democracies (Veenendaal, 2013).

Despite the weakening of the contemporary political parties as instruments of democratic representation (Van Biezen, 2012); and despite the legalization of independent candidacy in many democracies including the United States, political parties remain the most popular platforms for contestation of political power in a democratic context (Aldrich, 2020). Indeed, according to one source, political parties are in large part responsible for determining the character of democratic politics in any civil polity (Institute for Government, 2023). One key proof of this fact is that most contemporary constitutions expressly state the crucial role accorded political parties in modern democratic contexts (Mobrand, 2018).

One key issue that has defined global democracy in the last seven decades is the phenomenon of party constitutionalisation. Simply defined as the codification of political parties in national constitutions (Van Biezen, 2012), party constitutionalisation represents a significant break from the pre-World War 2 era when political parties were barely acknowledged in spite of their centrality to electoral democracy. Mobrand (2018) has shown that pre-Second World War scholarship paid little attention to

political parties as critical elements of a functioning democracy. According to Lorencka & Obrebska (2018), political parties in the pre-World War 2 period were generally regarded as a “hostile element” between the state and the citizen that was capable of distorting the will of the former. Immediate post-Second World War period however saw an intentional mention of political parties by public laws across Europe.

Essentially a global practice, party constitutionalisation emerged at different times across regions of the world. While in Europe, Italy and Germany, described by Muller and Sieberer (2006) as the “heartland of party law”, pioneered formal entrenchment of political parties into constitution in 1947 and 1949 respectively (Vohito-Anyanwu, 2020), the wave of constitutional codification of political parties reached the African continent in the early 1990s with the advent of the third wave of democratization which hit the continent. Ghafur (2020) however reveals that some sort of codification of parties in national constitutions had earlier occurred in Iceland (1944) and Austria (1945). Today across the global regions, party constitutionalisation is a common phenomenon in electoral democracies. According to one source, by the year 2022, 28 out of 32 democracies in continental Europe had codified political parties in their constitutions (Bale, 2023). Constitutional codification of political parties signals the place of parties in the institutional architecture of governance as well as the nature of party-citizenship relations in democratic polities.

Fundamentally, the basic rationale of party constitutionalisation is rooted in four core issues namely, to protect political parties against elite manipulation; to ensure party competitiveness; to instill sanity into party politicking; and to moderate the behaviour of party organization (Avnon, 1995; Borz, 2016). Thus, as shown by cross national evidences, constitutional regulation of political parties not only mediates party behaviour and parties’ ideological or programmatic choices, it also imposes constraints on the internal structure of party organization. Party constitutionalisation should be conceptually distinguished from party laws. The latter regulate the operational activities while the former relates to the enshrinement or entrenchment of political parties into the constitution. This constitutional entrenchment in a way signals the recognition of political parties as important institutional components of the democratic system (Borz, 2016). What this recognition also suggests however is that political parties lose their hitherto voluntary and private character which forbids state intervention in their affairs (Van Biezen & ten Napel, 2014).

Party constitutionalisation as a practice varies across mature and new democracies in terms of content, scope, issues subjected to constitutional regulation (Van Biezen & Borz, 2012) as well as consequences (Ginsburg & Versteeg, 2023). While national constitutions describe political parties in terms of core democratic values and principles, others define parties in terms of their electoral and parliamentary activities (Van Biezen, 2012). Key actors in party constitutionalisation include parliamentarians, political parties, the courts and the election oversight bodies. Borz (2016) has expanded the actors’ list to include the media, civil society organizations, local constituency and international organizations.

Nigeria had its first taste of party constitutionalisation during the military-brokered transition that culminated into the second republic in October 1979. Since that momentous event, party constitutionalisation has been a recurrent feature of constitution making in Nigeria. The key motivation for the codification of political parties in the 1979 constitution by the military was to avoid the repeat of the divisive and centrifugal tendencies that characterized party politics in the first republic (Jinadu, 2014). With the constitutional codification, political parties were, among others, required to wear national outlook, uphold intra-party democracy and be formally registered by the newly-instituted election management body. While the constitutional status accorded parties in Nigeria has endured till the current republic, there is no consensus as to whether the constitutional entrenchment has deepened constitutional party democracy in Africa's largest electoral democracy. And again, increasing constitutional regulation of parties has received little scholarly attention. It is this scholarly gap that this study seeks to fill. How has party constitutionalisation evolved over time in Nigeria? Has party constitutionalisation shaped party organization and party behaviour in a manner envisaged by the constitution?

This study will particularly focus on three key aspects of party constitutionalisation: intra-party democracy, party financing and electoral conduct of political parties. There are however other important aspects of constitutional regulation of political parties in the 1999 Constitution, as amended. One of such is the prohibition of ideologically extreme and ethnically affiliated political parties. For instance, Section 222 (a) prohibits any association seeking to be registered as a political party from adopting a name or logo that contains ethnic or religious connotation. In the same vein, Section 222 (c) of the constitution provides that the membership of any political association is open to every Nigerian citizen irrespective of place of origin, circumstance of birth, sex, religion or ethnic identity. These provisions are aimed at promoting or strengthening national unity and safeguarding democratic rule against insurrectionary elements. Prohibiting ideologically extreme parties will naturally raise questions of 'democratic intolerance' (Fox & Nolte, 1995; Azad, 2022; Tuovinen, 2023) by which it is meant the degree of tolerance that democratic states should accord anti-democratic elements. While this question is yet to be settled in the literature (Ceva & De Bernardi, 2022), has the experience in Nigeria since the transition to civil politics in 1999 defied the 'democratic value' attributed to party constitutionalisation? Or, given the contradictions that have characterized the codification of political parties in the Nigerian constitution, does it suggest that the constitutionalisation efforts have ended in tears?

### *Political Parties and Representative Democracy*

As primary vehicles of accessing political power in democratically ruled contexts, political parties constitute the 'gate keepers' of democracy (Ashindorbe, 2022). In all liberal representative democracies, political parties represent the instrumentality by which the electorate extract accountability from elective office holders through periodic multi-party elections (Jinadu, 2011; Chaudhuri, 2023).

As an organized group of persons with common ideas on governance and economy which it seeks to control by contesting and winning election, political party does not only represent the primary vehicle of accessing power, it is also an institutional tool of connecting the citizens with their representatives. Through this linkage function, political parties constitute critical channel through which democracy functions. In contemporary electoral democracies, political parties define and initiate political agenda, mobilize and organize the electorate, project diverse interests and hold elected regimes answerable to the voting public (Tesfay & Sete, 2019). Van Biezen (2012) has noted that political parties are critical not only for organizing democratic politics but also for expressing and manifesting citizen participation as well as political inclusion and pluralism.

Across democratic contexts, the roles of political parties are broadly classified into two: they run government or they serve as opposition (Wondwosen, 2009). As ruling or incumbent parties, political parties initiate and formulate policies and programmes that aim at enhancing citizen welfare. As opposition parties, they offer (credible) alternative policy choices and promote healthy policy competition with the ruling parties (Tesfay & Sete, 2019). Being both critical and central to the sustenance of democratic rule, the activities of political parties in and outside of political power considerably influences the stability of the democratic state (Igwe, 2019). Thus, by organizing government and serving as an outlet for recruiting government functionaries, political parties contribute to the vitality and sustenance of democracy.

For Africa which survived the ascent of one party rule of the late colonial rule and early independence era, the third wave of democratization of the early 1990s re-introduced multi-party democracy to the continent (Fombad, 2022).

### *Theoretical Framework*

This study adopts the zero-sum theory of politics to explain the ineffectiveness of party constitutionalisation as an instrument of extracting compliance by political parties with party finance regulations, deepening intra-party democracy, and ensuring responsible electoral conduct by political parties. Zero-sum approach is rooted in game theory (von Neumann & Morgenstern, 1944) and its adversarial logic significantly influences political behaviour in a way that tends to distort efforts at institutionalizing democratic norms both within the parties and the larger polity particularly in emergent democracies defined by weak political culture. Game theory itself dwells on understanding social behaviour and decision making in the context of inter-group competition (von Neumann & Morgenstern, 1944). Game theorists assume that people demonstrate zero-sum tendencies when they feel threatened by their competitive environment even if that threat does not reflect an objective reality but a mere subjective perception (Davidai & Tepper, 2023).

The central thrust of the theory is that political actors perceive political game or state power as a fixed indivisible resource and that one actor's gains correspond to the other's loss. Contenders for power must therefore do everything to outwit one another in the political game in order to access state power which can then be deployed for primitive

accumulation, economic security and patronage (Ake, 2001). Thus, the logic of zero-sum approach provides incentive for power contenders to brazenly violate rules of the game as instituted in party constitutions and national constitutions. These contraventions come in varying forms including manipulated party nomination, imposition of candidacy and manipulation of leadership recruitment process within political parties.

The zero-sum perspective draws its strength from incessant conflict, inequality and proclivity to violence in social and political relations (Read, 2012). The perspective thrives in contexts where finite resources cannot be allocated equally across the society or group resulting in inter-group contestation for the finite goods (Meegan, 2010).

Although the zero-sum theory offers a compelling insight into the inadequacy of party constitutionalisation in Nigeria, it is not without its own limitations. One key critique of the approach that has been advanced in the literature is that it cannot explain the blend of conflict and shared interest as well as that of competition and cooperation that define contemporary social and political relations (Read, 2012). Indeed, Schelling (1958) contends that many social situations combine elements of zero-sum and non-zero-sum perspectives.

Applying the assumptions of the zero-sum theory to electoral competition in Nigeria, Nigerian politicians approach electoral politics with winner-take-all tendency and will spare no effort to realize electoral victory even if to contravene extant legal and regulatory provisions. Ake (2001) alluded to the salience of zero-sum beliefs in African politics in the immediate post-independence period when he wrote that: "...politics remained a zero-sum game; power was sought by all means and maintained by all means...". This zero-sum character of electoral politics and the attendant display of reckless abuse of power and brazen impunity is aggravated by the weakness of institutional framework of political competition. The regulatory institutions lack the requisite autonomy to regulate or constrain the behaviour of the power elite.

### *Methodology*

This study adopts a qualitative research design relying on legal instruments particularly the 1999 Constitution of the Federal Republic of Nigeria, the 2022 Electoral Act, the Companies and Allied Matters Act as well as constitutions of political parties. In addition to these data sources, relevant and recent literature is consulted to gain deep and useful insights into the motivation, manifestation and trajectory of party constitutionalisation in Nigeria. Content analysis is adopted as analytical framework for the study.

### *Constitutional Regulation of Political Parties: The Justification and the Critique*

Constitutional regulation of political parties has remained an unending debate in Political Science and Law disciplines. At the heart of this debate is the question of the



correct status of political parties in the society. Are political parties private associations or public entities? Though the debate is yet to be settled in the literature, it is acknowledged that political parties occupy an unclear and intervening space between government and civil society (Van Biezen, 2012). Before the early 1940, political parties were practically outside of the control of the state. Invested with the power and liberty to define their structure, methods of decision making and modes of financing, the only entity to which the party was responsible and which constituted the tool of oversight over party organization was the party membership (Tesfay & Sete, 2019).

This paper adopts Borz's (2016) framework of party constitutionalisation for the discussion of this section. The framework fundamentally outlines the key justifications for constitutional codification of political parties from the world view of different political actors including political parties, state institutions and international actors. Five key justifications are advanced by Borz which he claims are a product of deductive approach garnished with "cues from new constitutionalism" (Borz, 2016). These justifications are: agency legitimization, organizational survival, distinction from similarly organized associations, prevention of anti-democratic parties, as well as prevention of abuse of power. According to Borz, formal recognition of political parties acknowledges the pre-eminent place of political parties in the power architecture. Constitutional codification of parties also enhances the organizational and financial survival of political parties. Similarly, constitutional regulation of parties distinguishes them from their societal 'rivals' such as the pressure groups and labour/trade unions. Furthermore, constitutional formalization of political parties represents a tool of excluding anti-democratic and extremist groups from the political/electoral space. Subjecting political parties to constitutional restraint also helps in checkmating the proclivity for abuse of powers by political parties particularly by the ruling parties.

Borz's justifications look convincingly rational and outwardly ambitious even if the manifestations of these justifications have varied across party democracies. While party constitutionalisation has granted legal and institutional recognition to political parties in most democracies, the scope of state regulation of political parties differs across democratic countries. Similarly, while state funding of parties is aimed at enhancing the organizational survival of political parties, the degree of party compliance with party finance rules as well as the degree of effectiveness of the regulatory instruments vary from democracy to democracy. Furthermore, while party constitutions have promoted intra-party democracy in some democratic countries, they have utterly failed to mediate party behaviour in other countries (Fombad, 2022; Ginsburg & Versteeg, 2023).

However, despite its utilitarian value as an explanatory tool, Borz's framework (and by extension party constitutionalisation practice) has come under criticism by scholars. Two key critiques of party constitutionalisation are cited here. The first is the overly state regulation of political parties as a core democratic institution. It is feared that excessive constitutional role of political parties may unwittingly lead to the erosion of party autonomy and political pluralism. When state regulation becomes extensive, political parties tend to lose their organizational independence and may gradually

transform into, even if unwittingly, semi-state agencies or public service entities (Bartolini & Mair, 2001). Indeed, opponents of regulation of political parties particularly the use of law to ban the emergence of parties with religious, ethnic, racist or radical tendencies have argued that legislating against the emergence and flourishing of political parties with certain identities tends to undermine critical democratic achievements (Bale, 2014). Other scholars (Rosenblum, 2007; Randall, 2008) have described prohibition of parties as a self-serving, partisan and exclusionary tool to undermine diversity in multiculturalism. To the extent that ethnic representation is a key indicator of democratic quality (Rashkova, 2014), prohibiting ethnic or cultural political parties represents an assault on political/social diversity. Banning or restraining emergence of such parties approximates what Isaacharoff (2007) calls “democratic intolerance”, a sort of restraint imposed on extremist or insurrectionist groups/parties under the guise of protecting the democratic order.

The second critique of constitutional formalization of political parties is the possibility of the emergence of hegemonic parties which are so well privileged by the constitutional prescriptions as to undermine the entry of new political parties into the electoral market.

The Nigerian case illustrates the two critiques cited above. Since 1999, political parties have existed largely under the effective influence of the state and the ruling governments thereby undermining their institutional autonomy; while few established parties with real prospects of capturing power have continued to dominate the electoral space.

### *Constitutionalising Political Parties in Nigeria: A Historical Sketch*

While constitutional codification of political parties formally started with the inauguration of the second republic on 1<sup>st</sup> October, 1979, political parties as party organizations had emerged more than five and a half decades earlier under the colonial order with the introduction of the 1922 Clifford constitution. With electoral politics limited to the two coastal towns of Lagos and Calabar, the Nigerian National Democratic Party (NNDP) formed by Nigeria’s foremost nationalist, Herbert Macaulay became the first political party in Nigeria. The party dominated the electoral market during the period marked by limited/restricted franchise (Omilusi & Adu, 2016). New parties, largely ethnic-based, later emerged as political parties grew in number. These included the Action Group (AG), the National Council for Nigerian Citizens (NCNC) and the Northern People’s Congress (NPC). While these parties had their respective formal constitutions that guided their internal structure and organization, they were not codified into the national constitution (Jinadu, 2011).

Essentially, Nigeria’s first shot at party constitutionalisation at the beginning of the country’s second democratic experiment in the late 1970s was intended as an anti-dote against the centrifugal and ethno-regional character of party politicking in the late colonial rule and the short-lived first republic. With the codification of political parties in the new presidential constitution, the country transited “from a functional definition of a political party to a legal-constitutional one...” (Jinadu, 2011). Under the new legal context, political parties must assume national identity, uphold internal democracy and



must be officially licensed by the election management body, the Federal Electoral Commission (FEDECO). The emphasis on internal in party organization is underscored by the fact that without its core democratic values and principles such as fair representation, equity and inclusivity within the parties can hardly be achieved (Mersel, 2006; Borz & Janda, 2020).

In broad terms, under the current democratic dispensation, four key documents constitute the regulatory framework for political parties in Nigeria. These are the 1999 Constitution, the 2022 Electoral Act, the 2020 Companies and Allied Matters Act and the INEC Guidelines for Political Parties and Candidates. What this section of the study seeks to do is to analyse the various provisions of these documents relating to the three key areas of interest to this study.

### *Internal Party Democracy*

There are several provisions relating to the achievement of intra-party democracy in the four regulatory instruments under review in this study. For example, Section 84 (3) of the 2022 Electoral Act states that a political party shall not impose nomination qualification or disqualification criteria, measures, or conditions on any aspirant or candidate for any election in its constitution, guidelines, or rules for nomination of candidates for elections, except as prescribed under sections 65, 66, 106, 107, 131, 137, 177 and 187 of the Constitution. This provision is aimed at checkmating abuse of powers by the principal officers as well as wealthy members or financiers of political parties to manipulate selection of candidates for elections for their own selfish ends or to favour certain aspirants. Similarly, Section 84 (13) of the Act states that where a political party fails to comply with the provisions of this Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue. This particular provision represents a warning to party managers to follow due process in their running of the affairs of political parties particularly as it relates to party nomination.

### *Political Party Financing*

All the four regulatory documents under review contain elaborate provisions on political party financing. To start with, Section 225 (3a&b) states that no political party shall - (a) hold or possess any funds or other assets outside Nigeria; or (b) be entitled to retain any funds or assets remitted or sent to it from outside Nigeria. Similarly, Sections 85, 86, 87, 88 and 90 contain copious provisions on retention of money or assets sent from outside the country; submission of annual statements of accounts and analysis of sources of funds by political parties to INEC; limitation on contribution or donation to political parties; ceiling or limit on amount of money to be spent on contesting for specific elections; and prohibition of receiving of donation from anonymous sources by political parties.

In the same vein, Section 43 (2) of the 2020 Companies and Allied Matters Act provides that a company shall not have or exercise power either directly or indirectly

to make a donation or gift of any of its property or funds to apolitical party or political association, or for any political purpose. and if any company, in breach of this subsection makes any donation or gift. Furthermore, INEC Guidelines for Political Rallies and Campaigns by Political Parties, Candidates, Aspirants and their Supporters in Section 17 provides for requirement of transparency in election expenses. Section 25 (4) of the Guidelines provides for limitation on election expenses which is in consonance with the provisions of the Electoral Act.

All the afore-mentioned provisions are aimed at achieving equity, fairness, transparency and accountability in the management of party funds and party organization in general.

### *Electoral Conduct of Parties*

Out of the four regulatory instruments under review, only two contain provisions relating to expected conduct of political parties, candidates and their supporters during elections. The two documents are the 1999 Constitution, as amended, and the 2022 Electoral Act. In Section 227, the 1999 Constitution provides that no association shall retain, organise, train or equip any person or group of persons for the purpose of enabling them to be employed for the use or display of physical force or coercion in promoting any political objective or interest or in such manner as to arouse reasonable apprehension that they are organised and trained or equipped for that purpose.

On its own, the 2022 Electoral Act contains a plethora of provisions that relate to the conduct of political parties, candidates and their supporters before, during and after polling. For instance Section 92 (1&2) of the Act provides that a political campaign or slogan shall not be tainted with abusive language directly or indirectly likely to injure religious, ethnic, tribal or sectional feelings. It also provides that abusive, intemperate, slanderous or base language or insinuations or innuendoes designed or likely to provoke violent reaction or emotions shall not be employed or used in political campaigns.

Similarly, Section 92 (5&6) provides that a political party, aspirant or candidate of a political party shall not retain, organise, train or equip any person or group of persons for the purpose

of enabling them to be employed for the use or display of physical force or coercion in promoting any political objective or interest, or in such manner as to arouse reasonable apprehension that they are organised, trained or equipped for that purpose. It further provides that a political party, aspirant or candidate shall not keep or use armed private security organisation, vanguard or any other group or individual by whatever name called for the purpose of providing security, assisting or aiding the political party or candidate in whatever manner during campaigns, rallies and elections.

Furthermore, Sections 95 (2, 3, 4, 5&6) copiously provide that State apparatus including the media shall not be employed to the advantage or disadvantage of any political party or candidate at any election. Media time shall be allocated equally among the political parties or candidates at similar hours of the day. At any public electronic

media, equal airtime shall be allotted to all political parties or candidates during prime times at similar hours each day, subject to the payment of appropriate fees. At any public print media, equal coverage and visibility shall be allotted to all political parties. A person who contravenes subsections (3) and (4) commits an offence and is liable on conviction, in the case of — (a) a public media, to a fine of N2, 000,000 in the first instance and N5, 000,000 for subsequent conviction; and (b) principal officers and other officers of the media house, to a fine of N1, 000,000 or imprisonment for a term of six months. Section 97 (1a&b) provides that a candidate, person or association that engages in campaigning or broadcasting based on religious, tribal, or sectional reason for the purpose

of promoting or opposing a particular political party or the election of a particular candidate, commits an offence under this Act and is liable on conviction— (a) to a maximum fine of N1,000,000 or imprisonment for a term of 12 months or both ; and (b) in the case of a political party, to a maximum fine of N10,000,000.

There is no denying the fact that the foregoing provisions are both elaborate and ambitious. In any electoral democracy where these provisions are strictly adhered to by politicians, political parties and their supporters; and where the provisions are unbiasedly enforced or implemented, transparency, accountability, legitimacy, issue-based politics and violence-free elections will dominate party politicking in such a democracy.

### *The Contradictions of Constitutional Codification of Parties in Nigeria's Fourth Republic*

What the foregoing section has shown in bold relief is that Nigeria does not lack the requisite party constitutionalisation framework capable of producing intended consequences of party formalization. Both the national and party constitutions contain provisions that aim at entrenching internal democracy within parties as well as instilling liberal and responsible party behaviour that enhances constitutional party democracy. Other legal and regulatory documents aim at enhancing the organizational survival of the parties through finances including (at the beginning of the current republic in 1999) state funding of political parties which was however outlawed following the constitutional/electoral reform of 2010.

In practice however, these comprehensive constitutional efforts have not produced the desired outcomes. Thus, the Nigerian case represents a paradox of growing disorderliness in the context of increased laws. There is a legion of empirical evidences that show the failure of the party constitutionalisation efforts in the period under review. Some of these instances are cited below.

In defiance to the provision on internal party democracy, imposition of candidates is the order of the day within political parties in Nigeria particularly among the established ones. For instance, former President Olusegun Obasanjo single handedly imposed Alhaji Umar Yar'adua on the PDP as its presidential candidate in the 2007 presidential election. Incumbent President Jonathan also exploited political incumbency to clinch the

presidential ticket of PDP in 2015 leading to the mass exit of prominent members from the party including former Vice President Atiku Abubakar and former House of Representatives Speaker, Right Honourable Aminu Tambuwal. Similar imposition of candidate was witnessed in Osun state in 2018 when Alhaji Isiaka Oyetola became the governorship candidate of APC for the 2018 governorship election. Imposition of candidate was also witnessed within the PDP when Senator Ademola Adeleke won the party's governorship ticket for 2022 governorship election. Furthermore, the Plateau State National Assembly Election Tribunal as well as the Appeal Court nullified the election of Napoleon Bali of PDP as Senator representing Plateau South Senatorial District due to the party's refusal to obey earlier court judgement that ordered it to conduct fresh party congress in 17 local government areas in Plateau state. The court consequently declared Simon Lalong of APC as the duly elected senator for the district. Similarly, in May 2019, the Supreme Court nullified the election of all the candidates of APC in Zamfara state in the 2019 general elections for failing to "follow legitimate guidelines and rules". Another assault on intra-party democracy was witnessed in APC during the nomination process for the selection of the party's candidate for the Yobe North senatorial district during the 2023 general elections. Whereas the validly conducted primary election for selecting the senatorial candidate of the party held on May 28, 2022 produced Hon. Bashir Sheriff Machina as the party's candidate, the party unlawfully conducted another primary on June 9 2022 which produced Senator Ahmed Lawan as the candidate of APC.

Against the provisions of the Companies and Allied Matters Act, a self-styled organization named Corporate Nigeria donated millions of naira to the Obasanjo/Atiku Campaign in 2003. Similarly, a business tycoon, Mr. Tunde Ayeni once donated N1 billion naira to PDP. Furthermore, Alhaji Isyaku Rabi'u, a prominent Nigerian business mogul, contravened the provisions of the Electoral Act 2006 when he donated N250m to PDP in 2007. Reports by election observers and civil society organizations since 2003 have consistently shown that established political parties particularly ruling parties and large opposition parties spent far above permissible election expenses. There are also media reports which were confirmed by INEC that many political parties do not submit their annual audited accounts to INEC as required by law. Lastly, the famous *Dasukigate* financial scandal as well as the diversion of the Ecological Funds meant for Plateau State to the financing of PDP clearly show the contravention of party financing regulations in Nigeria.

The instances cited above and many others not covered here represent the contradictions of party constitutionalisation in Nigeria. Whereas there are constitutional/legal prescriptions that promote internal party democracy, licit party funding and responsible electoral conduct, these prescriptions are often rudely violated by political parties, political incumbents and godfathers demonstrating a dissonance between formal legal framework and actual practices by political parties and political practitioners. This has thrown up party constitutionalisation as more of a symbolic than substantive tool of strengthening party democracy in Nigeria. Thus, given the negative

unintended consequences that have accompanied party constitutionalisation in Nigeria, one can safely conclude that the efforts have ended in tears for Africa's largest electoral democracy.

### *Wiping the tears and Strengthening Party Democracy*

This study has established that constitutional codification of political parties in Nigeria which set off more than four decades ago has not substantially achieved its intended goals despite its comprehensiveness and elaborateness. According to Jinadu (2011), party constitutionalisation has failed to effectively address the salience of ethnicity in Nigerian politics and has not deepened internal democracy within the political parties. He further contends that formalization of political parties has not ensured a level playing field for political parties and has also failed to engender issue-based and violence-free election campaigns (Jinadu, 2011).

In his own reflection on the outcome of party constitutionalisation efforts of Nigeria's second republic, Patrick Ollawa finds a sharp divergence between what was intended and the actual outcome. According to Ollawa "the paradox of party politics in the second republic is that despite a well-intentioned constitutional attempt to evolve a party system which would promote stable contest between parties, presumably characterized by different programmes manifested in issue-oriented ideologies... what emerged in practice was transactional politics based on opportunistic and informal networks of politicking replete with intra-party factionalism that consistently led to shifting alliances, a situation which unavoidably supplanted the formal structure of party organization..." (Ollawa, 1989). This reality calls for pro-active measures to address the challenge of ineffectiveness of party constitutionalisation.

This paper proposes three key measures for the reversal of the negative realities of party constitutionalisation in Nigeria as demonstrated by this study. First, political gladiators should demonstrate strong will to abide by the rules of party politicking as contained in the legal and regulatory instruments. Without a conscious psychological transition by political practitioners in Nigeria from zero-sum logic to constructive-sum logic, efforts at party institutionalization and party constitutionalisation will perpetually come to grief. Second, regulatory and enforcement institutions should be endowed with the requisite institutional autonomy to discharge their mandate. Third, strong citizen oversight through the instrumentality of associational life should be brought to bear on the activities of political parties and regulatory institutions.

### *Conclusion*

This paper has examined the practice of party constitutionalisation in Nigeria and the extent to which the phenomenon has strengthened party democracy in the country. The paper finds that political parties in Nigeria not only contravene the provisions of national constitution, they equally do not respect their own formal constitutions particularly in the areas of party funding and internal party democracy. This explains regular outbreak of conflicts in all political parties particularly during party nomination



for elective offices. Against this backdrop, the paper argues that efforts at party constitutionalisation in Nigeria have failed to engender intended outcomes both within the party organization and the larger body politic. The paper concludes that while party constitutionalisation, and the attendant incremental review, is a good effort at enhancing party democracy in Nigeria, the effort needs to be accompanied by effective mechanisms capable of achieving its goals. It contends that unless robust and more stringent remedial measures are instituted, the prospects of democratic strengthening may recede or stagnate.

### *Notes on Contributor*

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