

THE NIGERIAN JURIDICAL REVIEW

Vol. 10	(2011 - 2012)	
Articles		Page
Expanding the Frontiers of Judicial Review in Nigeria: The Gathering Storm	C. A. Ogbuabor	1
Legal Framework for the Protection of Socio-Economic Rights in Nigeria	S. I. Nwatu	22
A Critical Analysis of the Constitution (First Alteration) Act	O. N. Ogbu	49
How Much Force is Still Left in the Taxes and Levies Approved List for Collection) Act?	N. Ikeyi & S. Orji	73
Carbon Taxation as a Policy Instrument for Environmental Management and Control in Nigeria	J. J. Odinkonigbo	96
Medical Negligence: Liability of Health Care Providers and Hospitals	I. P. Enemo	112
Legal Remedies for Consumers of Telecommunications Services in Nigeria	F. O. Ukwueze	132
Reconciling the Seeming Conflict in Sections 4 & 5 of the Nigerian Arbitration and Conciliation Act	J. F. Olorunfemi	154
The Requirement of Corroboration in the Prosecution of Sexual Offences in Nigeria: A Repeal or Reform?	H. U. Agu	174
Optimizing the Role of the International Criminal Court in Global Security	S. N. Anya	198
Understanding and Applying the Public Interest Override to Freedom of Information Exemptions: Guidelines from International Best Practices	N. Attoh & C. Nwabachili	222
Developing A Statutory Framework for ADR in Nigeria	Edwin O. Ezike	248



FACULTY OF LAW
UNIVERSITY OF NIGERIA, ENUGU CAMPUS
Sylva Prints, Enugu

EDITORIAL COMMITTEE

General Editor

Professor B. O. Okere, Docteur d'Universite Paris

Assistant Editor

Professor G. O. S. Amadi, LL.B., LL.M., Ph.D., B.L.

Statute and Case Note Editor

Professor Ifeoma P. Enemo, LL.B., LL.M., Ph.D., B.L.

Secretary

Dr. Edith Nwosu, LL.B., LL.M., Ph.D., B.L.

Book Review Editor

Chukwunweike A. Ogbuabor, LL.B., LL.M., B.L.

Distribution Coordinator

D. U. Ajah, LL.B., B.L.

**NIGERIAN JURIDICAL REVIEW
VOLUME 10 (2011 – 2012)**

To be cited as (2011-2012) 10 Nig. J. R.

ISBN

© Faculty of Law, University of Nigeria, Enugu Campus

CONTRIBUTIONS

The Journal welcomes articles in any area or related subjects for publishing considerations. Articles and correspondence should be forwarded to:

**The General Editor,
Nigerian Juridical Review,
Faculty of Law,
University of Nigeria,
Enugu Campus, Enugu, Nigeria.**

**Published by
The Faculty of Law,
University of Nigeria,
Enugu Campus**

Sylva Prints, Enugu
+234-08063978826; +234-08181610325
e-mail: onyekasyivanus@yahoo.com

A CRITICAL ANALYSIS OF THE CONSTITUTION (FIRST ALTERATION) ACT*

I. Introduction

The first serious effort at amending the 1999 Constitution of the Federal Republic of Nigeria was during the tenure of President Olusegun Obasanjo (1999–2007). The National Assembly during the period set up a Joint Constitution Review Committee composed of members of the Senate and the House of Representatives headed by the then Deputy Senate President, Ibrahim Mantu. The Joint Constitution Review Committee after making some proposals held Zonal public hearings on their proposals. However, after the Zonal public hearings, their proposals could not be passed by the requisite majority of the Houses of the National Assembly. That adventure was particularly infamous and highly discredited because it was perceived as a vehicle for extension of President Obasanjo's tenure of office. Part of the amendment sought in the process was an amendment that would allow the president to run for a third term in office.

In 2009, President Umaru Musa Yar'Adua sought 14 amendments to the Land Use Act. He forwarded a bill cited as the Land Use Act (Amendment) Bill 2009 or the Constitution (First Amendment) Bill 2009 to the National Assembly for the purpose of the amendment.¹ It is clear now that the bill was not passed.² Following local and international outcry against the widespread malpractices observed during the 2007 general elections, President Umaru Musa Yar'Adua on 28th August, 2008 constituted an Electoral Reform Committee for the reform of the Nigerian electoral process.³ The Electoral Reform Committee recommended, *inter alia*, that the National Assembly should undertake a comprehensive review of the provisions of the 1999 Constitution to effect changes that are required to ensure free and

* Dr. Osita Nnamani Ogbu, Senior lecturer, Faculty of Law, Anambra State University, Igbariam Campus, +2348068630889; ositaogbu2005@yahoo.com.

¹ See A. Daniel, "Land Use Act: President Seeks Fourteen Amendments" *The Guardian*, March 8, 2009 pp. 1 & 2.

² In any case, since the bill was not passed during the life of the Parliament in which it was introduced, if the proposal is still taken seriously, it has to begin its life afresh in the current Parliament.

³ The Committee is also known as "Uwais Panel", taking the name from its chairman, Hon. Justice Mohammed Uwais, retired Chief Justice of Nigeria.

fair elections.⁴ On receipt of the report of the Electoral Reform Committee, President Yar'Adua forwarded to the National Assembly several bills seeking the alteration of certain sections of the Constitution. The Constitution Alteration Bills were passed by each House of the National Assembly with some variations. The different versions of the bills passed by the two Houses of the National Assembly were harmonized by a Committee of both Houses. After the harmonization, each of the two Houses passed the harmonized version with the requisite two-third majority of all their members. The harmonized bill was then transmitted to the State Houses of Assembly. Each State House of Assembly deliberated on the bill, approved some sections of the bill and rejected some sections. The National Assembly collated the resolutions of the State Houses of Assembly, sifted the provisions that had the support of at least two-third majority of all the State Houses of Assembly and considered the Constitution (First Alteration) Act as passed.

So far three amendments (or alterations) have been made to the Constitution. The Constitution of the Federal Republic of Nigeria (First Alteration) Act⁵ was passed by the Senate on 2nd June, 2010 and by the House of Representatives on 3rd June, 2010. On 16th July, 2010 it received the approval of two-third majority of the State Houses of Assembly.⁶ The Constitution of the Federal Republic of Nigeria (Second Alteration) Act was passed by the Senate on 3rd November, 2010 and by the House of Representatives on 4th November, 2010. On 29th November, 2010 it received the approval of two-third of the State Houses of Assembly.⁷ The Constitution of the Federal Republic of Nigeria (Third Alteration) Act was passed by the Senate on 14th December, 2010 and the House of Representatives on 15th December, 2010. It received the approval of two-third majority of the State Houses of Assembly on 8th January, 2011.⁸ The Constitution (Alteration) Acts were considered passed on the respective dates they received the approval of the State Houses of

⁴ See the Report of the Electoral Reform Committee Vol. 1 (Main Report) December 2008 p. 24.

⁵ Act No. 1 of 2010. The date the Act was based on the initial assumption that the Act does not require presidential assent. The succeeding paragraphs will show that presidential assent to the bill was given in 2011 after judicial pronouncement in favour of presidential assent.

⁶ See the Schedule to the Constitution (First Alteration) Act No. 1 of 2010.

⁷ See the Schedule to the Constitution (Second Alteration) Act No. 2 of 2010.

⁸ See the Schedule to the Constitution (Third Alteration) Act No. 3 of 2011.

Assembly. The National Assembly considered presidential assent to the bills unnecessary.⁹

The question of whether presidential assent to the amendment bills was required was canvassed before the courts. In *Olisa Agbakoba v. The Senate*,¹⁰ a Federal High Court sitting in Lagos presided over by Justice Okechukwu Okeke declared the constitution amendment process inchoate without the President's assent. In *Chief Great Ovedje Ogboru & Anor v. Dr. Emmanuel Ewetan Uduaghan & 2Ors*,¹¹ the Supreme Court held that by the provision of section 58(1) of the 1999 Constitution, bills for the amendment of the Constitution must be passed by both the Senate and the House of Representatives and assented to by the President. Upon the judicial pronouncement in favour of presidential assent, the Constitution Alteration Bills were forwarded to the President for assent. The President assented to them on 4th March, 2011. The amendments are far-reaching, touching several sections of the Constitution. This work seeks to critically analyze the amendments made to the Constitution through the Constitution (First Alteration) Act.¹² The purpose of each amendment and whether the amendment will achieve the desired objective will be considered. Though section 9 of the 1999 Constitution which provides for the procedure for the alteration thereof used the word "alteration" instead of "amendment", in this work the words "amendment" and "alteration" in relation to the Constitution will be used interchangeably.¹³ We will now examine the amendments.

⁹ For a critical analysis of the procedure for the amendment of the constitution, see O. N. Ogbu, "Constitutionalism and Constitutional Amendment: A Critical Appraisal of the Procedure for the Recent Amendment of the 1999 Constitution of Nigeria" (2010) 3 *N.J.I.L.J.*, p. 101.

¹⁰ The decision was reported in the newspaper but the citation was not given. See I. Uwaleke, "National Assembly's Constitution Amendment Breeds More Crises" *The Guardian*, November 16, 2010 p. 71.

¹¹ [2011] 17 *NWLR* (Pt. 1277) 727.

¹² The alterations made through the Constitution (Alteration) Acts Nos. 2 and 3 will not be considered in this work.

¹³ A learned writer has made a distinction between amendment and alteration of the Constitution. In his view, amendment is a more ambitious effort than alteration of a document. See A. Kalu, "The Constitution (Alteration) Bill 2010, Hints for the Legislature", *Vanguard* June 25, 2010 p. 44. The distinction appears, however, to be without a difference.

II. Constitution (First Alteration) Act: A Critical Analysis

The Constitution (First Alteration) Act introduced the following amendments to the 1999 Constitution:

A. Sections 66, 107, 137 & 182 of the Constitution: Disqualification for Indictment by Judicial or Administrative Panel of Enquiry

Section 66 of the 1999 Constitution was amended by deleting subsection (1)(h). Similar amendments were made to sections 107, 137 and 182. The deleted provision reads as follows:

No person shall be qualified for election to the . . . if:

(h) he has been indicted for embezzlement or fraud by a Judicial Commission or an Administrative Panel of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunals of Inquiry Law or any other law by the Federal or State Government which indictment has been accepted by the Federal or State Government, respectively; or . . .

The precursor to the amendment was the Supreme Court decision in *Action Congress v. INEC*.¹⁴ The Supreme Court held in that case that the disqualification in section 137(1) clearly involves a deprivation of right and a presumption of guilt for embezzlement or fraud in derogation of the safeguards in section 36(1) and (5) of the Constitution. According to the Court, the trial and conviction by a court is the only constitutionally permitted way to prove guilt and therefore, the only ground for the imposition of criminal punishment or penalty for the criminal offence of embezzlement or fraud. The Court reasoned that the penalty of disqualification for embezzlement or fraud solely on the basis of an indictment for those offences by an Administrative Panel of Enquiry implies a presumption of guilt, contrary to section 36(5) of the 1999 Constitution, whereas conviction for offences and imposition of penalties and punishments are matters pertaining exclusively to judicial power.¹⁵ The Supreme Court reaffirmed this proposition in *Rt. Hon. Rotimi Chibuike Amaechi v. INEC & 3 Ors.*¹⁶ The decision in these cases cannot be supported. They border on declaring a constitutional provision unconstitutional. The drafters of the Constitution should be presumed to be aware of section 36(1) and (5) before inserting the deleted subsection in the Constitution. It is a rule of statutory interpretation that

¹⁴ [2007] 12 NWLR (Pt. 48) p. 222.

¹⁵ At pages 259-260, 266, 293, 295, 309, 310.

¹⁶ (2008) 5 NWLR (Pt 1080) 227.

constitutional provisions should be interpreted harmoniously and not otherwise. In *Hon. Justice Raliat Elelu-Habeeb (Chief Judge of Kwara State) & Anor v. Attorney General of the Federation & 2 Ors*,¹⁷ it was held that each provision of the Constitution is supreme thus forming part of the supreme law. A section of the Constitution must be read against the background of other sections of the Constitution to achieve a harmonious whole.¹⁸

The decisions in the *Action Congress and Rotimi Amaechi cases* are in accord with the Supreme Court decisions in *Denloye v. Medical and Dental Practitioners Disciplinary Committee*;¹⁹ *Sofekun v. Akinyemi & 3 Ors*;²⁰ *Garba v. University of Maiduguri*;²¹ and *F.C.S.C. v. Laoye*²² to the effect that where an allegation against a person borders on commission of a crime, only a court, as opposed to an administrative tribunal, can entertain the matter. One cannot but agree with Professor Ben Nwabueze that the decisions are clearly misconceived, both because a finding of guilt for a criminal offence by a commission of inquiry or a disciplinary committee is not a conviction for that offence, and because dismissal from office based on such a finding is not a punishment but only a disciplinary penalty. Judicial power is not usurped by a finding of guilt which does not operate as a conviction for a criminal offence and which is intended to serve merely as a basis for disciplinary action. Disciplinary proceedings and criminal trial operate on completely different planes and serve entirely different purposes.²³ In a case where a statute enacted by the Ceylonese legislature in 1965 was applied to vacate the parliamentary seats of certain persons who had been found guilty of bribery by a commission of inquiry, the Judicial Committee of the Privy Council held that the removal of the culprits from their parliamentary seats was not in all the circumstances, punishment for a criminal offence, as to be a usurpation of judicial power.²⁴ According to the court, the purpose of the statute was to make public life pure. Similarly, the purpose of the deleted sub-section was to ensure that only credible persons

¹⁷ [2012] 13 NWLR (Pt. 1318) 423.

¹⁸ At pp. 520-521.

¹⁹ (1968) 1 All NLR 306.

²⁰ (1980) All NLR 153.

²¹ [1986] 1 NWLR (Pt. 18) 550.

²² [1989] 2 NWLR (Pt. 106) 652.

²³ *Military Rule and Constitutionalism* (Ibadan: Spectrum Law Publishing, 1992) p. 186.

²⁴ *Kariapper v. Wijesinba* [1976] 2 AER 485 discussed in Nwabueze *op. cit.*

are elected to public offices. The danger created by the amendment is that when persons facing corruption charges or who have been indicted for corruption are elected to public offices, it becomes more difficult to bring them to justice as they can use their official positions to frustrate their trials. Secondly, some of them may be elected to offices where they will enjoy immunity from prosecution upon being sworn in.²⁵ Moreover, such persons are likely to engage in more corrupt practices when elected into office. There is no doubt that it is possible to abuse the deleted sub-section as happened between the then President Obasanjo and Governor Orji Uzor Kalu, then Governor of Abia State.²⁶ However, the judiciary will intervene whenever there is such abuse or threat of such abuse.

It is regrettable that many political office holders who are facing trial for corrupt practices are allowed to hold their offices even when on trial. Sections 66(1) (h), 107(1) (h), 137(1) (h), and 182(1) (h) of the Constitution should have been strengthened to require that any elected person who is charged to court for criminal offence should stand suspended from office and the emoluments of the office suspended until the final determination of the criminal charge. Under the Civil Service Rules a civil servant who is charged to court for a criminal offence will be interdicted pending the final determination of the criminal charge. The reason for the double standard cannot be appreciated.

²⁵ See section 308 of the Constitution confers immunity from criminal prosecution on incumbent President, Vice-President, Governor and Deputy-Governor.

²⁶ When the then President Olusegun Obasanjo sent a list of indicted politicians, including the then Governor of Abia State, Orji Uzor Kalu, to the Independent National Electoral Commission based on a submission from the Economic and Financial Crimes Commission (EFCC), Governor Orji Uzor Kalu in turn based on a purported report of a Commission of Inquiry he set up, published a White Paper where President Olusegun Obasanjo, his daughter, Governors Umaru Musa Yar'Adua of Katsina State and Goodluck Jonathan of Bayelsa State (as they then were) were indicted on various grounds. In the election petition case of *Umaru Musa Yar'Adua & Anor v. Alhaji Atiku Abubakar & 3 Ors.*, [2008] 19 NWLR (Pt. 1120) 1, the Supreme Court held that the Governor of a State (in this case Abia State) can only set up a Commission of Inquiry in respect of public officers in his State. He has no constitutional competence to set up a Commission of Inquiry to inquire into the activities of public servants in any other State.

B. Sections 69 & 110: Recall (Senate & House of Representative Members, etc) Verification of Signature by INEC

Section 69 of the Constitution was altered in paragraph (a) by inserting immediately after the word “member” in line 4, the words, “and which signatures are duly verified by the Independent National Electoral Commission (INEC)”. Section 69 reads as follows prior to the amendment:

69. A member of the Senate or of the House of Representatives may be recalled as such a member if-
- (a) there is presented to the Chairman of the Independent National Electoral Commission a petition in that behalf signed by more than one half of the persons registered to vote in that member’s constituency alleging their loss of confidence in that member; and
 - (b) the petition is thereafter, in a referendum conducted by the Independent National Electoral Commission within ninety days of the date of receipt of the petition, approved by a simple majority of the votes of the persons registered to vote in that member’s constituency.

The purpose of the amendment is to prevent fraud by ensuring that the signatories to a proposal for a recall of a member of the National or State Assembly are authenticated through verification by the INEC.

C. Section 75: Ascertainment of Population

Section 75 of the Constitution provides for using the 1991 population census of Nigeria or any other census to be conducted thereafter for the ascertainment of the number of inhabitants of Nigeria or any part thereof for the purpose of determining the size of a Senatorial District or Federal Constituency. The amendment made to the section was to remove the specific reference to the 1991 population census of Nigeria. Consequently, section 75 of the Constitution was altered by deleting:

- (a) The expression, “the 1991 census of the population of Nigeria or” in line 3; and
- (b) The words, “after the coming into force of the provisions of this part of this Chapter of this Constitution” immediately after the word “Assembly” in lines 4 and 5.

The purport of the amendment is that at any time the prevailing population census will be used in determining the size of a Senatorial District or Federal Constituency.

D. Sections 76(1) & (2); 116(1) & (2); 132 (1) & (2); and Section 178 (1) & (2): Time of Election to National Assembly and State Houses of Assembly, etc.

Section 76 of the Constitution was altered as follows-

- (a) In subsection (1), line 2, by inserting immediately after the word “Commission” the words, “in accordance with the Electoral Act”
- (b) In subsection (2), by substituting for the words-
 - (i) “sixty days before and not later than the date on which the House stands dissolved”, in lines 2 and 3, the words, “one hundred and fifty days and not later than one hundred and twenty days before”.
 - (ii) “Three months” in lines 3 and 4 the words “ninety days”; and
 - (iii) “One month” in line 4, the words “thirty days.

Prior to the amendment, section 76(1) reads as follows:

76. (1) Elections to each House of the National Assembly shall be held on a date to be appointed by the Independent National Electoral Commission.

The amendment is intended to overcome the Supreme Court decision in *Attorney General of Abia State & 35 Ors., v. Attorney General of the Federation*.²⁷ Some provisions of section 15 of the Electoral Act 2001 relating to the date of elections were challenged for constitutionality in that case. The Supreme Court held that some provisions of the said section 15 of the Electoral Act 2001 were either in *pari materia* with some subsections of sections 76 (1) & (2); 116 (1) & (2); 132 (1) & (2); and section 178 (1) & (2) of the Constitution and consequently inoperative while those inconsistent with them were held void.

The amendment to section 76 (1) which added to the section the phrase “in accordance with the Electoral Act” may serve the selfish interest of the party to which the majority of the members of the National Assembly belong by taking away from the INEC and vesting on the National Assembly the power to determine the order of elections through the instrumentality of the Electoral Act. The order of elections is very important because of the possibility of bandwagon effect. The amendment to subsection (2) of section 76 is desirable to ensure that elections are conducted early enough to give room for petitions arising from elections to be possibly determined before the swearing in of the candidates whose elections are challenged. Similar amendments were made

²⁷ [2002] 6 NWLR (Pt. 763) 264

to section 116 (1) & (2) in respect of election to State Houses of Assembly; section 132 (1) & (2) in respect of presidential election; and section 178 (1) & (2) in respect of time for INEC to conduct governorship election.

E. Section 81: Authorization of Expenditure from Consolidated Revenue Fund (First Line Charge for INEC, National Assembly and Judiciary)

Section 81 of the Constitution was altered by substituting for the existing subsection (3) a new subsection “(3)” which reads as follows:

- (3) The amount standing to the credit of the –
- (a) Independent National Electoral Commission
 - (b) National Assembly, and
 - (c) Judiciary,

in the Consolidated Revenue Fund of the Federation shall be paid directly to the said bodies respectively; in the case of the Judiciary, such amount shall be paid to the National Judicial Council for disbursement to the heads of the courts established for the Federation and States under section 6 of this Constitution”.

The amendment is intended to promote the independence of the above institutions.²⁸ Before the amendment, only the judiciary enjoyed financial autonomy under the section.²⁹ It is surprising that while the State Houses of Assembly voted in favour of the amendment in respect of the National Assembly, the proposal for similar amendment to section 121(3) (a) & (b) in favour of State Houses of Assembly failed as a result of failure to obtain the support of the requisite number of State Houses of Assembly for the proposal. This shows clearly that State Houses of Assembly are tied to the apron strings of the governors and that the members

²⁸ According to Professor J. O. Akande, all moneys charged directly on the Consolidated Revenue Fund are not subject to annual debate in the National Assembly because once fixed, they do not appear on the annual budget estimate presented in the Appropriation Bill because they are not subject to changes during the term of office of the incumbent office holder. See J. O. Akande, *Akande: Introduction to the Constitution of the Federal Republic of Nigeria 1999* (Lagos: MIJ Professional Publishers Limited, 2000) p. 187.

²⁹ The Electoral Reform Committee recommended the amendment in respect of INEC. See the Report of the Electoral Reform Committee Vol. 1 (Main Report) December 2008 p. 24.

do not want to loosen themselves from the strings.³⁰ In apparent justification of the *status quo*, the Speaker of Akwa Ibom State House of Assembly, Samuel Ikon, explained that it was possible for the National Assembly to implement financial autonomy because they know they will get it from the federal government. According to him, since State governments rely mostly on allocation from the federal government, it was not possible to peg the percentage of the Assembly budget on the estimated cash inflow. “The autonomy would have been possible if the percentage of money due the State Assemblies were predicated on the actual amount available for the State rather than on some impracticable provisions”, he argued. To him, if the amendment had been passed, there would have been constitutional crisis in many States to the extent that governors would have been impeached or would have faced impeachment threat for violating the constitutional provisions.³¹ This contention is an illogical effort to rationalize the rejection by State House of Assembly of their financial autonomy.

F. Section 84: Recurrent Expenditure of INEC to be a Charge upon the Consolidated Revenue Fund (First Line Charge)

Section 84 of the Constitution was altered by inserting immediately after the existing subsection (7) a new subsection “(8)”-

(8) The recurrent expenditure of the Independent National Electoral Commission, in addition to salaries and allowances of the Chairman and members shall be a charge upon the Consolidated Revenue Fund of the Federation.

This amendment is also intended to promote the independence of INEC.

³⁰ For the States that supported the proposal, see *The Source Magazine* Vol. 27 No. 15 of August 2, 2010 p. 15.

³¹ A. Macauley, “We Rejected the Autonomy to avert Constitutional Crisis, says A’Ibom Assembly Speaker” *Daily Independent* 24th August, 2012 p. 8. On the contrary, however, the State Houses of Assembly have recently started agitating for constitutional amendment that will guarantee their autonomy. The Chairman of the Conference of Speakers of State Houses of Assembly, Hon. Garba Inuwa, has urged the National Assembly to consider an amendment that enables state assemblies to receive their money directly as a first charge on the state allocation. He said that the measure would go a long way in helping the state legislature to realize their full autonomy and free them from undue interference from any quarters. See O. Ezigbo, “Governors, State Assemblies Disagree over Autonomy” *Thisday*, 26th May 2012 p. 1.

G. Sections 135(2) and 180(2): Tenure of Office of the President and Governor Respectively in Case of Rerun Election

Sections 135 (2) and 180 (2) of the Constitution were altered by inserting immediately after the existing subsection (2) a new subsection (2A) which reads as follows:

(2A) In the determination of the four year term, where a re-run election has taken place and the person earlier sworn in wins the re-run election the time spent in the office before the date the election was annulled, shall be taken into account.

This amendment seeks to ensure that persons whose elections were annulled do not gain undue advantage if they win the re-run election. As may be recalled, the Supreme Court held in *Peter Obi v. Independent National Electoral Commission*³² that the tenure of a Governor who succeeds in an election petition begins to run from the date the oath of office was taken. The amendment seeks to exclude a Governor or President who win re-run election after the nullification of his initial election from spending more time in office than he would have spent if his election had not been nullified. Section 180 (2) & (3) (as amended) was in issue in the consolidated Supreme Court cases of *Congress for Progressive Change (CPC) v. Admiral Murtala Nyako & 2 Ors.*³³ *Independent National Electoral Commission (INEC) v. Senator Liyel Imoke.*³⁴ *Independent National Electoral Commission (INEC) v. Chief Timipre Sylva & 4 Ors.*³⁵ *Independent National Electoral Commission (INEC) v. Alhaji Aliyu Magatakarda Wamako & Anor.*³⁶ *Independent National Electoral Commission (INEC) v. Admiral Murtala Nyako & Anor.*³⁷ and *Independent National Electoral Commission (INEC) v. Alhaji Ibrahim Idris & Anor.*³⁸ The High Court had held in *Congress for Progressive Change (CPC) v. Admiral Murtala Nyako & 2 Ors.*³⁹ as follows:

Arising from the legal standpoint that oath of allegiance and oath of office taken by the plaintiff on 29/5/2007 have been rendered nullities by the nullification of their elections as a Governor before the re-run election which they subsequently

³² [2007] 11 NWLR (Pt. 1046) 565

³³ Unreported suit No. SC.141/2011 (judgment delivered on 27th January, 2012).

³⁴ Unreported suit No. SC.266/2011 (judgment delivered on 27th January, 2012).

³⁵ Unreported suit No. SC.267/2011 (judgment delivered on 27th January, 2012).

³⁶ Unreported suit No. SC.282/2011 (judgment delivered on 27th January, 2012).

³⁷ Unreported suit No. SC.356/2011 (judgment delivered on 27th January, 2012).

³⁸ Unreported suit No. SC.357/2011 (judgment delivered on 27th January, 2012).

³⁹ Unreported suit No. SC.141/2011 (judgment delivered on 27th January, 2012).

won, and in view of the other legal postulation that the amendment of section 180(2) made pursuant to the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010 does not apply to the plaintiff, it is obvious that the inexorable conclusion to reach is that the four year term of office of all the plaintiff must be calculated from the dates they took their oath of allegiance and oath of office after the fresh elections conducted in 2008.

This decision was affirmed by the Court of Appeal. The Supreme Court consolidated the case with other similar cases mentioned above and held that in calculating the four year tenure of a Governor, the period spent in office before the nullification of his election will be reckoned with to ensure that he does not spend more than four years in office as provided for in the Constitution.

H. Sections 145 and 190: Acting President or Governor during Temporary Absence of the President or Governor

Section 145 of the Constitution was amended by substituting for the section a new section “145” which reads as follows.

- 145(1) Whenever the President is proceeding on vacation or is otherwise unable to discharge the functions of his office, he shall transmit a written declaration to the President of the Senate and Speaker of the House of Representatives to that effect, and until he transmits to them a written declaration to the contrary, the Vice President shall perform the functions of the President as Acting President.
- (2) In the event that the President is unable or fails to transmit the written declaration mentioned in subsection (1) of this section within 21 days, the National Assembly, shall mandate the Vice President to perform the functions of the office of the President as Acting President until the President transmits a letter to the President of the Senate and Speaker of the House of Representatives that he is now available to resume his functions as President.

Similar amendment was made to section 190(1) in respect of Governors. The amendment is a fallout from the lacuna observed in the Constitution when the late President Umaru Musa Yar’Adua, on November 23 2009, travelled out of the country to Saudi Arabia for medical treatment without handing over to the Vice-President. This created a vacuum in the Presidency as the Vice President could not exercise the functions of the President without a handover of power to him.

The un-amended section 145 of the 1999 Constitution grants the President the discretion to transmit a letter to the Senate President and the Speaker to inform them that he would be going on vacation or be otherwise unable to discharge the functions of his office. In a suit filed by the Nigerian Bar Association against the Minister of Justice and Attorney General of the Federation, the NBA prayed the Federal High Court to rule that, in view of the fact that the President omitted or failed to transmit to the President of the Senate and the Speaker of the House of Representatives a written declaration that he was proceeding on (medical) vacation, the Vice President should be sworn in under the doctrine of necessity. The Federal High Court held that it was not mandatory for the President to write the National Assembly whenever he is proceeding on a vacation and his failure to do so does not amount to a breach of the Constitution.⁴⁰

An eminent Nigerian constitutional lawyer, Professor Ben Nwabueze, observed that section 145 of the Constitution is clumsily worded. To him, under the provision of section 145, the Vice President cannot validly discharge the functions of the office of President unless and until the conditions specified in the section has been satisfied i.e. until the prescribed written declaration has been transmitted to the two presiding officers of the National Assembly.⁴¹ Eventually the two Houses of the National Assembly, in order to plug the vacuum, passed resolutions confirming the Vice President as Acting President after 79 days of absence of President Yar'Adua on health grounds.⁴² The amendments to

⁴⁰ See *Nigerian Bar Association v Attorney General of the Federation & Federal Executive Council* (unreported) judgment of the Federal High Court delivered on 29th January, 2010 by Justice Dan Abutu, Hon. Chief Judge of the Federal High Court. For a criticism of the decision, see C. Akiri, "Abutu's Judgment on NBA V AGF: Matters Arising" *The Guardian*, Tuesday, February 9, 2010 p. 72.

⁴¹ B. O.Nwabueze, "Averting a Looming Constitutional Crisis in Nigeria" *The Guardian*, February 5, 2010 p 10.

⁴² While supporting the action of the National Assembly but criticizing the reasons for the action, a learned commentator, Onyeka Osuji, observed that the first US Vice President to assume the office of President was John Tyler after the death of William Henry Harrison in 1841, noting that the US Constitution at that time did not provide for succession in such circumstance. The practice was said to have continued without explicit constitutional provision until the 25th Amendment to the US Constitution. See O. Osuji, "Power Vacuum: Did the End Justify the Means?" *Thisday*, Tuesday, 23rd February, 2010 p. vii.

section 145 and 190 are intended to prevent reoccurrence of such vacuum in the executive offices of the President or Governor.⁴³

I. Sections 156(a) and 200(a): Qualification for Membership of INEC and SIECs

Section 156 of the Constitution was altered in subsection (1) (a), line 2, by:

Inserting immediately after the word, “Representatives”, the words, “provided that a member of any of these bodies shall not be required to belong to a political party, and in the case of the Independent National Electoral Commission, he shall not be a member of a political party.

Similar amendment was made to section 200(a) in respect of State Independent Electoral Commissions (SIECs). This amendment became necessary because under the un-amended section 156 of the 1999 Constitution, no person shall be qualified for appointment as a member of INEC unless he is qualified for election as a member of the House of Representatives. To be qualified for election as a member of the House of Representatives under section 66 of the Constitution requires that a person must be a member of a political party. It is considered that appointment of a member of a political party to INEC or SIEC membership will affect the independence of the Commission. However, the amendment did not go far enough to achieve the desired objective. Politicians have circumvented the provision by resigning their membership of political parties prior to their appointment as INEC or SIEC members. After their resignation, they will contend that they are not members of a political party at the time of their appointment. An example is the case of Bauchi State where Abdulmumini Kundak who was appointed Chairman of Bauchi State Independent Electoral Commission acknowledged that he was a card-carrying member

⁴³ However, much still depend on the disposition of the legislature. A test case on the implementation of the new section 190 of the Constitution has been provided by the case of the Governor of Taraba State, Danbaba Suntai, whose private jet crashed on 28th October, 2012. After the accident, he was flown to a German hospital. He did not transmit any letter regarding his absence to the House of Assembly. See S. Ezea, “How Suntai’s Case Might Test Amended Constitution” *The Guardian*, November 1, 2012 p. 49. Already the Attorney-General of the State and the Taraba State Chapter of the Nigerian Bar Association has pronounced that there is no vacancy in the Government House of the State. See C. Akpeji, “No Vacancy in Taraba Government House, Says Attorney-General, NBA,” *The Guardian*, November 1, 2012 p. 3.

of the PDP before his appointment but says that before his name was submitted to the Bauchi State House of Assembly for screening, he resigned his membership of the party.⁴⁴ The amendment should have stipulated that a candidate for appointment should not have been a member of a political party at all or for a specified period preceding the date of the proposed appointment.⁴⁵

J. Section 160: Powers and Procedure of INEC

Section 160 of the Constitution was altered in subsection (1), line 4, by inserting immediately after the word “functions”, the words, “provided that in the case of the Independent National Electoral Commission, its powers to make its own rules or otherwise regulate its own procedures shall not be subject to the approval or control of the President”. The amendment tries to enhance the independence of INEC.

K. Section 228(a) and (b): Powers of the National Assembly with Respect to Political Parties

Section 228 was amended by substituting new paragraphs (a) and (b) for the existing ones after the opening paragraph, ‘The National Assembly may by law provide-’. The new paragraphs (a) and (b) introduced by the amendment read as follows:

228 (a) and (b)-

- (a) Guidelines and rules to ensure internal democracy within political parties, including making laws for the conduct of party primaries, party congresses and party conventions; and
- (b) The conferment on the Independent National Electoral Commission of powers as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the Commission more effectively to ensure that

⁴⁴ See P. Ogbodo, “Our Plan for Credible Council Poll in Bauchi” *Daily Independent*, November 1, 2012 p. 27.

⁴⁵ The Minority Leader of the House of Representatives, Femi Gbajabamila, recently instituted an action against the President, INEC and others seeking a declaration, inter alia, that the purported confirmation of Ambassador Mohammed Anka, Maj. Gen. Bagudu Mamman, Alhaji Yakubu Shehu and Mr. Eddy Nwatalari, all members of the PDP for appointment to the offices of INEC Resident Electoral Commissioner is unconstitutional, null and void for violating section 156(1)(a) of the Constitution as amended. See B. Nwannekanma, B. “House Minority Whip sues President, INEC, Others over RECs Nomination” *The Guardian*, November 22, 2011 p. 96.

political parties observe the practices of internal democracy, including the fair and transparent conduct of party primaries, party congresses and party conventions.

This amendment follows the recommendation of the Electoral Reform Committee that relevant provisions of the Constitution should be amended to ensure internal democracy in Nigerian political parties.⁴⁶ Following this amendment, section 87 of the Electoral Act 2010 (as amended) provides for democratic party primaries and the justiciability of party primary election disputes contrary to the doctrine of political question. The doctrine which shielded party primary election disputes from judicial inquiry was most eloquently enunciated in Nigeria by the Supreme Court in the cases of *Hon. Onuoha v. Chief R.B.K. Okafor & 2 Ors.*,⁴⁷ and *Bashir Mohammed Dalhatu v. Ibrahim Saminu Turaki*.⁴⁸ The constitutional amendment and the provision of section 87 of the Electoral Act 2010 (as amended) sought to bury the doctrine in so far as party primary election disputes are concerned. However, in the consolidated cases of *Senator Yakubu Garba Lado & 42 Ors. v. Congress for Progressive Change (CPC) and 5 ors* and *Dr. Yusha'u Armiyau v. Congress for Progressive Change (CPC) and 47 ors.*,⁴⁹ the Supreme Court held that by virtue of section 87(4) (b) (ii), (c) (ii) and (9) of the Electoral Act 2010 (as amended), where there is one single primary and a contestant wins and his name is not forwarded to the Independent National Electoral Commission (INEC), he can complain before the court; but where parallel primaries were held by different factions of a political party, the court will have no jurisdiction to determine which of the candidates is the rightful candidate of the party. The Supreme Court further introduced the concept of non-justiciability of pre-primary election disputes in that case. This decision has whittled down the efficacy of the amendment made to this section.⁵⁰

⁴⁶ See Vol. 1 Main Report of the Committee, p. 41.

⁴⁷ (1983) 2 SCNLR 244.

⁴⁸ [2003] 15 NWLR (Pt.843) 310.

⁴⁹ [2011] 18 NWLR (Pt. 1279) p. 493.

⁵⁰ For a critical comment on the recent judicial attitude to the doctrine see O. N. Ogbu, "The Doctrine of Political Question and Judicial Resolution of Party Primary Election Disputes in Nigeria," the *Nigeria Bar Journal*, Vol. 2 No. 1 2012, pp. 191-216.

L. Section 229: Deletion of Interpretation of the Word “Association”

Section 229 of the Constitution was altered by deleting the interpretation of the word “association”. Prior to the amendment, section 229 of the Constitution read as follows:

In this Part of this Chapter, unless the context otherwise requires –

“association” means anybody of person corporate or unincorporated who agree to act together for any common purpose, and includes an association formed for any ethnic, social, cultural, occupational or religious purpose; and “political party” includes any association whose activities include canvassing for votes in support of a candidate for election to the office of President, Vice-President, Governor, Deputy Governor or membership of a legislative house or of a local government council.

The amendment to this section is necessary because the definition of the word “association” in that section to mean “anybody of persons corporate or unincorporated who agree to act together for any common purpose, and includes an association formed for any ethnic, social, cultural, occupational or religious purposes” will be in conflict with other sections of the Constitution conferring power over regulation and formation of political parties, particularly sections 221, 222, 223, 224 and 228 of the Constitution.

M. Section 233(2) – Extension of Appellate Jurisdiction of the Supreme Court to Governorship Election Petition Appeals

Section 233(2) of the Constitution was altered in paragraph (e) by-

- (a) substituting for the word “or” after the word “President” in subparagraphs (i), (ii) and (iii), a comma-“,”; and
- (b) inserting immediately after the word “Vice-President” in subparagraphs (i), (ii), (iii), the words, “Governor or Deputy Governor.”

The purpose of the amendment is to enable appeals in governorship elections to go up to the Supreme Court. Perhaps the loss of Ekiti and Osun States governorship by the ruling People’s Democratic Party through the decisions of the Court of Appeal may have influenced the amendment.

N. Section 239(a),(b)&(c) – Extension of the Original Jurisdiction of the Court of Appeal to Governorship Election Petitions

Section 239 of the Constitution was altered by-

- (a) substituting for the word “or” after the word “President” in paragraphs (a), (b) and (c), and comma- “;”; and
- (b) inserting immediately after the word “Vice-President” in paragraphs (a), (b) and (c), the words “Governor or Deputy Governor.

The amendment to this section extends the original jurisdiction of the Court of Appeal to election petitions involving the office of Governor or Deputy Governor. The rationale for the amendment cannot be easily appreciated. The Court of Appeal is already over-burdened with cases. Secondly, if there is something wrong with the Election Tribunals why should they continue to hear other petitions?⁵¹

O. Section 246 (1) (b) & (3) – Renaming of National and State Assembly Election Tribunals

The un-amended section 246 (1) (a) & (3) of the Constitution reads as follows:

246(1) – An appeal to the Court of Appeal shall lie as of right from-

- (a) decisions of the National Assembly Election Tribunals and Governorship and Legislative Houses Election Tribunals on any question as to whether ...
- (3) The decisions of the Court of Appeal in respect of appeals arising from election petitions shall be final.

Section 246 was altered as follows:

- (a) in subsection (1)(b), by-
 - (i) substituting for the words, “National Assembly Election Tribunals and Governorship and Legislative Houses Election Tribunals”, the words “National and State Houses of Assembly Election Tribunals”,
 - (ii) deleting subparagraph (ii), and
 - (iii) renumbering the paragraph appropriately; and
- (b) in subsection (3), line 2, by inserting immediately after the word “final”, the words, “provided that an interlocutory application may be decided during the delivery of judgment.

⁵¹ The section has, however, been further amended through the Constitution (Second Alteration) Act 2010.

The amendment to this section became necessary as a result of the amendment of section 285 of the Constitution to create only one Election Tribunal – National and State Houses of Assembly Election Tribunal. Prior to the amendment, section 285 created two Election Tribunals - National Assembly Election tribunals and Governorship and Legislative Houses Election Tribunals. The new proviso to subsection (3) enables the Court of Appeal to determine interlocutory applications during final judgment.

P. Section 251 – Extension of the Jurisdiction of the Federal High Court

Section 251 of the Constitution was altered by inserting immediately after the existing subsection (3) a subsection “(4)” which reads as follows-

(4) The Federal High Court shall have and exercise jurisdiction to determine any question as to whether the term of office or a seat of a member of the Senate or the House of Representatives has ceased or his seat has become vacant.

The amendment to the section has enlarged the jurisdiction of the Federal High Court to include the question whether the term of office or the seat of a member of the Senate or the House of Representatives has ceased or become vacant. Prior to the amendment, jurisdiction over the matter was vested on Election Tribunals by section 285 of the Constitution. The position was, however, found unsatisfactory because Election Tribunals sit only on ad hoc basis. Whether this additional jurisdiction is exclusive is not clear.⁵²

Q. Section 272 – Extension of the Jurisdiction of the State High Court

Section 272 of the Constitution was altered by inserting immediately after the existing subsection (2) the following new subsection “(3)” -

(3) Subject to the provisions of section 251 and other provisions of this Constitution, the Federal High Court shall have jurisdiction to hear and determine the question as to whether the term of office of a member of the House of Assembly of a State, a Governor or Deputy Governor has ceased or become vacant.

The amendment to this section similarly extends the jurisdiction of the Federal High Court to questions as to whether the term of office of a member of a House of Assembly, Governor or Deputy Governor has ceased or become vacant. However, since section

⁵² The issue will not be explored in this paper as a result of constraint of space.

272 of the Constitution provides for the jurisdiction of the State High Court, why was the jurisdiction of the Federal High Court in respect of these matters contained in this section instead of section 251? The implication is that a person who reads section 251 (including the amendment to the section) will not know the extent of the jurisdiction conferred on the Court by the Constitution except the person also reads section 272. Furthermore, whether this additional jurisdiction is exclusive is not clear.⁵³

R. Section 285: Election Tribunals

Section 285 of the Constitution which deals with Election Tribunals was altered as follows:

- (a) by substituting for the existing subsection (1) the following new subsection “(1)”-
 - (1) There shall be established for each State of the Federation and the Federal Capital Territory one or more election tribunals to be known as the National and State Houses of Assembly Election Tribunals which shall, to the exclusion of any Court or Tribunal, have original jurisdiction to hear and determine petitions as to whether-
 - a) Any person has been validly elected as member of the National Assembly; and
 - b) Any person has been validly elected as member of the House of Assembly of a State”;
 - (b) by deleting subsection (2);
 - (c) in subsection (3), lines 1 and 2 by substituting for the words “National Assembly, Governorship and Legislative Houses Election Tribunals”, the words, “National and State Houses of Assembly Election Tribunals”;
 - d) In subsection (4), line 2 by substituting for the word, “two”, the word, “one”;
 - (e) By inserting the following new subsection “(5)” –“(8)”:
 - 5) An election petition shall be filed within 21 days after the date of the declaration of result of the elections.
 - (6) An election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition.
 - (7) An appeal from a decision of an election tribunal or court shall be heard and disposed of within 60 days

⁵³ The issue will also not be explored in this paper as a result of constraint of space.

from the date of the delivery of judgment of the tribunal.

- 8) The Court in all appeals from election tribunal may adopt the practice of first giving its decision and reserving the reasons therefore to a later date.

The first observation is that subsection (2) of the original provision was deleted without any provision for renumbering the remaining subsections. The amendment introducing time limitation for the determination of election petitions may be aimed at stopping the situation where election petitions keep on lingering, until at times, the tenure of the office runs out. The amendment became necessary in view of the Supreme Court decision in *Unongo v. Aku*⁵⁴ to the effect that the legislature cannot fix the time within which the judiciary will determine a case.

It is, however, submitted that the Constitution should have merely empowered parliament to fix the period for the filing and determination of election petitions through ordinary legislation. If this approach is adopted, the time fixed can be regularly adjusted by law as experience dictates instead of going the whole hog of amending the Constitution if the time limitations do not serve the interest of justice. A legal luminary, Chief Mike Ahamba, SAN, has pertinently observed that the misfortune of the whole amendment was that procedural matters were planted into the Constitution.⁵⁵ In *Baxter v. Commissioners of Taxation (N.S.W.)*⁵⁶ a U.S. court referred with approval to the following passage from the judgment of Story, J in *Martin v Hunters' Lessee*:

The Constitution unavoidably deals in general language. It did not suit the purpose of the people in framing this great charter of our liberties to provide for minute specifications of its powers ... Hence its powers are expressed in general terms, leaving to the legislature from time to time, to adopt its own means to effectuate legitimate objects, and to mould and model

⁵⁴ (1983) 1 SCNLR 1. This was followed in *Attorney General of Abia State & 35 Ors v. Attorney General of the Federation* [2002] 6 NWLR (Pt. 763) p. 264 and *Yusuf v. Obasanjo* [2003] 16 NWLR (pt. 847) 554. For a criticism of these decisions, see O. N. Ogbu "The Imperative of Reconciling Nigerian Election Petition Laws and Practices with the Right to Democratic Representation" in O. Obuduro *et. al. (ed) Trends in Nigerian Law: Essays in Honour of DVF Olateru-Olagbegi III* (Ibadan: Constellation (Nig) Publishers, 2007) p. 33.

⁵⁵ See A. Avwode, "A Serving Judicial Officer Should no Longer Head NJC – Ahamba," *The Nation*, Saturday, September 17, 2011 p. 54.

⁵⁶ (1907) 4 C.L.R. 1087 at 1105.

the exercise of its powers, as its wisdom and the public interest should require.⁵⁷

The amendment introducing time limitation has led to an ugly result where several petitions were struck out on the ground that they were not determined within the period limited for their determination. In *All Nigeria Peoples Party (ANPP) v. Alhaji Mohammed Goni & 4 ors*⁵⁸, the Supreme Court held that where an election tribunal fails to comply with the provision of section 285(6) of the 1999 Constitution as amended, the jurisdiction to continue to entertain the petition lapses or becomes spent and cannot be extended by any court order howsoever well intentioned. In *Chief Great Ovedje Ogboru & Anor v. Dr. Emmanuel Ewetan Uduaghan & 2 Ors*⁵⁹ the Supreme Court held that by virtue of section 285(7) of the 1999 Constitution (as amended), an appeal from a decision of an Election Tribunal or the Court of Appeal in an election matter shall be heard and disposed of within 60 days from the date of delivery of judgment of the tribunal or Court of Appeal. The Court of Appeal was therefore under a statutory obligation to hear and determine the appellants' appeal within the period of sixty days prescribed by the Constitution but it failed to do so when it delivered the reason for its decision on the 72nd day after the judgment of the election tribunal was delivered. In the circumstance, the judgment of the Court of Appeal was given contrary to section 285(7) of the Constitution (as amended) and is therefore null and void. Thus, in pursuit of speedy dispensation of election petition cases, what has been achieved is an unfortunate situation where justice denied is preferred to justice delayed.

S. Alterations to the Schedules of the Constitution

Part 1, Item 56 of the Second Schedule to the Constitution was altered by inserting before the word "Regulation" the word, "Formation". The import of the amendment is that the National Assembly can now not only make laws regarding the regulation of political parties but also the formation of political parties, thus overcoming the Supreme Court decision in *Independent National Electoral Commission (INEC) & Anor v. Alhaji Abdulkadir*

⁵⁷ Cited in E. I. Kachikwu, and M. A. A. Ozekhome, "Extending the Frontiers of Constitutionalism: Should a Constitution contain only Legal Rules?" (1978-1988) *N.J.R.* pp. 74-105.

⁵⁸ [2012] 7 NWLR (Pt. 1298) p. 147.

⁵⁹ [2012] 11 NWLR (Pt. 1311) p. 357.

*Balarabe Musa & 5 Ors*⁶⁰. In that case, INEC Guidelines and the Guidelines for the Registration of Political Parties in the Electoral Act 2002 were declared unconstitutional for introducing additional requirements outside the stipulations of section 222 of the 1999 Constitution.

Item (F) of the Third Schedule to the Constitution was altered as follows:

- (a) by substituting for paragraph 14, the following new paragraph “14”
 - 14(1) The Independent National Electoral Commission shall comprise the following members-
 - a) A chairman, who shall be the Chief Electoral Commissioner; and
 - b) Twelve other members to be known as National Electoral Commissioners.
 - (2) A member of the Commission shall-
 - a) be non-partisan and a person of unquestionable integrity; and
 - b) be not less than 40 years of age in the case of the National Commissioners.
 - (3) There shall be for each State of the Federation and the Federal Capital territory, Abuja, a Resident Electoral Commissioner who shall-
 - a) be appointed by the President subject to confirmation by the Senate;
 - b) be a person of unquestionable integrity and shall not be a member of any political party; and
 - c) not less than 35 years of age”; and
- (b) in paragraph (15) (c), line 2, by inserting immediately after the word “finances”, the words, “conventions, congresses and party primaries.

The Sixth Schedule to the Constitution was altered as follows:

- (a) by deleting, the word “Assembly” and inserting immediately after the word “National” the words “and State Houses of Assembly Election Tribunals” in Heading “A”;
- (b) in paragraph 1 (1), line 1, by deleting immediately after the word “National” the word “Assembly”, and inserting the words, “and Sate Houses of Assembly Election Tribunals”;
- (c) in subparagraph (2), line 1, by substituting for the word “four”, the word” two”; and

⁶⁰[2003] 3 NWLR (Pt. 806) p. 72.

- (d) By deleting-
- (i) Heading “B”, and
 - (ii) Paragraph 2(1), (2) and (3).

The amendments to the schedules are intended to reflect the amendments to the body of the Constitution already discussed above.

III. Conclusion

As an organic law of a dynamic society, the Constitution of the country will always be amended from time to time as the need arises. However, the amendment ought to serve the purpose of social engineering and not elitist or class interest. The amendments made to sections 66, 107, 137 and 182 of the Constitution will serve elitist interest or the interest of the corrupt and inept political class in Nigeria. The amendments to sections 76(1) and (2) and 116(1) and (2) relating to time of election; and the amendment to section 132(1) and (2) relating to the date of election will undermine the independence of INEC. These amendments are open to manipulation by the party controlling the majority members in the National Assembly to its advantage to the detriment of the opposition political parties. The amendments which have incorporated into the Constitution time limitation for the determination of election petitions ought to be expunged from the Constitution. The matter should be left to be regulated by ordinary laws so that changes can as often be made as considered necessary or expedient. . It is suggested that the Supreme Court should at the earliest opportunity take a second look at its decisions in *Chief Great Ovedje Ogboru & Anor v. Dr. Emmanuel Ewetan Uduaghan & 2 Ors*⁶¹ and *All Nigeria Peoples Party (ANPP) v. Alhaji Mohammed Goni& 4 ors*⁶² to nip the ugly situation arising from the decisions in the bud. It is unfortunate that the Supreme Court has resurrected the doctrine of political question in relation to party primary election disputes notwithstanding the effort to bury the doctrine through the constitutional amendments and the Electoral Act 2010 (as amended). The situation calls for further amendment of the Constitution to bring the so-called issues of pre-primary election disputes and party primary election disputes involving factions of a party or the holding of parallel party primaries within justiciability.

⁶¹ [2012] 11 NWLR (Pt. 1311) p. 357.

⁶² [2012] 7 NWLR (Pt. 1298) p. 147.