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Emerging Trends in Employment Relations: The Case of Essential Service Employees in the Botswana Public Sector

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Abstract- This paper is intended as an advocacy for a more pragmatic approach to employment relations particularly within the public sector. To do this, the paper uses the recent problems surrounding the issue of essential services in Botswana as a context. The paper acknowledges that such an exercise calls for an objective appreciation of the state as an employer, a prime mover in employment relations and the institution in control of both legislative authority and political power. The paper also recognises the apparently unfettered discretionary authority reposed in the upper echelons of the public bureaucracy not only to implement policies and laws but also to make rules and purport to apply such rules in a quasi-judicial manner.

Furthermore, the paper also asserts that the impact of the actions of all these adjuncts of the state machinery on worker formations and their members including those employed in "essential services" has not been mutually beneficial.

Keywords: *essential services, discretionary authority, statutes, monist, stratification.*

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Emerging Trends in Employment Relations: The Case of Essential Service Employees in the Botswana Public Sector

Emmanuel Kodzo [α] & Bediaku Ntumy [σ]

Abstract- This paper is intended as an advocacy for a more pragmatic approach to employment relations particularly within the public sector. To do this, the paper uses the recent problems surrounding the issue of essential services in Botswana as a context. The paper acknowledges that such an exercise calls for an objective appreciation of the state as an employer, a prime mover in employment relations and the institution in control of both legislative authority and political power. The paper also recognises the apparently unfettered discretionary authority reposed in the upper echelons of the public bureaucracy not only to implement policies and laws but also to make rules and purport to apply such rules in a quasi-judicial manner.

Furthermore, the paper also asserts that the impact of the actions of all these adjuncts of the state machinery on worker formations and their members including those employed in "essential services" has not been mutually beneficial. The paper notes that, where the state appears to be weakening, the agencies created, including the coercive institutionalised structures, take over the functions of both the Executive and the Legislature.[1] An undesirable consequence of the state being held captive by these agencies in the field would be the deleterious impact on several spheres of social interaction.

These issues are discussed within the framework of labour law. To do this, the paper attempts to define the relationship between public service workers and the state as the employer. These issues are tested within the context of how "essential services" are determined. The paper concludes that the modalities by which workplace phenomena, such as "essential services" are prescribed will determine the sustainability of deliberative social partnering. In default, legislation and coercive authority will both be inefficient and ineffective simply because the legitimizing constituency will always be the final arbiter.

Keywords: essential services, discretionary authority, statutes, monist, stratification.

I. Introduction

Botswana is a society in transition, having emerged from colonialism not very long ago. Since independence, the political state seems to be in a continuous search for a pragmatic developmental path. This search may have inadvertently resulted in a web of legislation and policy whose effect, for now, conveys the impression of a concern for the sustenance of law and order. Some of the outcomes of such concern include the classification of workers generally as "public and private" sector employees (with different salary grades and working conditions) for which an Employment Act[1] on one hand is enacted and on the other, a Public Service Act.[2]

Within this environment is also captured avital component of employer- employee relations which is the ascribed characteristics of 'essential services' and by implication, 'non-essential' services. Another classification is the group designated as (general) "management"[3]. This ostensibly was intended under the Trade Unions and Employers Organizations Act to segment the more literate, informed and therefore vocal employees from the mainstream of employees for purposes of selective unionization.

There was yet another category referred to as 'industrial class' governed then under the Regulations For Industrial Employees (1988), made up of unskilled, semi-skilled artisans grounds men, janitors, messengers and drivers, "Industrial Class Employees" are actually public sector workers from grades A3 to B2 and are remunerated on a wage basis. In 1992, a decision was taken to convert this class to Permanent and Pensionable status. This category of workers has since then been declared 'employee' for the purposes of the Employment Act (as amended).

The Trade Disputes Act[4] as amended was essentially intended to re-visit, restructure and amend the procedures for dispute resolution, bringing in as many alternate and informal channels as functionally possible between the quasi-judicial and administrative roles of the state bureaucracy and the formal courts including the Industrial Court.

The main thrust of this paper therefore will be sections related to "essential services" under the Trade Disputes Act (TDA). As stated earlier, the evolutionary path of labour legislation and policy, both during the colonial era and the post-colonial Botswana, displays an

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[1] [Cap 47:01]
[2] [Cap 26:01] now No.30 of 2008
[3] Section 48 ss (2), (3) Trade Unions and Employers Organizations Act [Cap 48:01]
[4] [Cap 48:02]

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interventionist inclination by the state often translated in terms of legislative and administrative regulation. This has resulted in the fragmentation, marginalisation, confusion and discord among the various social formations, in particular labour. This parlous condition is also accompanied by subjective interpretations of various provisions of relevant statues. The problem is further compounded by some aspects of the constitution of Botswana[5] and, with due respect, some worrisome decisions by the senior court of the land.

In this environment, the judiciary would appear to have played a supportive role in its inability or reluctance to lead through teleological pronouncements regarding controversial executive actions such as widening the basket of essential services. It has also not reacted, as one would have expected, to attempts at circumventing the stipulations of the Statutory Instruments Act[6]. These developments dictate the focus of the paper.

Broadly, the paper undertakes an overview of labour legislation and policy formulation in Botswana and employment relations law in general. This involves the examination of specific aspect of the legislative regime as it has been unfolding. Using case studies, the paper also attempts to investigate the implications of these administrative *cum* legal interventions. By extension, the paper also examines key constitutional issues such fundamental freedoms. Finally, the paper answers the question as to whether both the judiciary and the executive are providing a framework for open and robust social discourse or are shaping up as potential obstacles along the path of emancipating nascent social formations such as labour.

This paper is grounded in the 'Law in Context' approach. Much as law may be a variable factor, thorough grounding in the dynamics of the context in which it is observed is crucial. As such there is the need to understand the chosen context such as Botswana. Such an understanding must cover the peculiarities, problems and conditions existing so as to make law more effective and responsive. This is the principle referred to as fidelity to context[7]. The rationale is that, an analysis of the institutions such as those created to deal with labour issues or the prevailing social environment should provide indicators for appropriate rules and procedures. This will facilitate the appreciation of the genuine needs so as to be able to respond to realistic circumstances without compromising the required standards of legality and morality. This however should not be misunderstood as diluting the general regulatory qualities of law.

In sum, 'law in context" is not intended to take fidelity to context as an absolute. It should be seen as a process that needs to be subjected to and controlled within the confines of universal standards and ideals of freedom, fairness, rationality, justice, empowerment and growth among others.[8] The goal therefore is examining, observing and analysing of events in order to realize relevant and enriching ideals within a given context. For this paper, this would mean how to eliminate injustice and acrimony in the workplace and generate industrial peace and amity in the specific contexts of countries such as Botswana.[9]

As anobservation of the law in action within a given social context the paper's aim is to draw some lessons from events both past and present for the future. Being an academic exercise, any position taken by the paper is not intended as a critique of any governmental system or the ideological inclinations of the state.

The paper is divided into sections. Section one deals with the conceptual framework of the paper which mainly covers the traditional notions of labour law in particular the institutionalisation of the employment contract and the supposed prerogative of the employer. It deals with the functions of labour law within society and the perceived role of the state in this context, a role which extends beyond regulation to the maintenance of the *status quo*.

In section three, the paper retraces the legislative route over the years and examines in particular the labour legislation framework including the Trade Disputes Act and how this has impacted on labour formations. Section four examines the effects of some provisions relating to constitutional rights such as freedom of association and assembly. Inferentially, the paper also deals with the right to organize and withhold services and how these operate within the context of international norms and practices such as the conventions and principles of the International Labour Organisation (ILO). In section five, the paper examines some aspects of the domestic law in action. This is done relative to elements of contractual activity such as determination of "essential services." Judicial interpretation of relevant cases and how these, in their totality, affect worker rights are also examined. On the basis of the foregoing, an informed conclusion is drawn.

II. Conceptualising Labour Law

This section deals with the broad framework of labour law principally because the critical issues are based on divergent positions between the state as an employer and groups of employees. A defining characteristic of labour law is its "attention to conflicts

[5] [Cap 01:00]
[6] [Cap 01:05]
[7] Selznick, Phillip, *"Law in Context: Fidelity To Context"* Centre For JSP, 2002 Repositories.edlib.org/csls/fwp/21 bidp

[8] Selznick, Phillip *"Law in Context Revisited"* Journal of Law and Society Vol.30 No.2 June 2003 pp.177- 86 at p.185
[9] Ibid

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and co-operation between, among and within different economic and social interests" [10]. Secondly, modern labour law is an admixture of terms, principles, rules of common law and statute such as apply to labour dispute resolution and by extension, the protection of employees from the dominant economic power of the employer.[11]

Though legal rules may not directly re-define the employment relationship, they rationally change the legal content and effect of the relationship. In addition, the context of work determines the nature of the work relations that legal rules do or attempt to regulate[12]. Legal rules within labour law could thus oversee but not necessarily permeate the realities of the workplace. Under normal conditions, market forces may be allowed to determine the nature of the relationship between employer and employee rather than state's unilateral and regulatory intervention[13].

Labour law may also be defined more in terms of its localised, domestic nature rather than traditionally accepted commonalities such as "individual" and "collective" labour law. This then underscores the need to closely examine local contextual practices and rules as a reflection of local dynamics or comparatively as inter- territorial differentiation. Conceptually, functionally and also therefore contextually, labour dispute resolution is part of the broad field of labour law[14]. This is evident in the cases discussed hereafter.

It is argued that function of labour legislation is to transcend the boundaries of the mechanics of employment. This is because it deals with work in a manner in which work is and will be organized in today's world and the work world of the future. In a sense, a modern labour law should reflect the on-going dynamics of the workplace and the society in which it is located. The issue becomes one of a comparative distinction between what the labour law is, what it does or should do and how it has functioned in terms of the interrelationships between the power holders and the power addressees such as workers.

Given the nature of recent events in Botswana, labour law, depending on the environmental context in which it is actualised, should not overlook the trans-territorial approach to it holistic efficacy. Thus, the concept of legal formants and resultant benchmarking also comes into play. The premise is that unjustifiable adherence to a monist legal system that attempts to deny historical facts cannot assist in the development of such a legal system. This is particularly so when a country voluntarily ratifies international conventions, principles and treaties which it then informally denounces. The situation gets compounded when it appears the denunciation originates rather from the Judiciary. Watson deals with the concept of legal transplants where societies borrow models or domesticate foreign legal rules that are considered relevant to local needs.[15]

However it is also worthwhile to heed Teubner's advice that the import of legal rules should be seen in terms of a deliberate introduction of legal irritants whose objective is to trigger change within a given local legal system. However, since contexts differ, such borrowing and grafting may not be as simple as changing vehicle parts. In fact, according to Teubner, a completely unexpected mutant might be created by such a process.[16] Both writers thus provide a justification for looking beyond territorial confines for juridical guidance albeit cautiously and prudently. Given the discernible ambivalence towards international labour standards, this paper contends that Botswana is yet to reach beyond its immediate confines in the search for substantive changes in labour laws.

It is assumed that the true function of labour law is the preservation of the social and economic structures prevailing in society at any given moment. This view cannot endorse the need to restrain the conflicting relationship between employers and employees. In that case, the true purpose of labour law should rather be the judicious application of ground rules and regulations. This would also encompass how these rules are translated by administrators such as Commissioners of Labour, Industrial Courts and the Judiciary who superimpose administrative, quasi-judicial and judicial decisions on transactional demands by social role players.

In this regard, it must be assumed that laws and labour law in particular should also function as liberators of the creative energies of workers and employers in their search for mutual advantages. These are some of the issues that the facts on the ground in Botswana need to openly debate.

Having examined what Labour law ought to be in order to sustain a claim to relevance, its critics should also be acknowledged. Labour law is considered as flawed due to certain observable shortcomings. First, there is the claim that labour law impedes efficiency, flexibility and development.[17] Further, it is criticised as reducing employment and being partial to those forming

[10] Arthurs, H, W *Labour Without The State* University of Toronto Law Journal, Vol.1 (Winter) 1996.
[11] Creighton, Breen, Stewart, Andrew *Labour Law: An Introduction* The Federation Press, 2000.
[12] Ezzy, D *''Subjectivity and The Labour Process: Conceptualising 'Good Work'* '' Sociology Vol. 31 No.3 pp 427-444.
[13] Ibid p.7.
[14] Paul, Haveman "*Law In Context Taking Context Seriously* "Waikato Law Review Vol.8 1995.
[15] Watson, A *"Legal Transplants: An Approach To Comparative Law*" Edinburgh Scottish Academy Press 1974.
[16] Gunther,Teubner *"Legal Irritants: Good Faith In English Law Or How Unifying Law Ends Up In New Divergencies"* Modern Law Review Vol,61 11998.
[17] Davidov, Guy, Langille, Brian *The Idea Of Labour Law*Oxford University Press 2011.

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the labour aristocracy while leaving the informal sector and other categories of workers unprotected from predatory labour contractors and unscrupulous employers[18]. Further, traditional labour law has enabled labour law practitioners to question the coherence of the discipline, its relevance to new empirical realities in the world of work and its normative resilience in the current world order.[19] Further, traditional labour law has enabled labour law practitioners to question the coherence of the discipline, its relevance to new empirical realities in the world of work and its normative resilience in the current world order. [20]

It is also observed that there is a decline in and transformation of the founding paradigms of labour law particularly in the developed countries. From a socio-legal perspective, this shift is said to be due principally to the impact of trans-nationalisation on productive processes and the attendant employment relations. These views therefore dictate a rethinking about labour law's purpose and context.[21] Worker aspirations have, in the past, been defined in terms of the polarisation of relations between capital and labour. This is what Kahn-Freund referred to as "relations of power." [22] Regarding countervailing power, modern trade unions emerged as the vibrant successors to the vocational, craft and trade guilds. Their roles included winning concessions and making gains from the employer but in a regulated manner.

Objectively, labour legislation could be said to have moved beyond the notion of conferring rights on workers. This is because it has also effected the regulation of the business environment through balancing management autonomy and worker protection. Irrespective of this, even though the regulatory mechanism leaves a scope for common law principles and judicial decisions. Regrettably, none of these has prevented labour disputes from festering until the conflict explodes into industrial action.

In effect, legislative intervention, common law principles and judicial rulings have neither assuaged the anxieties nor lessened the aspirations of workers. This is because workplace arrangements cannot always be justified as grounded in consent. As such, insecurity is often engendered by the individualisation of the contract of employment and the unilateral rights of termination earlier referred to. From the foregoing, draconian regulation of labour relations ironically admits the perceived capacity of organized labour to destabilize not the industrial environment, in the event of unresolved disputes.

Taken to its logical conclusion, labour disputes do indeed have the capacity to also destabilise the state and social structures. However, procedurally and substantively, the role of labour legislation should not be to shackle or deal with labour disputes perfunctorily. Rather, it should also generate mediatory policies aimed at ensuring that socio-economic activity is based on *a quid pro quo* arrangement. Whether this has been the case in Botswana is the subject of this paper.

III. A Brief Overview of the Legislative Terrain

Legally and historically, the Protectorate of Bechuanaland came into existence mainly through the Foreign Jurisdiction Act of 1890 and the Bechuanaland Protectorate Order in Council of 1891. The enactment of these laws heralded the importation of whole regimes of law into a pre-capitalist, agrarian environment. The laws included those intended to regulate employment and labour relations. Over the years, the socio-economic effects of the regime of laws together with policies so formulated have not been exactly positive, given that the driving philosophy was command and control.

Contemporary indigenous literature in this regard does not appear to provide this historical linkage as it seems to focus on issues regarding post– colonial labour legislation, market regulation and relations. Such literature is also not focused on any particular doctrinal issue. Such literature concerns itself with largely academic polemics, substantive law, statutory regulations, law reports and commentaries on judicial decisions. However, they help point the way around statutory provisions and state policy.

From the foregoing, the role of legislation and policy over the years, the effects and the prospects for effective employment relations all deserve careful examination. This is because these impact on social progress. They are also seen through the prism of society at large as social actors and are therefore perceived as *bona fide* agents of democratic governance in Botswana. This paper is not assessing regulatory mechanisms in terms of abuse or effect. The point is that by entrusting the state with such discretionary authority and power over preventive and pre-emptive legislation, the most visible consequence of what might be called the social contract is the consolidation of the dominance of the state. The constitution itself defers to the authority of the state with regard to fundamental rights and freedoms[23].

[18] *Ibid*
[19] Ibid
[20] Ibid
[21] Moreau Marie- Ange "*The Reconceptualization of The Employment Relationship and Labour Rights Through Trans-nationality*" Comparative Labour Law and Policy Journal Vol.34 No.3 2013
[22] Kahn-Freund, O.*Labour and The Law* Stevens and Sons, London p.8 1972
[23] Chapter 11 Constitution of Botswana [Cap 01:00]

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IV. The Contract of Service

This sub-section is based on the following premise. Law plays different roles in society. Ideologically, the law justifies existing power relations to both rulers and the ruled so as to induce willed compliance. The law also confers legitimacy on regulatory and institutional mechanisms that define social conduct. Politically, the state provides the institutional framework for the law. As a result, the state, through the instrumentality of law, may, for example, assume sovereign ownership of land while erecting structures for the political economy[24]. One such area is the structural differentiation between owners of capital and those who expend their labour power.

Thus the modern concept of the contract of employment has become an institutionalised component of this differentiation and eventual stratification. The concept traces its roots to the traditional Roman law "*locatioconditiooperarum*" or the letting and hiring of services which had initially applied to only the unskilled, menial worker. [25] In essence, moving away from the Roman and English common law roots, the modern definition of the contract of employment has come to acquire an increasingly legislative definition intended to address the perceived shortcomings of both the Roman– Dutch and English common law approaches. The employment contract, as per legislative definition, has now been clothed in a spurious notion of mutuality of consent and reciprocity. In this ensuing relationship between equals, the servant or employee (*locator operarum*) avails the employer or master his personal service (generally undefined but legally circumscribed) for hire under given conditions, over a specified period of time in return for remuneration.[26]

The Employment Act [27]of Botswana provides the prescriptive environment underpinning employment relations. The scope of the Act suggests that, within the framework of formal employment, there is ample statutory protection even if implementation and enforcement may be lacking. [28] This Act defines an employee as a person who voluntarily enters into a contract of employment for the hire of his labour. A casual employee is defined as an employee whose terms of contract are for a period of not more than twelve months and limiting working time to three days or twenty two and a half hours a week.[29]

Labour legislation in Botswana has demonstrably continued to be skewed towards the notion of contractual obligations. This notion is not grounded in a conscious desire for equity in the absence of equality between the parties. This is because, realistically, the notion of voluntarism in the context of employment is a myth in and of itself. Even in the event of state intervention, the premise is generally the supposed private contract between two consenting adults. As a result, both labour peace and stability in Botswana are now subject to the intersection between the old school of labour law and emerging trends that seek to acknowledge the limitations of such legalised definitions. Such trends as indicated, include ideas of labour market flexibility and deregulation. Deregulation in this context is not the demise of regulation in its totality but the loosening of current limitations so as to offer protection and security to other players in the world of work.

The next sub-section examines the question of the implications of the concept of Freedom of Association and the role of the state and the Judiciary in resolving any ambiguities there may be. This is because given the scope of the paper, it is necessary to examine possible conflicts between statutes and constitutions. Freedom of association is also the context within which "essential services'' could be best understood.

V. Understanding "Essential" Service

The notion of essential services in labour law presumes terms and conditions of employment which include areas of human endeavour whose retraction may pose dangers to the safety, health and security of a society or segments of it[30]. The International Labour Organization (ILO) defines this as service "the interruption of which would endanger the life, personal safety or health of the whole or part of the society.''[31] It further stipulates that, much as the restriction on the right to strike may depend on the peculiar circumstances of each country, even a legal strike over a protracted period could become restrictive and an issue of life and safety.[32]

Given the dynamics of the world of work, technological and socialisation processes at work, the determination of what is essential can only be a continuing process undertaken by those attuned to the exigencies of the workplace and the value of such essential service to the society at large. From the foregoing therefore, the ILO provided certain categories which, strictly considered, should *not* be classified as "essential". These include: *agricultural activities, the*

[24] Rubin, G, Sugarman, D Law, Economy and Society: Essays in The History of English Law 1750-1914 Professional Books 1984
[25] Grogan, J *Workplace Law* Juta Law, Juta& Co Ltd seventh Edition 2003
[26] *Smitv Workmen's Compensation Commissioner* 1979 (1) SA 51 (A) p. 56-57
[27] [Cap 47:01]
[28] No. 23 of 1998
[29] Part 1 Preliminary Cap 47:01
[30] ILO Guidelines Mmegi Blogs http://www.mmegi,bw/blogs.plp?-sid=10&aid of 11/10/2012 [ILO 1983]b par.214 as subsequently adopted by the Committee on Freedom Of Association
[31]
[32] ILO 1996 par.545

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education sector, transport generally, banking and mining, postal services and construction among others.[33] The Committee on Freedom of Association therefore recommended that in particular where member states are prone to using discretionary powers to effect amendments to prohibit strikes in essential services, such must be restricted in terms of the ILO's strict definition only.[34]

The terminology of the ILO in this respect emanates from issues of fundamental importance on one hand and matters of public utility. However, both the Committee of Experts and the Committee on Freedom of Association agree that essential services must be those whose interruption would endanger life, personal safety and health for which restrictions or even prohibition are justifiable. In such instances, *a minimum service force must be operational to allow the majority to actualize the freedom to organize and participate in lawful industrial action.* (my emphasis) As observed by the Committee of Experts, the principle whereby the right to strike may be limited or even prohibited in essential services would lose all meaning if national legislation defined these services in too broad a manner.[35]

In 1998, the International Labour Conference (ILC) in its Declaration on Fundamental Principles and Rights at Work reaffirmed the commitment of the international community "to respect, to promote and to realize in good faith" the rights of workers and employers to freedom of association, effective right to collective bargaining and to promote the elimination of discrimination in respect of employment and occupation. Convention Number 87 of the International Labour Organisation (ILO) deals with the freedom of association and the protection of the right to organize. This basic right enjoins all stakeholders to enable all workers and employers to form and join organisations of their own choosing without prior authorisation and provides guarantees for the free functioning of organisations without interference by public authorities. This core Convention was ratified by Botswana in 1997, thirty one years after independence.

The implication is that, in principle, Botswana has therefore undertaken to provide unfettered freedom to workers and employers in their quest to organize and join organizations which shall have the right to draw up their own programmes, constitutions and rules and elect representatives in full freedom. Furthermore, in keeping with the principle of *pactasuntservanda*, every treaty in force is binding upon the signatories to it and must be performed in good faith[36]. Such organizations shall not be dissolved or suspended by any administrative authority and *shall be free to establish and join* (my emphasis) federations or confederations and have the right to affiliate with international organisations of workers and employers. The concern of this paper is the extent to which these provisions actually accommodate "essential services".

The Convention on Freedom of Association is generally coupled with the Right to Organize and Collectively Bargain Convention. The Labour Relations (Public Service) Convention[37] deals with the right to organize in the public service. Its provisions expand on Convention 98 which, unlike 87, does not cover public servants engaged in the administration of the state. Even then, the logical reaction would be the meaning of 'administration of the state". If this process is undertaken by those in "management," the role of a grounds man for example should then be excluded. The United Nation's Universal Declaration of Human Rights provides that "everyone has the right to form and join trade unions for the protection of his interests" It also recognizes that" no one may be compelled to belong to any association"[38]. By extension also, no one should be compelled not to join any association of his choice.

a) How Essential is Essential?

This sub-section of the paper deals with the concept of 'essential services' within the overall context of ILO Conventions 87 and 98 because this is the main plank of the paper. ILO Convention 87 states that public authorities shall refrain from any interference which would restrict the right or impede the lawful exercise of the freedom of association. Further the law of the land shall not be such as to impair guarantees provided by the Convention[39] However, the Convention also recognises the primacy of domestic legislation as contained in laws, awards, custom and agreements over which the Convention may assert only an oversight in order to safeguard the guarantees subsumed in the Convention[40].

Convention 98 accepts the right of the state to restrict the police and armed forces with regard to the formation of and joining trade unions of their choice. These apparently contradictory statements raise important issues. The first is the sheer moral and persuasive authority of ILO Conventions and Principles. Secondly, the symbolic gestures of willingness to domesticate the ILO provisions coupled to an overt disregard and hostility towards the integration of these provisions by signatory states into domestic legislation. Thirdly, the overall effect of selective incorporationas a compromise.[41] Fourthly, as part of "soft" international law, these Conventions as ratified, do not carry the

[33] ILO 1994 a pars 159,160
[34] See Article s1-5
[35] Vienna Convention Article. 26 *Law of Treaties*
[36] No.98
[37] No. 151 of 1978
[38] 1948 see Arts. 20-23
[39] Art.3 (3) Part 1 Convention87-Freedom of Association
[40] Art 8 (2)Part 1 Convention 87 Freedom of Association
[41] Art 9 (2) Ibid

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enforcement or coercive authority in relation to municipal legislation. Comparatively therefore, their role requires unambiguous clarification whether from a 'monist' or 'dualist' perspective[42]. The paper suggests that subsequent events demonstrate the judicial confusion over (a) outright rejection or (b) occasional reference and reliance on these same Conventions or(c) clear endorsement of all relevant and ratified provisions as part of domestic law.

The International Covenant on Economic, Social and Cultural Rights requires that ratifying States must ensure the right of everyone to form trade unions of his choice and for unions to function freely[43]. This Article acknowledges the right to strike subject to compliance with domestic laws. The International Covenant on Civil and Political Rights also in its Article 22 provides for the inclusion of those in the "administration of the state" in the basket of beneficiaries of the freedom to form and join trade unions. Having stipulated this, Convention 98 then specifically defers to municipal discretionary authority with regard to the position of public servants engaged in the administration of the state, while contending paradoxically that this profound and deferent position adopted by the ILO is without prejudice to those affected[44].

At this point, though one sees a dominant trajectory of convergence between the principles enunciated by different international institutions, the conclusion of subordination to domestic rule-making is inevitable. The paper contends that, if indeed 'freedom of association' provides the nexus between civil, political, economic, social and cultural aspects of human rights, then this should include the right to join trade unions and membership must come with a legitimate expectation to actualise the right to put pressure on employers during negotiations through the instrumentality of the strike[45]. Assuming this is so, the issue then is what validates and legalises the discretionary authority of the state to exclude or restrict segments of society from full actualisation of these rights.

It is at such times that a more robust teleological role by the Judiciary could have helped. An example could be by questioning and thus diluting the restrictive impact of legislation as compared to constitutionally guaranteed rights. In Britain, the passage of the Human Rights Act of 1999 which came into effect in 2000 gave statutory effect to the European Convention on Human Rights. It also provided that the most direct method of upholding the Convention rights is by allowing the courts to enforce them directly against public authorities including the state.

However, in the *GCHQ* case, the European Court of Human Rights (ECHR) rejected a complaint by members of the General Communications Headquarters in the UK (GCHQ) that restrictions on their union membership had breached Article 11 of the European Convention. The court said the measures were not arbitrary and thus did not violate any rights simply because restrictions on grounds of state security or public safety were permissible irrespective of whose subjective definition of "state security" and" public safety" is being applied.[46]

At another level, the dichotomy between the individual and the collective with regard to freedom of association is played out in the Webster case regarding whether it also implies freedom to dissociate. In *Young, James and Webster* v *UK* the dissenting judges considered the right to associate as concerning "the individual as an active participant in social activities" while at the same time it is "a collective right in so far as it can only be exercised by a plurality of individuals". The right to dissociate "aims at protecting the individual against being grouped together with other individuals with whom he does not agree or for purposes which he does not approve"[47].

However, such protection of the individual is not the implication of the positive freedom of association.[48] Hepple and Leader therefore argue that the argument above is fallacious[49]. Firstly, as a paid worker, one ceases to have that liberty in terms of who to work with, in which unit or on which shift. Secondly, the freedom not to associate is not a celebration of the 'closed shop' membership recruitment approach. Most importantly, this negative freedom seeks to remove the possessors of the freedom of association from the point at which the freedom is decidedly actualised[50] . One cannot realise the freedom of association practically as a lone individual. This is because, assuming one consciously excludes himself from union membership, it should still be expected that the person would enjoy any benefits won through collective bargaining, while that individual retains the right not to be forced to subscribe to a check-off system.[51]

Both the Human Rights Act and the pronouncements of the courts in the UK would suggest an unwillingness to question the primary duty of the employee to their contractual obligations rather than to a post-contractual creature such as a trade union. The

[42] *Moatsi and Another v Fencing Enterprises (Pty) Ltd* 2002 BLR 286 per Ebrahim Carsten J
[43] *Botswana Land Boards and Local Authorities V The Director of Public Service Management* CA/242004
[44] *Art. 22*
[45] Art. 6 Convention98
[46] Art.11 European Convention on Human Rights
[47] *Council of Civil Service Unions v UK (*1988) 10 EHRR 38
[48] *Young,James & Webster* (1982) 4 EHRR 38
[49] Hepple ,B *Freedom to Form and Join or not to Join Trade* Unions Freedom of Association 1993
[50] Leader ,S *Freedom of Association: A Studyin Labour Law and Political Theory* Yale University Press pp. 33-34 1992
[51] [Cap 48:01]

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problem here is a) at point of entry, the new employee undertakes to conform to certain ground rules. b) He subsequently joins a union. How is fidelity to union reconcilable with obligations under contract? The Act does not deal with this. It also does not prevent derogation from the rights of individual workers regarding disclosure of information and parameters of business and commercial transactions even after the termination of the contract.

Once more, the primacy of the common law notion of contract is extolled, forgetting that the employment contract though institutionalized, is not a basis for any normal exchange of rights and obligations. The underlying issue here is whether there is any degree of authority to unilaterally and arbitrarily derogate from fundamental rights such as that of the freedom of association. In effect, statutory provisions must not be seen as being or operating in direct contravention of rights provided for by the Constitution of Botswana.

Essential service workers like other employees should not be denied their associational rights coupled with alternatives to industrial action. Such alternatives could include compulsory arbitration. This process allows one party to refer a dispute in essential services to arbitration with or without the agreement of other parties. An arbitrator then has to determine the dispute as it would have been determined if strike action were permissible. As stated earlier, collective bargaining without leverage for both sides robs the process of the equilibrium which is essential for its success and that is why it is conventional, when the right to strike is taken away, to substitute it with compulsory arbitration. In this way equilibrium is maintained at the bargaining table.

In other words, whether administrative and managerial institutions as created are dysfunctional or function from a different ideological orientation is a contributory factor to any friction that can arise between essential service employees and those the state as the employer, refers to as " management".

VI. The Constitution, Fundamental Rights Versus Statutory Provisions

Section 13(1) of the Constitution of Botswana guarantees the protection of freedom of assembly and association and, by extension, the right to organize and collectively bargain. To this extent, it provides, inter alia, that except with this own consent, ostensibly voluntarily given, no one shall be hindered in the enjoyment of these freedoms. Translated further, it means the right to assemble freely and associate with others, to form or to belong to trade unions or other associations for the protection of their interests.

This provision captures the spirit of all the international instruments hitherto cited. To that extent therefore, there is nothing iniquitous about it. However, in sub-section 2 of Section 13, it stipulates that *nothing contained or effected under the authority of any law (duly enacted) shall be held to be inconsistent with or in contravention of the Constitution* if the purpose includes defence, safety, public order, health or morality (as shall be defined for that purpose).The same sub-section also condones and legitimises restrictions (without form or content) upon public officers and others.

However, the same sub-section of Section 13 of the Constitution of Botswana could be said to be within the expectations of Article 9 of ILO Convention 87 but not in agreement with the United Nations' Universal Declaration of Human Rights. The restrictions in this context mean those regarding assembly and association, but it is not apparent that, in Botswana, these restrictions are specifically in relation to formation and joining of trade unions as they could emanate from anything subjectively related to law, order, security and other perceived threats.

A cursory examination of this group as defined includes supervisory staff literally of all levels within an enterprise. [52]Employers, in this instance represented by the Botswana Confederation of commerce, Industry and Manpower (BOCCIM), being affiliates of the state, could, in response, welcome such developments. They, in their turn would advocate for new forms of regulation or mechanisms ensuring that their prerogatives are not unduly diluted. The state then mediates between employers and employees using legislation and structures thus created. This mediation could then assume a conscious, selective symbolic, accommodation of exogenous influences such as international labour standards. However, for these standards to take root successfully certain social preconditions must exist that are allowed or tolerated by the state and patently legitimised by the judiciary.

From December 2008 to 2012, the following are the pieces of labour related legislation in Botswana. These are, the Employment Act,[53] the Employment of Non-Citizens Act, [54] the Factories Act, [55] the Trade Disputes Act [56], the Trade Unions and Employers Organizations Act (TUEOA) [57], the Industrial Relations Code, the Workers Compensation Act[58] and the Public Service Act.[59] As indicated earlier, the germane sections of the Trade Disputes Act will be Part VI, Section 49 and the Schedule of the Act.

Section 13 of the Constitution of Botswana could be said to be within the expectations of Article 9 of ILO Convention 87 but not in agreement with the

[52] Section 14 (3) of TDA[Cap 48:02]
[53] [Cap 47:01]
[54] [Cap47:02
[55] [Cap 44:01]
[56] [Cap 48:02]
[57] [Cap 48:01]
[58] [Cap 47:03]
[59] No. 30 of 2008 [Cap 26:01]

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United Nations' Universal Declaration of Human Rights.[60] The restrictions in this context mean those regarding assembly and association, but it is not apparent that, in Botswana, these restrictions are specifically in relation to formation and joining of trade unions as they could emanate from anything subjectively related to law, order, security and other perceived threats. A prison officer in Botswana is not only excluded from membership of trade unions but associations not established exclusively for members of the Service alone[61]. With regard to the Police Service, the restrictions expressly include association that wishes to control or influence work terms and conditions within the Service[62].

These and others apply equally to members of the Botswana Defence Force. Within these contexts, it has been assumed that acceding to the terms and conditions of employment imply voluntary consent to have one's constitutional rights restricted. This, the paper contends, raises again the question about the fallacy of the freedom of contract which supposedly underpins employment relations. The legislative and practical effects given to the subjective and unrestricted interpretation of restrictions has so far yielded the following results that transcend the issue of trade unions. The question with respect to the constitution is whether any statutory body should be visited with the consequence of being absolutely hamstrung by a prejudicial exclusion from the enjoyment of the freedom of association and assembly.

In South Africa, while the NDF, NIA and SASS[63] are excluded from the scope of the LRA and BCEA,[64] the SANDF has been given the right to form and join trade unions. This was the position of the Constitutional Court in *SA National Defence Union v Minister of Defence and Another.*[65] Naturally, soldiers in the SANDF are not permitted to strike but that has not diminished their rights to associate, not as a union in the conventional sense, but to be able to collectively fight for their common welfare.

It should be noted that it has taken the Botswana Legislature almost four decades after independence to include all public sector workers, tribal administration staff and teachers under the ambit of 'employee' so as to enable them form and join unions. Hitherto, this large but extremely fragmented categories of workers, had, as per the Constitution, been excluded from forming and joining trade unions of their choice.. The relaxation of the restrictions under the 2004 amendments to the TUAEOA could be interpreted as either the latent intention of the Constitution or in its prescient wisdom, the Constitution had anticipated such developments for the future that has come[66].

On the other hand, this development, albeit in keeping with emerging international trends, calls into question what informed the provisions of the Constitution at the time. This is particularly so when one also considers the provisions under the Act dealing with restrictions on registration, membership thresholds, eligibility for office and others. This should also take into account the apparently stifling legislative environment of the past from which the country was supposed to have emerged at independence.

In the European Union, one could see, from the Government Communications Headquarters (*GCHQ)* in Britain case among others, the stand of the European Court of Human Rights(ECHR) on the position ceded to the state on how and how far to impose restrictions on segments of the society. In Botswana, there has been no direct challenge regarding the constitutionality of the exclusion from union membership per se until now. Rather, certain other sections have been challenged as unconstitutional. For example, in the *BPCWU v BPC*[67] case, the union wanted the then section 61 of the TUEOA to be declared contrary to section 13 of the Constitution of Botswana.

This section (61), now Section 48 and still intact, excluded and in effect still does, all 'members of management' from forming or belonging to the same union as other employees. The relevant provision in the current amended law, Section 48) (2) excludes 'members of management' from being represented by the same negotiating body for the other employees. It also stipulates that they may form their own negotiating body if they so wish. In interpretation, the effect is the same because, strictly speaking, within the context of unfettered rights, this is selective exclusion from unions of one's choice.

In the instant case, the union also wanted a re-categorisation of some employees out of "management" for purposes of union membership and representation. In its ruling, the Court of Appeal explained that:

- "Management" as an organizational term implies the prerogative of the employer to determine who fall into this group. Otherwise, for collective bargaining purposes, it would be between only the operating group (employees) on one hand, and stock and bond holders (owners) on the other.

[60] 1948 Articles20(2),23(4)
[61] Section 35 Prisons Act[Cap 21:03]
[62] Section 24 (1) Police Service Act Cap 21:01]
[63] National Defence Force (NDF) National Intelligence Agency(NIA), South African Secret Service(SASS)
[64] Labour Relations Act(LRA) ,Basic Conditions Of Employment Act (BCEA)
[65] SA National Defence Union vMinister of Defence and Another (1999) 20 ILJ2265
[66] See Section 13 (2)© of the Botswana Constitution
[67] Botswana Power Corporation Workers Union v Botswana Power Corporation [1999] 1 BLR 73 CA

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- The decision as to who belonged to "management" is not for the organization to make as it has already been defined within the Act.

In that case, the Judge President stated "Section 61(2) defines the expression *'member of management' for the purpose of section 61 of Cap 48:01. If any person wishes to understand the meaning of the expression ,it is to that definition that he should turn and that is so irrespective of what the Botswana Corporation Act says.''* In terms of precedent therefore, this ruling ought to have been sufficient guideline for subsequent decisions.

It is submitted that even then, the Court of Appeal missed the opportunity of examining the scope of the definition provided in the Act as at that time to test it against the spirit and letter of Section 13 (1) (2) of the constitution. By this act of omission, it deferred to the Legislature. Indeed, in organizational usage, if "member of management" as per the current but same provision [section 48 (3)] were to be fully applied, there would be few employees at any subordinate level who did not require the use of their discretion or whose work is neither routine nor clerical in nature.

VII. Statutory and Judicial Determination of a Service as 'Essential'

In South Africa, the Essential Services Committee (ESC) has, over the past fifteen years, carried out its mandate and in doing so, has, after due notice and public investigation, designated a large number of services as essential services. Among these are:

Municipal health, Municipal security , The supply and distribution of water, The security services of the Department of Water Affairs and Forestry, Fire - fighting, The services required for the functioning of Courts, Blood transfusion services provided by the South African Blood Transfusion Service,

The following services in the public sector are part of those determined as essential services:

Emergency health services and the provision of emergency health facilities to the community or part thereof , All electrical services, All safety services , All security services, and the maintenance and operation of water borne sewerage systems, including pumping stations and the control of discharge of industrial effluent into the system and the maintenance and operation of sewerage purification works

What this suggests is a transparent, on-going process openly discussed and not arbitrarily and strategically imposed measures intended to coral and harness labour formations.

In South Africa, the starting point is not notification but a determination of whether the essential services workers have or should have a right to strike at all. The right to strike for the purposes of collective bargaining is one of the fundamental rights enshrined in Section 27 of The South African Constitution. It is an extremely important right because *'If workers could not, in the last resort, collectively refuse to work, they could not bargain collectively. The power of management to shut down the plant (which is inherent in the right of property) would not be matched by corresponding power on the side of labour. These are the ultimate sanctions without which the bargaining power of the two sides would lack "credibility". There can be no equilibrium in industrial relations without a freedom to strike.'* [68]

The rationale behind collective bargaining is to maintain industrial peace and as Cheadle says: "it is one of the ironies of collective bargaining that its very object, industrial peace, should depend on the threat of conflict." The protection given to this fundamental right to strike is thus based on the functional importance of strikes to collective bargaining. As it is sometimes simply put "collective bargaining without the right to strike amounts to collective begging".[69]

The Labour Relations Act ("LRA") recognises this constitutional right to strike but subjects the right to a number of limitations. Among those limitations is a limitation which provides that no person may take part in a strike if that person is engaged in an essential service. Because the right to strike is so important, a limitation of this kind needs to be justified. To be justified it needs, among other things, to be limited. The essential services limitation on the right to strike in the LRA has not been subject to constitutional challenge and it is unlikely that it will be.

This is because it is clearly justified and properly circumscribed in its scope. The Constitution permits rights in the Bill of Rights to be limited in terms of laws of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.[70] There is thus a need to balance the right to strike with other fundamental rights such as those to health care, food, water and social security which are also enshrined in the Bill of Rights. From the South African point of view, in order to achieve an appropriate balance, workers in essential services are conventionally excluded from the right to strike in open democracies. The position is based on the hitherto discussion of ILO provisions but from a different perspective. In this regard, the interpretation is that, though this exclusion has been sanctioned by the International Labour Organisation, it is only to a limited extent.

[68] Davie, P, Freedland, *Khan Freund's Labour and The Law* 3rd Edition 1983 p 292

[69] Brassey, M Cameron, E, Cheadle and Olivier M *The New Labour Law*Juta

[70] Section 36 (1) LRA

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The Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (CEACR) recommends that the right to strike should only be restricted in relation to public servants *exercising authority in the name of the State and in relation to genuinely essential services,* namely: "those the interruption of which would endanger the life, personal safety or health of the whole or part of the population"[71] As said earlier, there is the element of arbitration to determine whether a service contemplating a strike is essential. Some countries have codified this common law of interest arbitration into a statute. An important subsidiary principle which applies in such arbitration is that public sector employees should not be expected to subsidise public services. They are not second class working citizens. If the reasonable wages they should receive are such as to render the public authority unable to continue to provide the service, then that is a political problem, not one that should be reflected in an arbitral award.[72]

It would appear then that one advantage of compulsory interest arbitration is that, with a good body of arbitrators, outcomes become predictable and parties are for this reason discouraged from taking up unreasonable positions in negotiation. This in turn actually encourages negotiated settlements. Evidence from Canada and the United States shows that the outcomes determined in compulsory arbitration are very similar to comparable negotiated outcomes.[73]

Consequences of an unprotected strike include those that have potentially serious consequences for parties who take part in an unprotected strike or in any conduct in contemplation or in furtherance of such a strike. Such persons do not fall within the protection provided by the LRA of South Africa or the TDA of Botswana both of which state that persons who take part in a protected strike or in any conduct in contemplation or in furtherance of a protected strike do not commit a delict or a breach of contract by doing so.

The result is that any person who suffers a civil harm as a consequence of an unprotected strike may claim damages from a union and or workers who participated in or furthered the strike. This may be done in terms of the common law or in terms of the relevant legislation. In such instances, in appropriate contexts and as per their jurisdictions, the law gives the Labour Court or the Industrial Court or the High Court the power to order the payment of just and equitable compensation for any loss attributable to the strike.

According to Brand, actions of this kind are uncommon because once the dust has settled after a strike, employers are reluctant to "rock the boat" with court actions and the average person on the street is reluctant to take on a union in court because of the cost and delay involved.[74] In South Africa, the LRA also empowers the Labour Court to grant an interdict or order to restrain any person from participating in a strike or any conduct in contemplation or in furtherance of a strike if the strike does not comply with the provisions of the LRA.

Failure to comply with such an interdict or order is a factor which the Labour Court may take into account in ordering just and equitable compensation. The Court frequently grants such interdicts and trade unions have sometimes flouted these interdicts in contemptuous terms. Union organisers are, however, seldom summoned before Court to explain their contempt. These scopes afforded by the requisite law need revisiting in terms of the Botswana situation.

a) Definition of Essential Services under The LRA

In South Africa, unlike Botswana, labour legislation widely and clearly defines essential services in Section 213 of the Labour Relations Act (LRA) as follows:

- "A service the interruption of which endangers the life, personal safety or health of the whole or any part of the population; (b) the Parliamentary service; (c) the South African Police Service" This definition is openly acknowledged as being in line with International Labour Organization (ILO) recommenddations and not just a reference to nebulous principles in the name of monist legal theory.[75]

If that was all that the LRA did to define essential services there would be much uncertainty about which workers fell within the definition and which did not. In order to limit such uncertainty the LRA provides for the establishment of an Essential Services Committee (ESC) which must determine which services fall within the definition.[76] The LRA provides that the minister, after consulting the National Economic Development and Labour Advisory Council (NEDLAC) and in consultation with the minister for the Public Service and Administration must establish an ESC under the auspices of the Commission for Conciliation Mediation and Arbitration (CCMA). Members of the Committee are required to have knowledge and experience of labour law and labour relations[77].

The functions of the ESC are to conduct investigations as to whether or not the whole or a part of any service is an essential service and then to decide

[71] General Survey (1983) Pars. 213-14 Also *Freedom Of Association and Collective Bargaining* ILO 1994 *par.158-159*
[72] Brand, John, *Strikes in Essential Services* Institute For Accountability in South Africa :///C./Users/ntumy/Development/Essential% 20services%20htm of 2014/06/24
[73] Ibid
[74] Ibid
[75] Par.9 P.8 per Judge President, CA Civil Appeal Case No.CACLB-043-11 IC CASE NO.IC UR 13-11 of13/03/2013
[76] Section 70 (1) a
[77] Section 70(2) b

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whether or not to designate the whole or a part of that service as an essential service. The ESC is also required to determine disputes as to whether or not the whole or a part of any service is an essential service. In addition, at the request of a bargaining council, the ESC must conduct an investigation as to whether or not the whole or a part of any service is an essential service.[78]

The LRA also prescribes the process which the ESC must follow in designating a service as an essential service[79]. In essence the ESC must give notice of an investigation and invite interested parties to submit written representations and to indicate whether they require an opportunity to make oral representations. Interested parties are then given a right to make oral representations in public. The ESC is then charged, after having considered any written or oral representations, to decide whether or not to designate the whole or a part of the service that was subject to an investigation, as an essential service.

If the ESC designates the whole or a part of the service as an essential service, then the ESC must publish a notice to that effect in the Government Gazette. Importantly, the Parliamentary Service and the South African Police Service are deemed to have been designated an essential service. The effect of this is that no investigation and determination by the Essential Services Committee is required in respect of those services. In a recent judgment of the Labour Appeal Court, the South African Police Service has been held to be confined to the service performed by members of the South African Police Service excluding other employees employed in the Service.

To date, there is no such provision in the Botswana statutes and this critical lack has been responsible for a lot of misconceptions. This state of affairs has resulted in the unilateral arrogation of a supposed right by the state to determine labour matters which, ordinarily, would have been a collective, deliberative and democratic process.

b) Essential Services under The Trade Disputes Act of Botswana

The Trade Disputes Act provides very elaborate procedures for the settlement of trade disputes generally, and of trade disputes in essential services in particular. It distinguishes between disputes of right and of interests for the purposes of what can trigger a strike and which disputes must ultimately be resolved by the Industrial Court. The labour laws of Botswana do not prohibit industrial action in any form once it is procedurally lawful, substantively valid, constitutional and protected[80].

Every party to a dispute of interest has the right to strike or lockout.[81] However, there are extensive and stringent conditions, the quasi-judicial powers of the Commissioner of Labour (COL) and the specific powers of the mediators and arbitrators so appointed.[82] In addition there is the political cum administrative oversight of the responsible minister in terms of all labour matters, real or perceived. The new definition of "trade dispute" includes a dispute between unions, a grievance and any dispute over the application or the interpretation of any law relating to employment; the terms and conditions of employment of any employee or class of employees, or the physical conditions under which such employee or class of employees may be required to work; the entitlement of any person or group of persons to any benefit under an existing collective agreement and the existence or non-existence of any collective agreement.

In addition, there are follow-up steps like dismissal, suspension from employment, retrenchment, re-employment or re-instatement of any person or group of persons/Others include recognition or non-recognition of an organization seeking to represent employees in the determination of their terms and conditions of employment.[83] With regard to essential services, the relevant Schedule had, prior to the recent questionable amendment, identified the following specific areas as essential services unlike the approach adopted by the Essential Services Committee (ESC) in South Africa under the Labour Relations Act (LRA).

Air traffic control, Botswana Vaccine Laboratory, electricity, fire, and water services, transport and telecommunications services as deemed necessary, operational services of the railways, health services and the Bank of Botswana.

Relative to the ILO understanding of core essential services, some of those in the Schedule immediately become superfluous.[84] In furtherance of the minister's discretionary powers, he may invoke section 49 of the Act to and by order published in the Gazette, amend the schedule. The minister may also make statutory regulations with regard to any matters required to be prescribed under the Act.[85] The key question is whether the minister is clothed with the relevant authority to amend a core element of a statute without Parliamentary approval, bearing in mind that statutory discretionary authority is only in relation to subordinate or delegated legislation.

Secondly, assuming the amendment as gazetted was effected as a Statutory Instrument then it

[78] Section 70 (2)(c)
[79] Section 71
[80] Although the Court of Appeal claimed the Director,(DPSM) in her interpretation of the Public Service Act [Cap 26:01] of 2008 asserts a contrary view with regard to Public Sector Essential Services .Vide Par.47 of Civil Appeal No.CACLB-043-11/IC No. IC UR 13-11 of 13/03/20130 Supra.

[81] Section 39 TDA No 15 of 2004
[82] S 39,40,41,42 of No. 15 of 2004
[83] Part 1 section 2
[84] A.120 ss2 and 49
[85] s 50

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ought to have been subjected to Parliament scrutiny and approval.[86] In effect, the validity of widening the basket of essential services arbitrarily without proper justification and in contempt of both domestic law and the ILO's remonstrations creates room for concern. In simple terms, that singular act of defying the Legislature, international norms and practices and proceeding on grounds of domestic monist prerogative suggests a state in siege and a government bent on emasculating the nascent labour front.[87] Regarding legal strikes, the regulatory interventions do not and cannot *per se,* determine the lawfulness or otherwise of strikes with regard to essential services given that the procedures are deliberately cumbersome. It is therefore ironical that these fragmented unions are credited with better resourcefulness than the state and its agents in the theatre of labour relations.[88] At this point, the role of the Industrial Court becomes critical.

The role of the Industrial Court as understood, is crucial in matters related to the issue of employees, worker formations and essential services. The Industrial Court, created under the Trade Disputes Act, is vested with all the powers and rights set out in the Act as a court of law and equity.[89] The court, or any division of the court, shall have exclusive jurisdiction in every matter properly before it under the Act. There shall be an appeal to the Court of Appeal against decisions of the Industrial Court as the said Court is *ipso jure* of concurrent jurisdiction with the High Court. Whether it is so in fact is another issue.

VIII. Interpreting the Reality

The following section is germane to the position of the paper mainly as an illustration of the dynamics of the state – labour relationship in Botswana. Its other role is to provide an insight into the pivotal concern with the exploration of the internal motive force that propels the state in a given direction in its relations with other social actors such as labour. It discusses some major cases that have a bearing on the subject matter of essential services.

The first of these is the case concerning the interdiction and subsequent dismissal *en masse* of members of the listed unions for unlawful industrial action as essential service employees.

of:

Botswana Land Boards and Local Authorities Workers Union

Botswana Public Employees Union

National Amalgamated Local& Central Government& Parastatal Workers's Union

And

The Director of Public Service Management

Attorney General[90]

The second case is that of an appeal against the decision of the High Court in declaring the interdiction and subsequent dismissals above as unfair, unlawful and invalid.

The Attorney General

And

Botswana Land Boards and Local Authorities Workers Union

Botswana Public Employees' Union

National Amalgamated Local & Central Government& Parastatal Worker' Union

Kefilwe Toteng[91]

The first of the trio of cases is referred to as the 'mother of all strikes' which resulted in an appeal was heard at the High Court in August 2012. It involved the matter between:

Botswana Public Employees Union (BOPEU)

Botswana Teachers' Union (BOTU)

National Amalgamated Local & Central Government & Parastatal Workers Union (NALCGPWU)

Botswana Secondary Teachers' Union (BOSETU) as appellants or the Union

And

Minister of Labour and Home Affairs

Attorney General and the Director of the Public Service (DPSM) or the State.[92]

As per the facts of the case, the members of the aforementioned union, on 18 April 2011 embarked on a nationwide industrial action which also involved some ''essential'' service employees as well as the non – essentials such as veterinary, teaching, transport and other services. The Industrial Court, at the behest of the state, subsequently issued an interim interdict restraining participation in the strike by those workers in the essential services. This order was ignored and because it was subsequently executable, the state dismissed those essential service workers who had refused to return to work.

[86] Section 9 (1) Statutory Instruments Act [Cap 01:05]

[87] CEACR Observation Report,2011 ILO 101st Session: See below comments on amendments to the Schedule Order 2011 of15/07 2011

[88] In Civil Appeal No.CACGB-053-12/HC Civil Case No.MAHLB-000631-11 of 20/03/2013 at P.86,Par.128, the Judge president of the Appeal Court described Botswana Public sector unions as "well-funded ,sophisticated body with highly knowledgeable senior staff and the benefit of legal advice"

[89] Part 111 Section 15 (1) Trade Disputes Act No. 15 of 2004 [Cap 48:02]

[90] Court Of Appeal Civil Case No. CACLB-043-11/Industrial Court Case No. IC UR 13-11 of 13/03/2013

[91] Court of Appeal Civil Appeal No. CACGB-053-12/High Court Civil Case No.MAHLB-000631-11 of 20/03/2013

[92] MAHLB 000674-11/8/2012 Unreported

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In June 2011, the Botswana Federation of Trade Unions (BFTU) was informed by the office of the Commissioner of Labour (COL) of an impending meeting by the Labour Advisory Board (LAB) the purpose of which was to amend the Schedule listing essential services so as to include veterinary and teaching services. As per the court records, the COL made reference to the ILO definition and categorisation of "essential services" which, from the foregoing parts of the paper, was a misinterpretation of the ILO position. First, animal husbandry is not cited as an essential service and in any case, given the poor performance of the Botswana Meat Commission (BMC) and the cattle industry in terms of GDP as a whole, cattle cannot be considered as 'backbone of the economy.'[93]

An equally weak argument was proffered with regard to teaching because without it, there 'would be no education'. [94]It is common knowledge that classroom learning is not the only form of education and such strikes in any case have a target and often peter out quickly. As to be expected, a new Statutory Instrument was gazetted (SI49) on the 17 June changing the scope of the Schedule of Essential Services. It then added such ancillary services like telecommunications, transport, veterinary, teaching, diamond-sorting, cutting and selling services as core essential services' and all support services in connection therewith'

The Legislature then took steps to contain the executive intrusion into its domain by resolving to annul the said SI 49 and directing the Minister to gazette the annulment. Rather than do so, the state persisted in its advocacy of its position as above and reintroduced the same expanded basket of essential services via another Statutory Instrument (No.57). Despite this, the Court of Appeal subsequently declared the following as essential services: doctors, nurses, other specialists, support staff, caterers, grounds men cooks and others such as night watchmen [95] even when there was no provable looming disaster or' acute national disaster' as explained by the ILO [96]. This also refers to ''acute national emergency or genuine crisis situations such as those arising from serious conflict, insurrection or natural disaster.[97]

The Union then decided to challenge these developments on several grounds, in particular the validity of Statutory Instrument No. 57(SI 57). The paper has only selected a few pertinent areas and these are examined below:

a) That the Minister's powers under Section 49 of the TDA were *ultra vires* Section 86 of the Botswana Constitution because it conveys the impression that the Legislature, contrary to the Constitution, purported to relinquish its legislative authority and oversight and by so doing, confer unconstitutional power on the Executive to amend an Act of Parliament.

b) That by placing a limitation on the right to strike, which must be seen to be reasonably justifiable in a democratic country,, the Minister's amendment of Section 49 is *ultra vires* Section13 of the Constitution.

c) That the amendment is *ultra vires* Section 49 of the TDA which, on proper reading, does not empower the Minister to unilaterally publish an order whose effect is incompatible with Botswana's international law obligations as a recognised member State of the ILO that has ratified the Conventions relevant to this case.

d) That Botswana's membership of the ILO and ratification of its Conventions gives rise to a legitimate expectation by workers that the Minister will not include services outside the ILO standards, and any such act shall be susceptible to review.

Before making his orders, the Judge referred to a recent report by the ILO Committee of Experts on Application of Conventions and Recommendations (CEACR, 2011)) about events in Botswana. Of note is the following observation: "*the Committee considers that the new categories added to the Schedule do not constitute essential services in the strict sense of the term and therefore request the Government to amend the Schedule accordingly.*"[98]

In his decision, the learned Judge ordered as follows;

- That Section 49 of the Trade Disputes Act No.15 of 2004 is incompatible with the Constitution of Botswana and is accordingly invalid.
- That the Trade Disputes (Amendment of Schedules) Order contained in Statutory instrument of 2011(No. 57) is invalid and of no force or effect.

The paper contends that the issues raised in this 98 page judgement need no further interpretation. One could be excused for concluding that Indeed an unexpected development did occur. On 20th March 2013, an appeal case saw the decisions of the High Court *a quo* was thrown out of the window. This was a clear message as to the direction of the future and portends more interesting developments along the

[93] Par 14 p.4
[94] Ibid
[95] Par.140pp 97-98 Civil Appeal No.CACGB-053-12 Op. Cit. supra
[96] ILO 1996d para.527
[97] ILO 1994a para.152

[98] Op Cit The BOPEU Case p.78 par 225

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trajectory of the emancipation of labour formations in Botswana[99].

IX. Conclusion

It is clear that since its inception, the Industrial Court in Botswana has acted more as an extension of the state bureaucratic adjunct in its supportive role of state labour regulatory measures. Though a higher court of judicature, it has been more of an appendage to the senior courts of the judicature. Similarly, the Appeal Court has done its best to defend state intervention and parochial interpretation of labour legislation. To date, the decisions affecting how the laws are interpreted and applied on the ground have not been addressed resulting in the state having its sway in how it interprets and applies labour relations in Botswana.

Indeed, there are on-going efforts to harmonise the various statutes that have segregated particularly public sector employment law into petty fiefdoms overseen by bureaucrats. This amalgamation of regulatory mechanisms governing the public service is crucial in order to give practical effect to ILO engineered reforms. However, this is also an indication of the problems caused by the provisions in the Constitution allowing derogation. The conclusion to be drawn therefore is that while the Legislature reserves the right to exclude some segments of workers as it might deem fit from the basket of the freedom to strike on one hand and on the other hand prescribes modalities for industrial action for other employees, its selections and scope run the risk of unjustifiably stifling the rights envisaged under Section 13 of the Constitution of Botswana.

In its overall effect, labour legislation and policy formulation in Botswana as an evolving process is still essentially elitist and prescriptive rather than co-regulatory. This is why one hopes the case above will set the trend in asserting the intervention and guidance of the judiciary. Secondly, the requirements for lawful strikes by essential services is crafted so that a lawful strike is not realizable. There is no sub-section 4 as referred to in Section 45 which is necessary to legalise the procedures required for contemplated strikes. The said reference needs to be either completed or deleted and ideally, a harmonised procedure adopted for both essential and non-essential services.

The industrial relations scene in Botswana can best be summarized as prescribed and regulated stability. Tripartite structures are essentially symbolic as any union official who attends such meetings would attest to. Institutional mechanisms are largely advisory as they are mainly given statutorily prescribed roles. Their membership reflects the state's leadership position and subjective and selective empowerment of the social partners particularly organized labour. Just like in the colonial past, the centrality, dominance and arrogated leadership by the state in all spheres including labour matters are still very evident. Contrary to expectation, it would appear that Section 23 of the Employment Act [Cap 47:01] regarding automatically unfair dismissals is being flouted to victimize employees for their union activities.

At another level, it is apparent that there is a continuous wage disparity even in the public sector. This is in the face of increasingly high cost of living. This is occurring in tandem with evident, differentiated and structured conspicuous consumption and accumulation by some segments of society. This could create socio-economic cleavages that might manifest themselves on the shop floor by way of episodes of periodic display of the synergic force, form and trajectory of worker sentiments.

Another worrying development is that, since the recent amendments to the labour laws, there has been a multiplicity and fragmentation of worker formations. This is remarkable because, hitherto, the Registrar of unions had been vigilant in exercising the discretion not to register or de-register to unions to avoid this very situation of potential duplication, waste of resources and dissipation of worker collective capacity that is now prevalent. There seems therefore to be an emasculatory strategy behind this liberalization.

Botswana may indeed be an economic success story. However, for the success to permeate society, there must be seen to be an inclusiveness particularly with regard to the processes for labour legislation and policy formulation. This is because, the regenerative labour force has, along the historical continuum, played a dominant role in wealth creation. Yet, forty odd years after independence, domestic workers and employees in agricultural undertakings have only just been brought under the protective ambit of minimum wage law and policy.

[99] *Trade Disputes Bill No. 12 of 2015* (Published in the Government Gazette on 22 June, 2015). In Part V11 Section 46 (1), a new list of essential services is being enacted. Included are: Air Traffic Control Services, Botswana Vaccine Laboratory Services, Bank of Botswana, Diamond Sorting, Cutting and Selling Services, Electricity Services, Fire Services, Health Services, Operational and Maintenance Services of the Railways, Sewerage Services, Water Services, Veterinary Services in the Public Service Teaching Services ,Government Broadcasting Services, Immigration and Custom Services and services necessary to the operation of any of the foregoing services. In Sub-section 2, the Minister, after consultation with the Board, by Statutory Instrument published in the Gazette declare any service not referred to in Sub-section (1)essential in the event the interruption of the service which, as a result of the duration of strike, endangers life, safety or health of the whole or part of the population.

Section 47 proceeds to seal the fate of workers in those services by providing that :"no employee in essential services shall take part in a strike and no employer in essential services shall take part in a lockout"

See (a) Motaung v National University of Lesotho and Others (CIV/APN/182/06 (b) Lerotholi Polytechnic and Another v Lisene Case No. LAC?CIV/O5/2009 (c)Minister of Labour and Employment and Others v Ts'euoa (C of A (CIV) 1/2008

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Given global economic trends, the worker may yet be called upon again to make sacrifices for the nation. The generality of workers demand a living wage as understood by them. They also feel a sense of privation and deprivation. The challenge therefore lies not in nominal, incremental wage adjustments. It lies in the collective transformation of labour legislation and policy into engines of redistribution of the wealth that the workers help to create.

By way of recommendation, the time for an omnibus definition of a public servant or an employee in the public service in contradistinction from the private sector has come. Basically, an essential service worker should be seen as an employee who possesses the power to exercise authority in the name of the state, not the power to discipline or merely supervise work and definitely not the presumption that each can be a threat to public health, security or welfare. For this to be meaningful, all stake holders must constantly review the realities that apply via the mechanism of an Essential Service Committee (ESC). This cannot be done under the oversight of a Minister as a political appointee, an employee, a manager and also a supervisor.

The Committee should exercise the power to designate essential services as in South Africa under the LRA and its composition should, ideally, be from the Ministry of Labour and Home Affairs, parties to the Bargaining Council and the Directorate of Public of Public Services Management (DPSM). The first objective should be a Minimum Service Level Framework Agreement as part of any Bargaining Council negotiation process. The functions of the Committee should include the ratification of Essential Service Agreements and the enforcing of Minimum Agreements. Also to be included should be ways of identifying problems, resolving them and providing guarantees against engaging in unnecessarily disruptive industrial action.

Naturally, problems would be encountered primarily because both essential and non-essential employees fall within the same bargaining unit whose interests are collectively pursued by the same union. Employers find it easier to band all employees together because public sector workers easily qualify as essential employees who can be easily restricted or even prohibited from going on strike. In essence, the best practicable approach is via bargaining and negotiation for the minimum service agreement.

What Botswana needs now is not a combative and confrontational labour legislation and policy environment founded on power and coercive authority on one hand and a fragmented, confused labour sector on the other. It needs a collaborative and therefore synergic match along the long road to mutually beneficent emancipation within a developmental and democratic system.

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Legislative Turnover in the National Assembly: A Study of the South – East Zone, 1999-2015

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Abstract- Since 1999, the high turnover of lawmakers in the country has been a source of concern to not a few stakeholders but to academics. It was therefore not surprising that the National Institute for Legislative Studies (NILS) in its latest report conducted in 2014 revealed that Nigeria has the of the Federal Republic of Nigeria requires the legislators to gain the requisite experience to effectively lowest retention rate of lawmakers in the national parliament in the world. The 1999 Constitution discharges their mandate. Consequently, there is decision not to limit the number of times a performing legislator could be re-elected. Despite this, the electorates have the constitutional right to elect or re-elect a legislator. The incessant high turnover of National Assembly members provides a new challenge to democracy. That is, at the inception, one would wonder the level of constructive contributions that would be expected from inexperienced legislators. Re-election of a legislator should under normal circumstance be based on his or her performance and contribution in lawmaking process, representation and oversight functions as well as constituency accountability.

Keywords: legislators turnover, democracy, constitution, election & performance.

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Legislative Turnover in the National Assembly: A Study of the South – East Zone, 1999-2015

Richard Amaechi Onuigbo [α] & Eme, Okechukwu Innocent [σ]

Abstract- Since 1999, the high turnover of lawmakers in the country has been a source of concern to not a few stakeholders but to academics. It was therefore not surprising that the National Institute for Legislative Studies (NILS) in its latest report conducted in 2014 revealed that Nigeria has the of the Federal Republic of Nigeria requires the legislators to gain the requisite experience to effectively lowest retention rate of lawmakers in the national parliament in the world. The 1999 Constitution discharges their mandate. Consequently, there is decision not to limit the number of times a performing legislator could be re-elected. Despite this, the electorates have the constitutional right to elect or re-elect a legislator. The incessant high turnover of National Assembly members provides a new challenge to democracy. That is, at the inception, one would wonder the level of constructive contributions that would be expected from inexperienced legislators. Re-election of a legislator should under normal circumstance be based on his or her performance and contribution in lawmaking process, representation and oversight functions as well as constituency accountability. However, in several occasions, public deviate in their perception of these constitutional mandates of a legislator, for some selfish and self-serving expectations. With these attitudes, even if a legislator has made meaningful impact in the chamber, he or she may not be re-elected for the failure to play to their tune. Again in some places it is about zoning for substitution not working for the people. This paper seeks to examine the level of Legislators turnover in the South-east between 1999-2015 with a view of addressing this democratic challenge in the region.

Keywords: legislators turnover, democracy, constitution, election & performance.

I. Introduction

Nigerians must recall that the 1999 Constitution of the Federal Republic of Nigeria requires the legislators to gain the requisite experience to effectively discharge their mandate. Consequently, there is decision not to limit the number of times a performing legislator could be re-elected. Despite this, the electorates have the constitutional right to elect or re-elect a legislator. The incessant high turnover of National Assembly members provides a new challenge to democracy. That is, at the inception, one would wonder the level of constructive contributions that would be expected from inexperienced legislators. Nevertheless, there are opportunities for learning, provided the legislators sincerely present themselves for such. For instance, Civil Society Legislative Advocacy Centre (CISLAC), National Legislative Institute present themselves to train legislators both at national and state levels, primarily to ensure effectiveness in performance of their mandate.

Re-election of a legislator should under normal circumstance be based on his or her performance and contribution in lawmaking process, representation and oversight functions as well as constituency accountability. However, in several occasions, public deviate in their perception of these constitutional mandates of a legislator, for some selfish and self-serving expectations. With these attitudes, even if a legislator has made meaningful impact in the chamber, he or she may not be re-elected for the failure to play to their tune. Again in some places it is about zoning for "chopping" not working for the people.

Since 1999, the high turnover of lawmakers in the country has been a source of concern to not a few stakeholders. It was therefore not surprising that the National Institute for Legislative Studies (NILS) in its latest report conducted in 2014 revealed that Nigeria has the lowest retention rate of lawmakers in the national parliament in the world. The report was signed by Director- General of NILS, Dr. Ladi Hamalai. The document titled "Continuity and change in Nigeria's elections: a collection of essays," stated that even by African standard, Nigeria has a high turnover rate of 70 per cent as compared to South Africa with 47, Ghana 56, Kenya 64, Uganda 50.5 and 51 per cent for Benin Republic respectively (Odewinge, 2014:5).

The legislative Institute document reported that the United States has the highest retention rate in the world with almost 100 per cent probability that a senator or member of the House of Representatives would be re-nominated by his party to re-contest elections. The report adds that there is a 90 per cent probability that he or she would be re-elected. Re-election rate in US House of Representatives averaged over 90 per cent since 1964 while the retention rate for Senate averaged 85 per cent in the last five decades.

A very close observation of Nigerian politics since 1999 shows that factors such as incumbency advantage, quality of challenges, intra- party procedures and structures as well as god fatherism and elections malpractices are considered as determinants of

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reelection rates of legislators accounted for these levels of turnovers. Giving details of the retention rate in the Senate and House of Representatives between 2003 and 2011, the report revealed that both chambers had an average of 25.9 per cent retention rate. While the trend in the Senate showed a decline retention rate in 2003, that of the House of Representatives showed a decline in 2011.

In 2003 elections, only 35 senators were re-elected out of 109, posting an average retention of 32.11 per cent, while 27 and 35 were re-elected in 2003 and 2011 respectively leaving a retention rate of 24.77 and 32.11 per cent. Finally, between 2011-2015, 35 Senators were re-elected (32.1 per cent retention rate). In the House of Representatives, only 108 out of the 360 lawmakers were re-elected in 2003 giving a percentage of 30 while 110 and 103 lawmakers were re-elected in 2007 and 2011 posting a percentage of 30.6 and 28.7 respectively. In elections held from 2003-2007, of 360 seats in the Nigerian House of Representatives, 108 members were re-elected (30 per cent retention rate). 2007-2011, 110 members were re-elected (30.6 retention rate), 2011-2015, 103 members were re-elected (28.7 per cent). From the above thesis, it is axiomatic to posit that Nigeria has the lowest retention rate of lawmakers in the national parliament in the world, the paper seeks to identify the factors responsible for this and their implications using the South-east as a Case between 1999& 2015 respectively.

II. Theoretical Perspective

Lindberg (2004) defines turnover of power in terms of the „electoral turnover of the chief political executive in presidential elections and a changed majority in parliamentary elections. For Lindberg (2004), turnover represents one of the core indicators of electoral competitiveness, the latter being one of the major democratic qualities of elections. Other indicators of competitiveness include winner's share of the vote, winning party's share of legislative seats and second party's share of legislative seats. As articulated by Lindberg, winner's share of the votes is a percentage of the total valid votes cast. Although the exact position of this variable in determining the level of competition has been, and is still being debated, the main argument has been that the closeness of the outcome among competing parties is a reflection of the level of electoral competition. As Lindberg (2004) puts it, being the manifest outcome of institutionalized uncertainty, alternations of power occurring in peaceful manner remains a sign of the distributive authority of the people inherent in the expression "rule by the people". Schedler (2002b; also quoted in Orrnert and Hewitt, 2006:12) has also argued that where alternation has occurred, there is likely to be more democracy and a greater likelihood that new elites are emerging.

Turnover has also been linked with the legitimacy of an election, another key democratic quality of elections. The legitimacy of an election can be determined by the extent at which political stakeholders particularly political parties and candidates accept the outcome of elections in a peaceful and open manner. Rakner and Svasand (2003:4) lend credence to this when they argue that the legitimacy of the electoral process hinges on the electorates" and candidates" perception that the process has been conducted in a way that does not in advance ensure a certain outcome. It is, therefore, expected that to enhance the democratic legitimacy of any elections, there should be certainty about the process, but uncertainty about the results (Przeworski, 1991: 40-41). This, according to Lindberg, is in itself, an intrinsic democratic quality. To measure electoral legitimacy, Lindberg identifies indicators such as loser"s acceptance of election results, peacefulness of the elections at all stages –before, during and after- and breakdown. With respect to losers accepting the results, Lindberg warns that there may be situations, especially in transitional settings, where losers may raise alarm just to gain political advantage, for example, from the international community. It may also be a strategy to undermine the political rule of their rivals. By implication, Lindberg submits, that „challenge to the official results cannot be taken at face value as substantiating allegations of irregularities (2004: 64). This rationalisation finds empirical support in the ongoing propaganda in Africa that opposition parties and candidates see elections as legitimate only when they win and vice versa. Despite its sound logic and appeal, the argument nevertheless, fails to tell how to identify genuine rejection of results by oppositions when elections were seriously flawed. In the circumstance, it does seem that the reports of local and international election monitors may provide some leeway about the genuineness or otherwise of opposition's protests and rejection of results (Obi, 2008; Omotola, 2006; Adebayo and Omotola, 2007).

The legitimacy of elections, according to Lindberg (2004a: 64), can also be measured by the peacefulness of the elections, defined in terms of whether violence occurred at any stages of the elections, which according to him, is „a symptom of failed institutionalisation (Lindberg, 2004: 64). There is also the issue of breakdown, which has to do with the abortion of the electoral cycle. This can occur either through military seizure of power or the outright breakout of civil wars. As long as the electoral cycle continues, despite all odds, the elections do have Work in progress, please do not cite. Some form of legitimacy. This, as far as Lindberg is concerned, is the ultimate indicator of legitimacy" (Lindberg, 2004a: 65). Lindberg went ahead to test the validity of these theoretical propositions, building on the foundational works of Bratton (1998; 1999), Bratton and Van de Walle (1998)

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and others and concluded that there were reasons for demo-optimism" in Africa on the basis of marked improvement in the democratic qualities of its successive elections.

Turnover can be broadly defined as 'the proportion of membership that changes from one election to the next' (Matland and Studlar 2004: 92). For the exact calculation of turnover rates, however, Manow (2007) offered a more precise definition. Manow (2007:196) propose to define turnover as the share of those who either do not return to the subsequent parliament or are not re-elected. This leads to a broad and a narrow definition of turnover. Legislative turnover is either defined broadly as comprising all who have been members of parliamentt but are no longer members of parliament (turnover rate¼ return rate), or it is defined more narrowly as comprising all who have been elected to parliament but failed to be re-elected to parliament (turnover rate¼ re-election rate) (Manow,2007:197). Using Germany instances, Manow (2007) posited that whereas the first proposed definition includes all those who were not elected but became members of parliament during the term (in Germany the so-called Nachru¨cker, i.e. substitutes who replace MPs who leave parliament during the term for whatever reason), the second definition excludes them. The difference is non-trivial. For instance, during the 12th term of the Bundestag (1990–94) 10 members of parliament died and 27 resigned and these vacancies were filled from party lists. This definition though fits the German environment does not fit ours because of the First Past the Post in operation in Nigeria as opposed to Proportional Representation and First Past the Post combination operating in Germany.

Both definitions have straightforward counting rules: the return rate can be calculated by counting the number of MPs sitting in parliament on the last day of the previous parliament and the first day of the next parliament, with the total number of seats in the previous parliament as the divisor. The re-election rate reports the percentage of incumbents who have been elected at one general election and are re-elected at the next general election, i.e. who were members of parliament on the first day of the previous and on the first day of the next parliament. Oham (2005:8) captured these analysis in Figure 1 below. The election is only part of the total turnover of incumbent Members of Parliament he concluded.

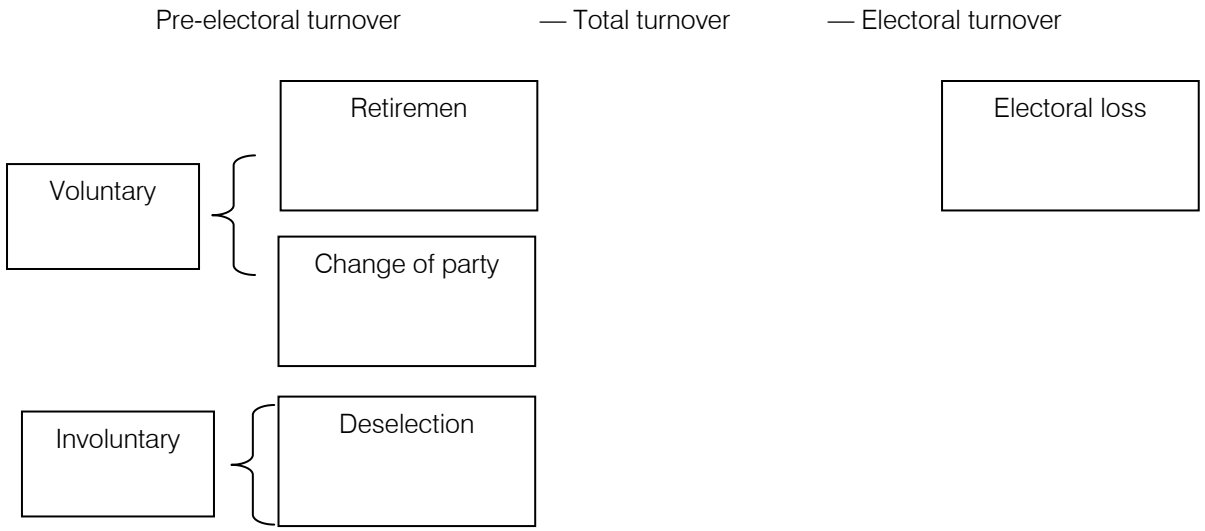


Figure 1 : Breaking down the turnover of incumbent Members of Parliament

The figure shows us that the pre-electoral turnover can be either voluntary or involuntary. Voluntary turnover could be either because the MP decides to devote her or his time to something else, or because she or he chooses to join another party. In established democracies, party shifts among MPs exist, but are rare. Admittedly, retirement is not always voluntary, as it can depend on failing health. As mentioned above, Members of Parliament may also die in office. In single seat electoral systems, deaths in office will normally trigger a by-election, and information about by-elections has been taken into account in this study (to the extent it has been available), and such cases are then not counted as turnover. Involuntary pre-electoral turnover occurs when an MP is not made the candidate in the next election, even though (s) he wishes to run. It is not possible to separate voluntary from involuntary pre-electoral turnover using election data, and as discussed above it may be difficult even with detailed information, but we will discuss the issue further below. In contrast, the electoral turnover is relatively straightforward. An MP who stands for re-election (for his/her own party, for another party or as an independent) may be accepted or rejected by the electorates.

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For our purpose, Legislative turnover refers to the number of lawmakers who failed to win both at the intra and inter party elections irrespective of the fact that they were members of the out going parliament. For example, in Nigeria the Seventh Senate recorded a low turnover of its members as only 33 out of the 109 Senators returned to the Eighth Senate after the general elections. As many as 76 lost their bid to come back. The turnover ultimately affects the quality of performance of the new Assembly. Most of the best legislators who helped conspicuously in giving vibrancy to the 7th Senate lost their return bid for various reasons apart from national interest.

The Leader of the Seventh Senate, Senator Victor Ndoma-Egba, who served for 12 years and played a leading role in stabilising the Senate and democracy lost to intra party politics and the overbearing influence of godfatherism in Nigerian politics. Also, Enang, who could be described as encyclopaedia of legislative rules, proceedings and processes lost as the former Governor of Akwa Ibom State, Godswill Akpabio, insisted that he must not return to the Senate, even when he himself was elected to replace Senator Aloysius Etok.

There are therefore different fates that can befall a Member of Parliament when it is time for a new election. In Nigeria, when all the leadership organs of the Peoples Democratic Party (PDP) comprising of the Board of Trustees (BOT), Governors' Forum and National Working Committee (NWC) chose the 66th National Executive Committee (NEC) meeting of the party held last year in Abuja to adopt former President Goodluck Jonathan as its sole candidate for the March 28, 2015 presidential election, little did they know that its state chapters and governors would take a cue from it in no distance time. Without any sense of reference to the party's headquarters, the state chapters witnessed a handful of endorsements for the 2015 election from then PDP-controlled states, especially for governorship ticket. Aiming to nip the catalogue of adoptions in the bud, the NWC voided the endorsements and instructed the governors and chairmen of the affected states to cancel such adoption.

Already, the directive had generated bad blood between the party headquarters and the state chapters led by governors. For once, the interests of governors on the platform of PDP seems threatened and they have started pointing fingers at the Presidency for inflaming the NWC against them to halt their decisions of handpicking their successors and selecting candidates for both the national and state assemblies. These different fates are described in Figure 2. From the different outcomes, we can calculate a series of variables, which are important in our understanding of the various aspects of the turnover of incumbent MPs. These variables are explained by Oham(2005:9) in Table 2 below,

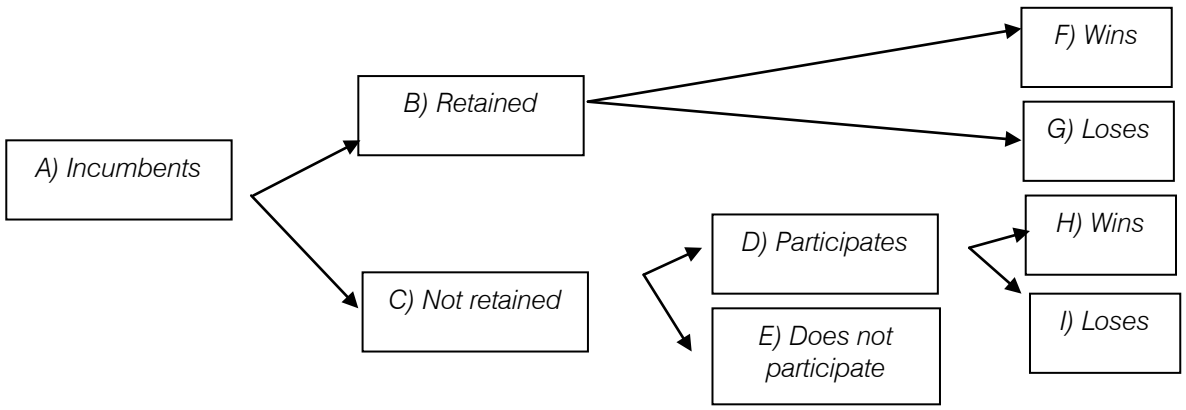


Figure 2 : The possible fates of a Member of Parliament

The factors that account for the above will constitute our units of analysis in section three of the paper.

III. Theoretical Framework of Analysis

The theoretical foundation of this article will rest on elite theory. Parry (1969) defined elites as the small minorities who appear to play an exceptionally influential part in socio-political affairs. They exercise preponderant influence within that collectivistic by virtue of their actual or supposed talents. In political science, the theory is basically a "class" analysis approach to the understanding of political phenomena. The term has history that dates back to the writings of Vilfredo Pareto (1935 and 1968), Gaetano Mosca (1939 and 1968) and Robert Michels (1968, 2001) observations made by them with regard to (1) the elite as distinguished from the non-elite groups within a social order and (2) the divisions within the elite as between a governing and a non-governing elite. Furthermore, Mosca Gaetano (1939) noted that the distinguishing characteristic of the elite is the "aptitude to command and to exercise

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political control". The conceptual schemes postulated by elite theorists comprise the following generalization:

In every society, there is, and must always be, a minority which rules over the rest of society. This notion is quite compatible with Robert Michel's observation in his "political party" who posits that organization says oligarchy". Mosca Pareto also says that in all human societies, be it capitalist or socialist, simple or complex, there is a ruling elite which rules all others member of society. The classical elite theorists posit that elites derive almost invariably the original power from coercive sources through the monopoly of military factor. The minority, either "political class" or governing elite compose of all those that occupy political power or those that influence governmental decisions. This minority undergo changes in its membership and composition. These changes may ordinarily be by recruitment of new members of society. Sometimes the change is by incorporation of new social groups and accordingly a complete replacement of ousted elite by counter elite through revolution. The last form of change comes about when elite refuses to respond to the first two changes. Elite theorists also talked about what they called the "circulation of elites". This can be explained as a situation where by one set of elites (political executives) is replaced by another possessing similar traits. This is what Mosca Pareto was describing when he generalized that "history is a graveyard of aristocracies". This statement shows the inevitability of change when the elite facet. This change can take different forms: (1) between different categories of the governing elites itself (e.g. from the non-governing elite) or between the elite and the rest of the population and while such changes go on, they affect merely the form but not the structure of rule which remains at all times minority dominated (Oligarchy).

Put differently, the theoretical view held by many social scientists which holds that American politics is best understood through the generalization that nearly all political power is held by a relatively small and wealthy group of people sharing similar values and interests and mostly coming from relatively similar privileged backgrounds. Most of the top leaders in all or nearly all key sectors of society are seen as recruited from this same social group, and elite theorists emphasize the degree to which interlocking corporate and foundation directorates, old school ties and frequent social interaction tend to link together and facilitate coordination between the top leaders in business, government, civic organizations, educational and cultural establishments and the mass media. This "power elite" can effectively dictate the main goals (if not always the practical means and details) for all really important government policy making (as well as dominate the activities of the major mass media and educational/cultural organizations in society) by virtue of their control over the economic resources of the major business and financial organizations in the country. Their power is seen as based most fundamentally on their personal economic resources and especially on their positions within the top management of the big corporations, and does not really depend upon their ability to garner mass support through efforts to "represent" the interests of broader social groups. Elitist theoreticians differ somewhat among themselves on such questions as how open the power elite is to "new blood," the exact degree of agreement or disagreement that usually prevails within its ranks, and the degree of genuine concern (or lack thereof) for the broader public welfare that enters into their choices of public policy goals, but all such theorists broadly share the notion that it is these few thousand "movers and shakers" who really run the country and determine the basic directions of public policy, certainly not the manipulated and powerless masses of ordinary voters choosing among candidates at election time (Burton and John,1998),).

Elite theory in political sociology was advanced in direct response to Marxism. The early elite theorists were conservatives who were opposed not only to socialism, but also to liberal democracy as expressed by any movement which attempted to give the masses of the population a greater influence on political affairs.", They argued that elites were necessary and inevitable and that any revolution which pretended to abolish elites would end up by simply replacing one elite with another. Elite theorists use two basic lines of argument. First, they argue that certain aspects of human nature make elites inevitable. Second, they argue that elites are necessary for any social organization to function effectively. There is also a sociological argument that elites are necessary for a large social organization to function. To a degree this has even been accepted by Marxists. Tucker (1972) accepted the necessity of a "dictatorship of the proletariat" after the Communists had taken power in order to suppress those who would attempt to restore their privileged position in the old society. V. I. Lenin, who led the first communist movement to actually win state power did so on the basis of his theory that only an elitist party of professional revolutionaries, with strict discipline and control by a small central committee, could be efficient enough to win power from the capitalists.

Marx(1982), however, argued that once socialism had been established in conditions of affluence, coercion would no longer be necessary and everyone could share in the administration of common affairs (Tucker, 1972). Exactly how this would be done was never specified, however, and the history of the Soviet Union after the Communist Party took power certainly provided ammunition for the argument that a revolution which intended to abolish elites would simply replace one elite with another. This might be explained as resulting from the avowedly elitist organizational structure which the party needed in order to take power.

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Elitist tendencies can also be found, however, even in political parties which are deeply committed to democratic ideals and which operate in a society that allows opposition political parties to function freely. Robert Michels made an extensive study of oligarchical tendencies in political parties, basing most of his analysis on the history of the German Social Democratic party, a working class party strongly committed to democratic ideas. He felt that by showing the prevalence of oligarchical rule in an avowedly democratic organization he was making a critical test of elitist theory. Michels thought that there were three basic causes of oligarchical tendencies---organizational necessities, characteristics of the leaders, and characteristics of the masses. A complex organization requires highly trained and experienced leaders. An organization engaged in conflict with other groups needs to be able to make quick decisions and to command the organization's resources in carrying out those decisions. These organizational demands encourage the development of a professionalized, stable leadership group. These leaders find their job situation quite rewarding, both in salary and in working conditions. This is especially true in labor organizations since the gap in living standards, working conditions, and prestige is great between the leaders and the rank and file. Leaders are likely to perceive an improvement in their own living condition as representative of a general improvement in society, and consequently to become more conservative. In the German socialist party prominent leaders were usually elected members of parliament, where they relied on the support of many voters who were not party members. This enabled them to be relatively independent of the party organization and members; they had more to offer the party than the party had to offer them. The masses tend to be relatively apathetic as long as the organization is producing reasonable benefits for them. Often, they have deferential attitudes toward the leadership; but even if they were unhappy with their leaders, it would be too much trouble to do anything about it.

These processes create what Michels called the "iron law of oligarchy," a tendency for small ruling elites to emerge and persist in complex organizations. This same point was made by Max Weber in his highly influential theory of bureaucratization. Weber felt that bureaucratic administrations could not be abolished by any kind of socialist or anarchist revolution since if they did so the society would cease to operate. He did see possibilities for change, however, largely through the mechanism of a charismatic leader. A charismatic leader emerges during periods of crisis or social breakdown when things aren't working right and people look for a solution which is outside the normal routine of social life. They seek a leader with outstanding personal qualities in whom they can place their trust. While Weber was an intense German nationalist during World War I, he was also a liberal and did not live long enough to see Adolph Hitler become the terrible incarnation of his concept of the charismatic leader. Robert Michels did live long enough to leave the socialist movement and seek salvation from Benito Mussolini. Pareto, also, was sympathetic to the fascist movement, and his works were used as part of the theoretical underpinnings of fascism.

Elite theory, with its emphasis on strength and leadership, has a natural affinity with fascism just as social class theory has an affinity with socialism and pluralist theory with liberal democracy. Not all elite theorists, however, moved into totalitarianism; one of the most prominent, Gaetano Mosca, was able to reconcile his theory of elites with a belief in a limited form of liberal democracy. The critical differences between political systems, in Mosca's view, depend largely on the organization of two strata within the elite - those at the very top and a larger group of people who are not part of the ruling clique at the moment but nevertheless have considerable power and resources. Less capable families drop out of the top group, and more capable members of the second group rise to the top. This sort of mobility, which Pareto called the "circulation of the elites" is healthy up to a point. If all could compete equally for the position at the top, however, the struggle for power would use too much social energy for too little social benefit. Indeed, it may be necessary for families to be in an elite position for several generations for them to develop the virtues needed for leadership in their children. This line of argument has been applied to more modern events by Karl Mannheim. Mannheim argued that one of the reasons for the growth of fascism in Europe was the weakness of the elites. There was an increase in the number of elite groups due to the increasing complexity of society. This means that the elites became less exclusive and no one was really able to influence events in the societies. The elites were not sufficiently insulated from the masses and were not able to cultivate cultural and intellectual differences. The anti-intellectualism of the masses became popular in elite circles, the quality of intellectual and artistic work declined, while intellectuals became so numerous that their social prestige declined. After fleeing Germany, Mannheim was impressed by the British social system which maintained a stable elite through its aristocratic traditions, while still recruiting an adequate amount of fresh blood.

Too much democracy could lead to dictatorship, and a dictatorship which rules over a relatively literate and sophisticated population must be an authoritarian one since it cannot rely on the passivity and ignorance of the large majority of the population. England was Mosca's ideal also, and it is easy to see how someone who feared the success of a totalitarian movement based on support from frustrated, uneducated masses might feel that a stable, aristocratic

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elite on the English model could best provide some stability to society. Elite theory developed in part as a reaction to Marxism. It rejected the Marxian idea that a classless society having an egalitarian structure could be realized after class struggle in every society. It regards Marxism as an ideology rather than an objective analysis of social systems. According to Elite theory man can never be liberated from the subjugation of an elite structure. The term Elite refers to those who excel. The classical elite theorists identify the governing elite in terms of superior personal qualities of those who exercise power.

However, the later versions of elite theory placed less emphasis on the personal qualities of the powerful and more on the institutional framework of the society. They argued that the hierarchical organization of social institutions allows a minority to monopolize power. Another criticism of the elite theories against the Marxian view of distribution of power is that the ruling class too large and amorphous a group to be able to effectively wield power. In their view power is always exercised by a small cohesive group of the elite. Elite theory argues that all societies are divided into two main groups a ruling minority and the ruled. This situation is inevitable. If the proletarian revolution occurs it will merely result in the replacement of one ruling elite by another. Classical elite theory was propounded by Pareto and Mosca. From the above theses elite theory and their circulation has the following features:

- Power is a function of economic status (wealth and related social standing)
- Few have power, while most do not
- Few are atypical of society as a result of distinct upper Social Economic Status and interlocking social networks in schools, family, corporate & charitable boards, and party affiliation.
- Non-elite movement into elite strata is slow and only those who accept elite "consensus" enter into the governing circle.
- Elites share consensus on basic goals and values such as "managed capitalism"
- Public policy reflects elite preferences
- Policy changes are incremental while "big" changes are rare
- Elites influence mass more than mass direct elite through their control of news media, control of political parties, control of entertainment media and control of political agenda
- Elites because of their privilege position control the business of democracy.
- Elite Theory discourages competition among homogenous elite and promotes "top down" democratic values, discourages violent changes.
- How can a republic like Nigeria claim to be a democracy if only a few people actually make political decisions, even if they are elected by the people? Elite theory holds that a representative democracy is not really based on the will of the people, but that there is a relatively small, cohesive elite class that makes almost all the important decisions for the nation. Another version of elite theory argues that voters choose from among competing elites. New members of the elite are recruited through a merit-based education system, so that the best and brightest young people join the ranks of the elite. Elite theorists argue that the founders believed that a privileged majority should rule in the name of the people with a controlled amount of input from citizens. The application of this theory to this article posits that elites consist of those successful persons who rise to the top in every occupation and stratum of society. For example; we can talk of elite of lawyers or Senior Advocates (SAN), elite teachers (Professors), politicians (god fathers, elected and appointed officials) among others.
- The elite own political structures which return the god sons to office, bribes the judiciary or electoral umpires to decide cases in their favour. They equally provide financial resources to the non-governing elites to oil their political machine. They control the decision making of their parties and their communities respectively. The role of the elites in Nigeria is captured by the role the once powerful kitchen cabinets of political parties, governors and the presidency. The misty situation, orchestrated by the kitchen cabinet fuelled speculations about the status of the current president whose hold on power was threatened by the cabal. To move away from this kind of situation the governors are now making effort to remain relevant in Nigeria political history by moving to the senate in droves. The analysis below will attest to this politics of anxiety.

a) Understanding Legislative Turnover in the South – East of Nigeria: A Thematic Exposition

In the light of this development, the National assembly election in Nigeria requires more critical scrutiny beyond the initial euphoria generated by the electoral turnover. More specifically, there is need to explore the factors that account for high rate of legislative turnover in the South –east.

b) Intra-party politics and godfatherism

Nigeria has the lowest retention rate of lawmakers in the national parliament in the world, the National Institute for Legislative Studies (NILS) recent study revealed. The report reported that the activities of godfathers and lack of internal party democracy constituted the fundamental reason accounting to

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legislators losing their seats in the legislature. For instance, the idea for Jonathan's blanket endorsement was first mooted in 2013 by the chairman of PDP's BoT, Chief Tony Anenih at two separate stakeholders meetings of the party in Asaba, Delta State and in the Presidential Villa, Abuja. Anenih who admitted that party primaries had always been the bane of rancour in the party's rank, said to avert this tradition of internal warfare, the party hierarchy must consider a selection process that would not leave the party bruised and incapacitated before, during and after the election.

Though Anenih's recommendation did not get immediate approval, it was a matter of time before his advocacy became the party's mantra with President Jonathan turning out to be the first beneficiary. With waves of endorsement already pouring in from the party's chapters and zones across the country for the president, the PDP's NEC at its 66th meeting held on September 18 finally stop any of its members itching to contest the March 28, 2015 presidential election. Afterwards, it was rain of endorsement for the president across the PDP structures both within and outside the shores of the country. From Transformation Ambassadors of Nigeria (TAN) rallies held in the six geo-politico zones of the country to PDP sensitisation rallies and the various groups and caucuses in the party, it was Jonathan all the way. Perhaps, the truism – what is the good for the goose is good for the gander played out after Jonathan's endorsement in September 2014. The list of endorsement continued to increase by the day after Jonathan got his clean passage. Some PDP governors anointed their possible successors and even drafted lists of candidates for legislative seats.

In Enugu State, member representing Udenu/Igboeze- North in the House of Representatives, and Chairman, House Committee on Marine Transport, Ifeanyi Ugwuanyi, was endorsed by Governor Sullivan Chime as the PDP candidate and this got the stamp of stakeholders in the state. The story is not different in Ebonyi State where Governor Martin Elechi endorsed the Minister of Health, Prof. Onyebuchi Chukwu as his possible successor. In Delta, Governor Emmanuel Uduaghan is said to be backing behind a former permanent secretary in the state, Anthony Chuks Obuh, while Governor Godswill Akpabio of Akwa Ibom State is said to have picked the Secretary to the State Government (SSG), Udom Emmanuel as the party's flag bearer. Similarly, some second-term seeking governors that have already gotten their state executives endorsement include: Ramalan Yero (Kaduna); the Acting Governor of Taraba State, Garba Umar; Ibrahim Dankwambo (Gombe); Seriake Dickson (Bayelsa).

Also, the bid of some governors seeking to move to the Senate after the expiration of their terms has already been boosted by the senatorial structures of the PDP as they have been declared as the consensus candidates. Those in this bracket include: Akpabio (Akwa Ibom), Gabriel Suswam (Benue), Uduaghan (Delta), Saidu Dakingari (Kebbi), Theodore Orji (Abia), Chime (Enugu), Ibrahim Shema (Katsina), Aliyu (Niger), and Isa Yuguda (Bauchi).The Senate President, David Mark, who is seeking a fifth term in the Senate was also been anointed for the seat in Benue State. Unlike President Jonathan's endorsement that had a smooth sail, nearly all the endorsements done at the state level went down with fights, evoking measures of imminent division and possible implosion if not looked into. Claims and counter-claims are the order of the day with the different interests itching for each other jugular. Open protests were staged and protests letters were written to condemn the action of the governors to endorse as opposed to party primaries.

For instance, the purported endorsement of Udom by Akpabio met a brickwall with a former governor in the state, Obong Victor Attah taking his defence against the governor to the PDP National Chairman, Alhaji Adamu Mu'azu in Abuja. Same goes for Enugu where Senator Ayogu Eze is shouting daylight robbery over the endorsement of Ugwuanyi. Clearly, the party is sitting on the edge with these protests and with the opposition watching to cash in on the possible implosion, it is only left to be seen what the party leadership could bring to the table. Perceiving that the outcome of the ventures embarked upon by its governors and state chapters may be counter-productive for the party in 2015, the PDP NWC issued a stern warning to the chapters and their chairman against endorsing any aspirant. At the end of its NWC meeting, the leadership of the party said it has voided the endorsement of governorship, senatorial and other candidates by the governors and state chapters, instructing the governors and state chairmen of PDP to cancel such endorsements.

The report singled out lack of internal democracy in parties to be the root cause of electoral problems in Nigeria and perhaps the determinant of re-election rate of legislators. The report indicted state governors of collectively hijacking Nigerian democracy. The governors according to the document became uncomfortable with the presence of high ranking legislators who developed political clout of their own. It is clearly in the interest of the executive arm and especially governors, the National and State Assemblies continuously suffer from the weakness of high turnover. The document further revealed that state chapters of political parties are increasingly controlled by the governors. It noted that state party leaders normally defer to the instructions of the governor in "a patron-clientele interrelationship."

According to the report, governors are de facto party chairmen at the state level. They determine who gets nominated, who is voted out and who is voted in. Candidates were rarely voted out of office, rather, they were replaced mainly through new arrangements or

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nomination decided by party leaders. Senator Jubril Aminu for instance, a victim himself accused state governors of hijacking the entire political process to their side; hence, as party leaders at state level, they decide on the fate of aspirants seeking legislative positions across all levels. The Nigerian Governors' Forum is what is used to oppress everybody including the president; and if it is not checked will put the country in serious trouble. According to the report, working in parallel with governors are political godfathers who have the capacity to determine who is elected where and when in a given state. "Apart from being an undemocratic system, godfatherism influence turnover negatively because of intolerance of the godfathers to any show of independence by their protégés in the National Assembly," the report said.

The report deposed that "by 2003/2007 elections, prominent godfathers and governors became extremely powerful to the extent that political parties had little or no powers to curtail the interest of such individuals." Comparing the Nigerian situation with the UK, the report said currently party control is strong in UK just as Nigeria. However, UK differs in that political parties are highly institutionalised and not subjected to personal interests or whims of godfathers within the party as in Nigeria. All the same, British MPs have only limited scope for independent action if they wish to retain favour of their parties.

c) Incumbency factor

Since the return of democratic governance in 1999, former governors have been in the habit of moving from Government House to the Senate after the expiration of their second term in office. While some of them were pressurized by their people to go to the senate based on their performance in office, others pulled their way through without minding whose ox is gored. The trend, which has grown phenomenal in the polity in recent years, is also gradually becoming part of the country's political norms. Even though it is backed by the 1999 constitution, many believe that it is a trend seeming only obtainable in a country like ours where continuous occupation of public offices and posturing for consistent political relevance is placed above merit and performance. When in Enugu State in 1999, the former governor of old Anambra state and then godfather of the state politics, Chief Jim Nwobodo won the Enugu east senatorial seat by proxy, not many knew it was the beginning of a new trend. After the senatorial election, Nwobodo, who was also a presidential aspirant of the Peoples Democratic Party (PDP), contested the party's Presidential primaries in Jos, and lost. But he immediately took the Enugu East senatorial seat from is political godson, Nnaji and moved to the Senate in 1999. He also defected from the AD of which the senatorial seat was won to PDP. So Nwobodo was among, if not the first former governor, that went to Senate with the return of democracy in 1999. Since then the influx of former governors into the senate has remained a common practice in every general elections especially since 2007 till date.

This is despite the clamour for a paradigm shift in the country's political leadership that has been predominantly dominated by the same set of people and their cronies since independence. It would be recalled that with the expiration in 2007 the second term in office of all the state governors elected in 1999, some of them quickly found their way to the senate the same year without delay. Among those that were elected into the Senate in 2007 were Alhaji Bukar Abba Ibrahim (Yobe State), Senator Saminu Turaki (Jigawa State), Senator Chimaroke Nnamani (Enugu), and Senator Abdullahi Adamu (Nasarawa) Adamu Aliero (Kebbi) George Akume (Benue). In 2011 the number rose with the election of Dr. Bukola Saraki (Kwara) Alhaji Danjuma Goje (Gombe) Dr. Chris Ngige (Anambra) and Joshua Dariye (Plateau). Senator Chimaroke Nnamani (Enugu), Alhaji Saminu Turaki (Jigawa) and senator Adamu Aliero (Kebbi) who were in the senate in 2007 failed to win their re-election in 2011 due to some political differences with their successors and other factors. The likes of Orji Uzor Kalu (Abia) Attahiru Bafarawa (Sokoto) Boni Haruna (Adamawa), Rev. Jolly Nyame (Taraba) Gbenga Daniel (Ogun) and others who could not found their way to the senate immediately after their second term as governors expired have not been finding it easy politically.

The attempts to move to Senate in the last general elections failed them as they lost out in the election. But it seems they are not relenting yet as many of them contested for the senatorial seats in 2015 general elections. The development pitched some of the governors against incumbent senators of their zones. . A development *Eme & Okeke (2015)* posited caused ripples and rivalry in some political parties already. A serving senator had disclosed at peak of the defection and counter-defection in the National Assembly that their party leadership promised them automatic tickets for 2015 election. According to the senator: We were promised automatic return ticket for 2015, but some of were skeptical about it, considering that most second term governors of their party platform want to go to the senate in 2015. It was obvious they just used it as a political gimmick to discourage them from defecting to another party.

Supporting this thesis ,the NILS report noted that one of the most worrisome cause of high turnover, the report stated, is the "ruling party" incumbency dominance syndrome. According to the findings, the Peoples Democratic Party (PDP) which ascended to dominance in 1999, surpassed that of any previous government in Nigeria. In 1999, the PDP won commanding majority of 68 per cent of seats in the National Assembly, with nearly identical margin in both houses. "This increased to 69 per cent in Senate after

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the 2003 elections, and 80.7 per cent in 2007. PDP, for the first time in 2011 lost its poise in National Assembly as its presence in Senate fell from 80 percent to 66 per cent due to the rise of parties such as Congress for Progressive Change (CPC) and Action Congress of Nigeria (ACN) thus breaking the continuity pattern after 2015 elections.

d) Quality of challengers

What then is the place of opposition merger/coalition in the promotion of electoral turnover? In order to engage this question, it is apposite to begin with the rise of effective opposition to counter the PDP. It would be recalled that the APC was a product of the merger of the defunct Action Congress of Nigeria (ACN), the Congress for Progressive Change (CPC), the All Nigerian People's Party (ANPP), and a breakaway faction of the All Progressive's Grand Alliance (APGA) led by Rochas Okorocha, the Governor of Imo State. Aimed essentially at supplanting the PDP, the emergence of APC as a mega party made the contest for 2015 more intense. The APC gained more strength when a breakaway faction of the PDP, initially christened the new PDP and led by five incumbent PDP governors, a former National Chairman of the Party, leading members of the National Assembly in both chambers and their teaming supporters, defected *en masse* to the APC due to irreconcilable differences within the PDP. The NILS report noted that while it is argued that in the US, the high retention rate of legislators is partly explained by the well-established stature of incumbents compared to the lower quality challengers in emerging democracies such as Nigeria and South Africa. It continued that due to the established and dominant role of previous dictatorial governments, the new political class lacks confidence and remained cowed.

For example, in 1999 only 15 of the 360 members of the House of Representatives listed their prior occupation as politicians with the majority citing backgrounds in business, professional businesses such as accounting or law firms, education, and agriculture. That is why the 4th National Assembly has the highest number (78 per cent) of members who had educational qualifications of first degree and above. The percentage dropped to 66 per cent in 2011. The reason for the decline in academic quality of legislators is not unconnected with the developing confidence of the political class in the new democracy. The list obtained from the Independent National Electoral Commission, INEC, indicates that Abia and Gombe state are the highest contributors of female members to the House of Reps. Both states produced two female winners each. Yobe, the hotbed of Boko Haram insurgency, also produced one female Rep. member.

e) Politics of zoning and power sharing

Zoning is also seen to be responsible for the low retention rate amongst Nigerian lawmakers. Provisions on federal character and zoning in section 14 of the 1999 Constitution (as amended) has been adopted by political parties at national and state levels in power sharing.

Section 14 (3) and (4) of the 1979 Constitution" Section 14 (3) clearly spelt out the modus operandi of the Federal Character principles as follows:

> The composition of the government of the Federation or any of its agencies be carried out in such manner as to reflect the Federal Character of Nigeria and the need to promote national unity and also to command loyalty thereby ensuring that there shall be no predominance of persons from a few ethnic or other sectional groups in that government or any of its agencies (The Constitution of the Federal Republic of Nigeria, 1979).

Although in practice, existing legislators can be re-nominated for re-election irrespective of zoning considerations depending on the interest of the party leadership, governors, godfathers and political clout of individual legislators, the research observed that the party leadership can also use the zoning principle as an excuse to reject an incumbent. In some cases, the local governments could fiercely insist on taking their turn and cause the party to de-nominate an incumbent. For instance, Senator Theodore Orji of Abia joined the league of second term governors in the Senate. Stakeholders from the governor's Abia Central Senatorial Constituency at the end of a meeting last year, said the resolution was upon what they described as the governor's good work in office. One time national chairman of the Peoples Democratic Party, PDP, Prince Vincent Ogbulafor was among the several stakeholders from the party who were at the meeting that was organized by eight members of the House of Assembly from the area. The adoption of the governor as the zone's sole candidate for the Senate seat was irrespective of the intentions of the present occupant of that seat, Senator Nkechi Nwaogu. Senator Nwaogu, a veteran political fighter who fought her way to relevance in the House of Representatives and in 2007, triumphed over two senators to take the Abia Central seat in the Senate. A couple of senators are, however, not as lucky as Nwaogu.

However, the most contentious battle was the tit for tat war fought between the Deputy President of the Senate, Senator Ike Ekweremadu and Governor Sullivan Chime of Enugu State for the Enugu West Senatorial District. It was not news that Ekweremadu and Chime were at each other's juggler. There are no pretenses that Chime wanted to come to the Senate at the expiration of his tenure in 2015. The battle was so fierce that the governor some time last year embargoed another term for all the Enugu team in the National Assembly. But Chime did not have a smooth sail. He was promptly challenged by some other members not only

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Ekweremadu. They pointedly told him that he lacks the constitutional powers to deny any member the right to contest if the person so wish. Just like the normal sibling rivalry, the Ekweremadu and Chime contest, was a rivalry that emanated from their days under Governor Chimaroke Nnamani. Ekweremadu became Chief of Staff when Chime as Special Adviser reported to him. When Ekweremadu became Secretary to the State Government, Chime became a commissioner reporting to the SSG. When Ekweremadu became Deputy President of the Senate, Chime in turn became governor and thence some claim, commenced a battle by the governor to express himself outside Ekweremadu's shadow. The shadow boxing between both men which occurred for most of the first term turned full blown recently at a meeting between the governor and members of the National Assembly from Enugu State during which the governor decreed that members who had served for two or more terms would not be returning to the National Assembly. That meeting was almost a reminder of that night in 2007 when then Governor Chimaroke Nnamani had lined up Enugu members of the National Assembly and his associates at home and dictated what and what offices they would vie for in the 2007 election.

Ekweremadu, however, stood up to Chime and told him that he had no capacity to dictate for them and moved that the meeting be closed if the governor had no other agenda. Ekweremadu's stern stance reportedly emboldened another member of the National Assembly who seconded his motion for the adjournment of the meeting. Since that controversial meeting, Ekweremadu and the governor have not sat together but aides and associates have increasingly exchanged barbs. Ekweremadu who it was believed was about relinquishing his seat in 2015, it was learnt, has based on the challenge from the governor now set himself for a possible challenge with the governor who had set his sights on Ekweremadu's seats. Ekweremadu who has through his influence drawn several Federal Government projects to his Enugu West constituency had through an aide accused the governor's camp of trying to destroy constituency projects facilitated to the constituency.

f) Election malpractices

The prevalence of election malpractice has been identified as another factor causing the high turnover of legislators in Nigeria. Governors, godfathers and well-resourced aspirants are culpable of perpetuating electoral fraud and manipulating the election processes. In Nigeria, the history of elections has shown that the populace cannot look toward to them as a significant force in charging their material conditions of existence. Apart from crumbs when politicians and political parties throw out as inducements to the electors at election time, the masses of the people have gone through one election after another since 1923 without noticing any significant charge for the better in their material conditions. Whatever chare may have taken place cannot be traced to the electoral process.

Apart from the above, elections in Nigeria have also brought untold hardship to the people. The violence and thuggery which are always associated with electoral have caused havoc to the life and property of the palace. The general electoral atmosphere of intimidation; victimization, abuse, hostility, denial of the right of opponents to free speech and assembly, and the blatant disregard of cherished rules, norms and regulations by political actors increases the insecurity of the population.

These changes have generated major problems for the electoral process of Nigeria. Among these problems are:

- Electoral malpractices: these have illegal possession and printing of ballot papers, stuffing of ballot boxes with ballot papers, manipulation of electoral laws, beating-up opponents imprisonment and killing of real and alleged political opponents, denial of electoral rights to citizens, padding of falsehood by the mass medics, character assassination, non-enforcement of electoral laws. The offenders have been government officials, law enforcement, electoral officers, security agents, politicians and supporters and other Nigerians.
- Electoral violence
- Inadequate security for the electorates, electoral officials together with inefficient, law enforcement.
- Ignorance, indiscipline and gullibility of the electorate.
- Inefficiency of the electoral referee,
- Inefficiency of the mass media is carrying out electoral tasks;
- Inadequate funding and disbursement of funds by the electoral commission and
- Improper spending of funds by politician and their agents (Nnoli, 1987:45).

Electoral governance is a crucial variable in securing the credibility of elections in emerging democracies, but remains largely ignored in the comparative study of democratization. Universally, election is regarded as the heart beat of representative democracy. A credible election not only confers legitimacy on political leadership, it is also crucial to the sustenance of democratic order. Election provides citizens with the freedom to choose their rulers and to decide on public policy. Under any democratic system, citizens who are legally qualified to exercise franchise are provided with opportunity to choose political alternatives and to make decisions that express their preferences. In a multi-party dispensation, this choice is

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made out of the several parties and candidates competing in the electoral market.

Party primaries are rarely conducted with any sincerity or hope that the ultimate nominee will be the candidate with the most votes. Rather, primaries turn out to be shams and serve to confirm the candidates picked by the party hierarchy. For example, in Rivers State, the ruling party substituted for the name of the candidate who won the governorship primaries the name of a party member favoured by the party hierarchy who did not participate in the governorship primaries.

The NILS report disclosed that in 2007, the election into the National Assembly suffered credibility problems just as previous elections "as the presidency, and the ruling party (PDP) elite seemed determined to secure the outcome. It is a well-known fact that the 2007 elections were judged to be the worst in Nigeria's history. The ruling party (PDP) won nearly three quarter of the seats in the National Assembly. More than 10 gubernatorial elections were overturned, and dozens of National Assembly seats were transferred or substituted for new voting." The researchers observed that there seems to be a wind of change in the country's electoral process. It appraised the 2011 Electoral Act and the administration of the 2011 elections, which it said the international community also acknowledged as one of the best in the nation's history.

According to the report, while we expect more transparency and credible elections in the future, intra-party primaries remains a source of serious concern as the primaries are predetermined by governors and godfathers. It is thus expected that despite improvement in electoral transparency, high turnover of legislators will continue as many will continue to fail to be nominated or voted out at intra-party primary elections level not due to poor performance but the whims of party leaders.

IV. Implications

The legislature is the least developed of the three arms of government, which is a factor of the reality of our political evolution, where the military had been in power for almost three-quarter of our post-independence period. Each time the military came, the legislature was under lock and key. It was not allowed to grow along with the other arms of government. So the growth has been stunted and that stunted growth has also affected the capacity. We still have serious issues with capacity in the legislature. And we have not also helped the situation because of the rapid turnover. For example, from the 2011 senate, out of 109 senators only 23 returned. That is a serious issue. The truth is each time that you have a new person coming to the scene, he or she has to learn the ropes. There is no magic about it. Irrespective of what you read, it is not the same thing as when you are faced with the reality of the situation. This is because the re-election rates in Nigeria are too low to allow for capacity retention and growth in the institutional confidence of the legislature to enable effective performance. Speaking at the beginning of a five -day induction course for newly elected members of the National Assembly organized by the National Institute for Legislative Studies (NILS), Senator Mark regretted that only a few lawmakers would be returning, which, according to him, would impact negatively on the legislature.

During the March 28 presidential and National Assembly polls, over 70 senators and more than 250 members of the House of Representatives failed in their attempts to retain their seats. This, according to the former Senate President, was not good for Nigeria's democracy, positing that when people are new to a system, it takes time for them to adjust and learn the procedures. It is going to take time for them to even find their ways even round the National Assembly building itself. So, it will be a very slow start obviously. If the members returning are more, things will start a lot quicker.

The legislators are not the only one that lack capacity in this regard, also legislative support staff do not have the capacity to provide the needed legislative support. The capacity lapses in Nigerian legislature manifests mainly in the areas of law making and legislative process, financial and technicalities, oversight function etc. At both state and federal levels, Legislatures surrender to the wishes of the executive rather than being in the obligation to perform the functions given to them by the 1999 Constitution. The PDP last year endorsed David Mark without undergoing primaries. This was, however, predicated on the thinking that Mark's endorsement was consistent with the position of the party apparatchik that there may not be need for changing a good hand much less a winning team.

Since his ascendancy to the Sixth Senate, Mark's leadership is believed to have brought about the stability of the upper chamber of the National Assembly. This is particularly instructive when compared to the frequency at which the leadership changed in the fourth and fifth senate. There is no gainsaying therefore that the stability in the present legislature under Mark is responsible for the stability in the nation's body polity. Mark's leadership, without much ado, has had to intervene each time the country was at crossroads. Amongst such interventions are the Doctrine of Necessity in 2010, the resolution of the January 2012 fuel subsidy strike, the Academic Staff Union of Universities (ASUU) strike and most recently, the strike by the Nigeria Medical Association (NMA).

Whilst such interventions are seen to speak more to Mark's impressive leadership, it is nonetheless a success story made possible with the assistance of his deputy, Senator Ike Ekweremadu, and the Senate Leader, Senator Victor Ndoma-Egba. The home front

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secured, the leadership has helped re-position the National Institute of Legislative Studies (NILS) to build capacity and advocacy for Nigerian parliamentarians even as Ekweremadu has transformed the Parliament of the Economic Community of West African States (ECOWAS) as its Speaker.

Indeed, Ndoma-Egba is largely touted as having lived up to his billings, but has also been able to forge a close-knit relationship with his colleagues. An example was his role in the period that some members of his PDP defected to the All Progressives Congress (APC).

In fact, when their defection letter became a big issue and threatened to undermine their unity both as members of the senate and PDP, it was Ndoma-Egba who was handed the assignment to save the day. As the only Senior Advocate of Nigeria (SAN) in the Nigerian legislature, Ndoma-Egba guided the senate, particularly in the area of law. His experience and knowledge of the Constitution is believed to have helped guided the running of the senate. Consistent with Mark's policy which thrives on delegating authority, Ndoma-Egba hosted the first ever African Legislative Summit in Abuja on November 2013, where he assembled parliamentarians from all over Africa. He still coordinates the summit as its president.

Former President Goodluck Jonathan had also sent him across Africa as his special envoy to lobby other African parliaments, the result of which was the emergence of Hon. Bethel Amadi (from the House of Representatives) as President of the Pan-African Parliament. It was the first time that a Nigerian parliamentarian would hold such a high position on the continent. It is against this backdrop that scholars believe that such opportunities would be lost on the country should Mark, Ekweremadu and Ndoma-Egba fail to return to the chamber in 2015. This perception is predicated on the fact that changing the leadership of the National Assembly at this time has not only local but also international implications for Nigeria. This is because parliaments all over the world are now involved in diplomacy, both within and outside the shores of their respective countries.

Sadly, the parliament is one institution where there's no hand-over note. Once a lawmaker is kicked out, whatever experience he or she may have garnered goes with him; time and money are wasted. Against this backdrop, if turnover bug is allowed to continue in post-2015, the nation would have lost huge resources, not only in monetary terms but also in terms of manpower, clout and experience. The tables below capture the empirical analysis of causal variables underscoring high legislative turnover in Nigeria in general and the South-east in particular:

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Table 1 : Legislative Turnover in Abia State between 1999-2015

S/N	State	Constituency	Name of Candidate	Year	Sex	Party	Constituency	Year	Name of Candidate	Sex	Party
1	Abia	Isialangwa North/South	1. Nwakanwa Chimaobi 2. Anayo Damian Ozurumba 3. Chineye Fredinard Ike 4. Darlinton Nwokocha	1999-2003 2003-2007 2007-2015 2015-2019	M	PDP	Abia North	1999-2003	Ike Nwachukwu	M	PDP
2	Abia	Ikwuano Umuahia	1. Iheanacho Obioma 2. Atuma Emeka 3. Stanley U. Ohajuruka 4. Udo Ibeji 5. Samuel Ifeanyi Onuigbo	1999-2003 2003-2007 2007-2011 2011-2015 2015-2019	M	PDP	Abia Central		Bob Nwannunu	M	ANPP
3	Abia	Bende	1. Njoku Nnamdi 2. Mba Ajah 3. Nnenna Ijeome Ukeje 4. Elendu-Ukeje Nnenna L .I	1999-2003 2003-2007 2007-2015 2015-2019	F	PDP	Abia South		Adolphus Wabara	M	PDP
4	Abia	Aba North/South	1. Anthony Eze Enwereuzor 2. Nnanna Uzor Kalu 3. Uzo Azubuike 4. Ossy Prestige Chinedu Ehiriodo O Ossy	1999-2003 2003-2011 2011-2015 2015-2019	M	APGA	Abia North	2003-2007	Uche Chukwumerije	M	PDP
5	Abia	Arochukwu Ohafia	1. Mao Arukwe Ohuabunwa 2. Uduma Kalu 3. Arua Arunsi 4. Nkole Uko Ndukwe	1999-2007 2007-2011 2011-2015 2015-2019	M	PDP	Abia Central		Chris Adighije	M	PDP
6	Abia	Obingwa/ Ugwunagbo/ Osisioma	1. Clifford Ohiagu 2. Nkechi Justina Nwaogu 3. Eziuchi Chinwe Ubani 4. Solomon Adaelu Ezinwa O.	1999-2003 2003-2007 2007-2015 2015-2019	M	PDP	Abia South		Adolphus Wabara	M	PDP
7	Abia	Isuikwuato/ Umunneochi	1. Uchechukwu N. Maduako 2. Nkiru Onyejiocha 3. Onyejeocha Nkeruka Chiduben	1999-2007 2007-2015 2015-2019	F	PDP	Abia North	2007-2015	Enyinnaya Abaribe Harcourt	M	PDP
8	Abia	Ukwa East/West	1. Macebuh Chinonyerem 2. Uzoma Nkem Abonta 3. Abonta Uzoma Nkem	1999-2007 2007-2015 2015-2019	M	PDP	Abia Central		Nkechi Justina Nwaogu	F	PDP
							Abia South		Uche Chukwumerije	M	PPA
							Abia North	2015-2019	Mao Ohuabunwa	M	PDP
							Abia Central		Theodore Orji	M	PDP
							Abia South		Enyinnaya Abaribe Harcourt	M	PDP

Table 2 : Legislative Turnover in Anambra State between 1999-2015

S/N	State	Constituency	Name of Candidate	Year	Sex	Party	Constituency	Year	Name of Candidate	Sex	Party
1	Anambra	Aguata	1. Duru Chidi Okechukwu 2.Eucharia Azodo Okwunna	1999-2007 2015-2019	F	PDP	Anambra Central	1999-2003	Chuba Okadigbo	M	PDP
2	Anambra	Nnewi North South/Ekwusigo	1. Efobi Bertrand Maduka 2. Chris Emeka Azubogu	1999-2003 2015-2019	M	PDP	Anambra South		Mike Ajegbo	M	PDP
3	Anambra	Ihiala	1. Okeke Frederick A.U. 2.Anohu Chukwuemeka Reginald	1999-2003 2015-2019	M	PDP	Anambra North		Nnamdi Eriobuna	M	PDP
4	Anambra	Anaocha/Njikoka/ Dunukofia	1. Chukwuemeka Chikelu 2.Okechukwu Nnamdi Eze	1999-2003 2015-2019	M	PDP	Anambra North	2003-2007	Ugochukwu Uba	M	PDP
5	Anambra	Anambra East/West	1. Anosike Emma 2. Madubueze Peter Obiano	1999-2003 2015-2019	M	APGA	Anambra Central		Emmanuel Anosike	M	PDP
6	Anambra	Orumba North/South	Okechukwu Udeh	1999-2007			Anambra South		Ikechukwu Abana	M	PDP
7	Anambra	Idemili North/South	1. Ugokwe Jerry Sonny 2. Obinna-Chidoka	1999-2003 2015-2019	M	PDP	Anambra Central	2007-2011 2011-2015	Annie Okonkwo Chris Ngige	M M	PDP APC
8	Anambra	Awka North/South	1. Offodile Chudi 2. Anayo Nnebe	1999-2003 2015-2019	M	PDP	Anambra South		Ikechukwu Obiorah	M	PDP
9	Anambra	Ogbaru	1. Uzoka Okwudili 2. Chukwuka Onyema Wilfred	1999-2007 2015-2019	M	PDP	Anambra North	2011-2015	Joy Emodi (PDP) (annulled) Alphonsus Obi Igbeke Magi Okadigbo	F M F	ANPP ANPP PDP
10	Anambra	Onitsha North/South	1. Ikpeazu Lynda Chuba 2. Idu Emeka Godwin Obiajulu	1999-2003 2015-2019	M	PDP	Anambra Central	2015-2019	Uche Ekwunife	F	PDP
11	Anambra	Oyi/Ayamelum	1. Ughanze Celestine Nnaemeka 2. Onyenwife Gabriel	1999-2003 2015-2019	M	APGA	Anambra South	2011-2019	Andy Uba	M	PDP
							Anambra North	2015-2019	Stella Oduah	F	PDP

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Table 3 : Legislative Turnover in Ebonyi State between 1999-2015

S/N	State	Constituency	Name of Candidate	Year	Sex	Party	Constituency	Year	Name of Candidate	Sex	Party
1	Ebonyi	Ebonyi/Ohaukwu	1. Elizabeth Ogbaga 2. Peter Oge Ali 3.Nwazunku Chukwuma	2007-2011 2011-2015 2015-2019	M	PDP	Ebonyi Central	1999-2003	Sylvanus Ngele	M	PDP
2	Ebonyi	Ohaozara Onicha-Ivo	1. Okereke D. Onuabunchi 2. Okorie Linus 3. Okorie Linus Abaa	2007-2011 2011-2015 2015-2019	M	PDP	Ebonyi North		Vincent Obasi Usulor	M	PDP
3	Ebonyi	Ezza North Ishielu	1. Paulinus Igwe Nwagu 2. Peter Edeh Onyemaechi 3. Anayo Edwin	2007-2011 2011-2015 2015-2019	M	PDP	Ebonyi South		Anyim Pius Anyim	M	PDP
4	Ebonyi	Izzi/Abakaliki	1.Sylvester Ogbaga	2007-2019	M	PDP	Ebonyi North	2003-2007	Christopher Nshi	M	PDP
5	Ebonyi	Afikpo North/South	1. Omo Christopher Isu 2. Igariwey Iduma Enwo	2007-2015 2015-2019	M	PDP	Ebonyi Central		Julius Ucha	M	PDP
6	Ebonyi	Ezza South/Ikwo	1. Chima Innocent Ugo 2. Okwuru Chukwuemeka Tobias 3. Ogbee Lazarus N.	2007-2011 2011-2015 2015-2019	M	APGA	Ebonyi South		Emmanuel A. Azu	M	PDP
							Ebonyi North	2007-2011	Anthony Agbo	M	PDP
							Ebonyi South		Anyimchukwu Ude	M	PDP
							Ebonyi Central		Chris Nwankwo	M	PDP
							Ebonyi North	2011-2015	Anthony Agbo	M	PDP
							Ebonyi South		Anyimchukwu Ude	M	PDP
							Ebonyi Central		Chris Nwankwo	M	PDP
							Ebonyi Central	2015-2019	Ogba Joseph	M	PDP
							Ebonyi North		Samuel Egwu	M	PDP
							Ebonyi South		Sunday Oji	M	PDP

Table 4 : Legislative Turnover in Enugu State between 1999-2015

S/N	State	Constituency	Name of Candidate	Year	Sex	Party	Constituency	Year	Name of Candidate	Sex	Party
1	Enugu	Enugu North/South	1. Ofor Gregory Chukwuegbo 2. Chime Oji Agu	2007–2011 2015-2019	M	PDP	Enugu East	1999-2003	Jim Nwobodo W Hyde Onuaguluchi	M	AD
2	Enugu	Nkanu East/West	1. Peace Uzoamaka Nnaji 2.Chukwuemeka Ujam	2007–2011 2015-2019	M	PDP	Enugu West		(Nullified) Ben-Collins Ndu	M	ANPP
3	Enugu	Udenu Igboeze North	1. Ugwuanyi Ifeanyi 2. Agbo Dennis Nnamdi	2007–2011 2015-2019	M	PDP	Enugu North		Fidelis Okoro	M	PDP
4	Enugu	Nsukka/Igboeze South	1.Ikechukwu Ugwuegede	2015-2019	M	PDP	Enugu East	2003-2007	Ken Nnamani	M	PDP
5	Enugu	Uzo-Uwani/ Igbo Etiti	1. Paul Okwudili Eze 2. Stella Uchena Obiageli Ngwu	2007–2011 2015-2019	F	PDP	Enugu West		Ike Ekweremadu	M	PD
6	Enugu	Oji River/Aninri, Awgu	1. Oguakwa K. G. B 2.Toby Okechukwu	2007–2011 2015-2019	M	PDP	Enugu North		Fidelis Okoro	M	PDP
7	Enugu	Udi/Ezeagu	1. Ogbuefi Ozomgbachi 2. Amadi Oguerinwa Denis	2007–2011 2015-2019	M	PDP	Enugu East	2007-2011	Chimaroke Nnamani	M	PDP
8	Enugu	Enugu East/Isi – Uzo	1. Gilbert Nnaji 2. Kingsley Sunny Ebanyi	2007–2011 2015-2019	M	PDP	Enugu West		Ike Ekweremadu	M	PDP
							Enugu North	2011-2015	Ayogu Eze	M	PDP
							Enugu East	2015-2019	Gilbert Nnaji	M	PDP
							Enugu West		Ike Ekweremadu	M	PDP
							Enugu North		Utazi Chukwuka	M	PDP

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Table 5 : Legislative Turnover in Imo State between 1999-2015

S/N	State	Constituency	Name of Candidate	Year	Sex	Party	Constituency	Year	Name of Candidate	Sex	Party
1	Imo	Isialambano/Okigwe/ Onuimo	1. Ibekwe MauriceObasi 2. Onwubuaria Kinsley Obinna	1999-2003 2015-2019	M	PDP	Imo East	1999-2003	Owerri Ifeanyi Ararume	M	PDP
2	Imo	Ehime-Mbano/ Ihitte Uboma/Obowo	1. Nwajiuba Chukwuemeka U. 2. Chike John Okafor	1999-2003 2015-2019	M	APC	Imo West		Okigwe Evan Enwerem	F	PDP
3	Imo	Ahiazu/Mbaise/Ezinihitte	1. Anyanwu Tony 2. Raphael Uzochi Igbokwe	1999-2003 2015-2019	M	PDP	Imo North		Orlu Arthur Nzeribe	M	ANPP
4	Imo	Owerri Municipal/Owerri N/Owerri West	1. Oguike Levi 2. Ezenwa Onyewuchi	1999-2003 2015-2019	M	PDP	Imo East	2003-2007	Owerri Amah Iwuagwu	M	PDP
5	Imo	Orlu/Oru East/Orsu	Dike Cajethan O.	1999-2003 2015-2019			Imo West		Okigwe Ifeanyi Godwin Araraume	M	PDP
6	Imo	Nkwerre/ Isu/Njaba, Nwangele	1. Osuala Christopher Chukwuemeka 2. Chukwudi Victor Jones Onyereri	1999-2003 2015-2019	M	PDP	Imo North		Orlu Arthur Nzeribe	M	PDP
7	Imo	Ohaji/Egbema Oru, West Oguta	1. Eze Okere Tony 2. Goodluck Opia Nanah	1999-2003 2015-2019	M	PDP	Imo East	2007-2011	Chris Anyanwau	F	PDP
8	Imo	Mbaitoli Ikeduru	1. Nwole Uchenna 2. Nwawuba Henry Ugochukwu	1999-2003 2015-2019	M	PDP	Imo West		Hope Uzodinma	M	PDP
9	Imo	Ideato/North/ Ideato/South	1. Ezeani Nnamdi 2. Chukwukere Austine Ikechukwu O.	1999-2003 2015-2019	M	APC	Imo North		Achonu Nneji	M	ACN
10	Imo	Aboh Mbaise/Ngor Okpala	1. Egu Greg C. 2. Bede Eke Uchenna	1999-2003 2015-2019	M	PDP	Imo East	2011-2015	Chris Anyanwau	F	APGA
							Imo West		Hope Uzodinma	M	PDP
							Imo North		Achonu Nneji	M	PDP
							Imo East	2015-2019	Samuel Anyanwu	M	PDP
							Imo West		Uzodinma Goodhope	M	PDP
							Imo North		Achonu Nneji	M	PDP

V. Recommendations

Much as the buck of the work lies with the political parties, it is expedient to note that only lawmakers adjudged to have raised the bar in their legislative mandate be allowed to return to the Senate and the House of Representatives. That way, Nigeria may have begun a reality check for an institutional legislature. It therefore recommended that measures be taken with an expected outcome of increase re-election rates of legislators to at least 50 per cent in order to retain institutional memory and capacity in Nigerian democracy, particularly the legislature.

Accordingly, a transparent, free and real competitive elections in the polity will help reduce the high turnover regime. The quality of representation and legislative performance generally will improve if elections are based on transparent objective standards and if nomination of candidates are based on good performance and accountability. Again, having foreseen the challenges incessant high turnover will present to the legislative processes, it is suggested that organizing training and retraining programmes for the legislators at national and state levels to ensure constructive representation, lawmaking and oversight will be helpful. It is hopeful that the legislators will present themselves for proper learning.

VI. Conclusion

The pre- and post-electoral turnover of Members of Parliament proved to be consistently high in the Nigerian political parties and parliaments (elected through majoritarian electoral systems) included in this study, often very high. The position of MPs is much less secure than that of their colleagues in other countries. On average around half the MPs did not stand again for their own party. Some of these cases will naturally be voluntary retirements, but there are few reports of MPs having grown tired of sitting in parliaments, most of which have only existed for some 8 to 16 years. Some parliamentarians leave to stand for other parties, but their normally spectacular failure to succeed when doing so indicates that they are either very poor political strategists, or mainly switch when forced in one way or another to do so. On the whole, the available information indicates that the high rate of pre-electoral turnover is largely due to forced de -selection. The indications here is therefore that in comparison to established democracies, Nigerian MPs have significantly less influence over their continued position as the parliamentary representative of the party.

Furthermore, it seems that although falling out with the party leaders can certainly end the career of a parliamentarian, the turnover is not only due to the opinions of the leadership. The information suggests that local party activists can have influence through protests and threats of withdrawing support. In one way, this could be seen as functioning as a way of exercising accountability, especially when the electoral turnover is very low. This is however open to debate. Money is often of the essence in the process, and the foremost way to win local popularity is through providing benefits, rather than offering policy alternatives. No clear evidence has been found indicating whether or not we should expect the turnout to fall as the African political parties and parliaments grow older and possibly more institutionalised. Members of Parliament in the young Nigerian democracies may face an uncertain future also in the years to come.

Thereafter, the level of electoral turnover in emerging democracies outside of Nigeria was analysed in passing. On average, the turnover was lower in the countries for which data has been found, and closer to what we expect to find in established democracies. This implies that MPs in Nigerian political parties are less likely to return as candidates than their colleagues in other countries that have recently introduced a democratic political system. However, the lack of available data precludes us from drawing any definitive conclusions. Perhaps the most important finding of this paper is the need for continued research on electoral turnover also in non-established democracies, in order to better understand the dynamics of the political parties that inhabit them.

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Crisis of Natural Resource Governance in Nigeria's Extractive Industry: Examining the Phenomenon of Artisanal Mining/Quarrying

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Abstract- This paper examines the phenomenon of artisanal mining/quarrying as a critical manifestation of crisis of natural resources governance in Nigeria. By way of exploratory analysis, predicated on the stakeholder theory of corporate governance, the paper posits that failure of governance in Nigeria's extractive industry has led to unwholesome, unregulated and unsustainable exploitation of natural resources. From the standpoint of the untoward impacts and complications of artisanal mining/quarrying in Nigeria, the paper posits that unregulated exploitation of natural resources poses a threat to economic sustainability, as well as environmental and human security in the country. The paper makes a case for a mutual multi-stakeholder entrustment system whereby the government synergizes with relevant civil society, community, as well as corporate and non-corporate stakeholders in an effort to bringing about proper governance in the Nigerian mining sector.

Keywords: governance, corporate governance, stakeholder, natural resources(s), artisanal mining/quarrying.

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Okoli, Al Chukwuma [α] & Uhembe, Clement Ahar [σ]

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I. Introduction

Governance is, arguably, the most crucial challenge of government and politics in contemporary states. It refers to the capacity of the state to develop and leverage civic synergies to enable her effectively oversee its jurisdiction, enforce its values, implement its policies, control its population, as well as harness and exploit its resources for the advancement of the common good. The challenge of governance among states in the world today has seen variously affirmed in the notions of 'governance crisis, 'governance deficit' and 'governance failure' (RGI, 2013; ELI, 2014; Okoli & Orinya, 2014). It also prominently resonates in the 'state failure' literature (King & Zeng, 2001; Hoeffler, 2009).

Governance is in a very deplorable state in many developing countries. This is principally as a result of weak government and civil society institutions. The situation in Africa appears much more hopeless and precarious. In many African polities, there exists a plethora of 'ungoverned, 'ungovernable' and 'had-to-govern' civic spaces (cf. McLean & McMillan, 2003:226). These are spheres within the civic realm that are more or less devoid of a 'regulated life'. A case in point is the natural resources domain, which has been largely under-governed or ill-governed in most countries of the Continent (Ezirim, 2010).

Natural resources refer to Nature-given material assets that can be harnessed by mankind to sustain life and create wealth. They include all organic valuables accruable from the earth, land, waters, the wild (forests) and natural vegetation. Examples of such resources include minerals, metals, wildlife, fish, timber, wood, sand, clay, to mention but a few. These resources are freely supplied by Nature in both subsistence and surplus quantities for human exploitation and use.

Over the years, management of natural resources has posed a huge challenge to many countries. Most resource-rich countries in Africa have no established and viable natural resources governance regime (UNEP, 2013). Where such a system exists, it has often been characterized by inefficiency and mismanagement (Darby, 2010). In this regard, it has been observed that:

> Some countries negotiate poor terms with extractive companies, forsaking potential long term benefits. Many countries do not collect resources revenues effectively. And even when resource revenues do end up in government coffers, they aren't always spent in ways that benefit the public (RGI, 2013:3).

Hence, while some African countries may not have an effective mechanism for natural resource governance, a good number of them operate natural resource system that are too grossly inefficient to guarantee peaceful, equitable and sustainable resource exploitation (UNEP, 2013). With particular reference to Nigeria, natural resource governance has been pertinently problematic, especially within the sphere of the extractive industry. The solid minerals sub-sector of the extractive industry in Nigeria has hardly been properly harnessed and regulated; thus giving a lot of room for unwholesome and unsustainable exploitation of resources and resulting in untoward environmental and economic consequences. It is against this backdrop that this paper examines the phenomenon of artisanal mining/quarrying as a critical manifestation of crisis of resource governance in Nigerian extractive industry.

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II. Conceptualizing and Contextualizing Governance

Governance is a system of engendering control and regulation in any public domain. It encompasses governmental and non-governmental measures geared towards ensuring guided and regulated life in governmental, civil and corporate practices. According to Roba, Gibbons and Mahadi (2013:1):

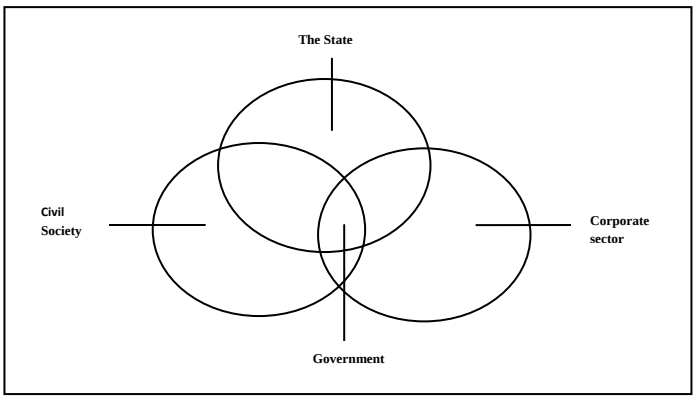
> Governance is the means by which society defines goals and priorities and advances cooperation. It includes policies, laws, decrees, norms, instruments and institutions. Governance is not the province of government alone, and includes informal institutional arrangements like voluntary codes of conduct for private businesses, professional procedures and partnerships among all sectors. These include numerous and varied arrangements but an essential element is that they mobilize diverse constituencies to agree on common goals and help realize them.

Table 1 : Definitions of Governance

Definition	Source
Governance is the system of values, policies and institutions by which a society manages its economic, political and social affairs through interactions within and among the state, civil society and private sector. It is the way a society organizes itself to make and implement decisions - achieving mutual understanding, agreement and action. It comprises the mechanism and processes for citizens and groups to articulate their interests, mediate their differences, and exercise their rights and obligations. It is the rules, institutions and practices that set limits and provide incentives for individuals, organization and firms.	UNDP (2004): Strategy note on Governance for Human Development
Governance refers to the rules, processes and behaviours by which interests are articulated, resources are managed, and power is exercised in society. The way public functions are carried out, public resources are managed and public regulatory powers are exercised is the major issues to be addressed in its context.	The European Commission (2003): Communication on Governance and Development
Governance is the traditions and institutions by which authority in a country is exercised for the common good. This includes (i) the process by which those in authority are selected, monitored and replaced (ii) the capacity of the government to effectively manage its resources and implement sound policies, and (iii) respect of citizens and the state institutions that govern economic and social interactions among them.	World Bank (http://goworldbank.org/MKOGR 258V).

Source: Compiled by the authors, 2015.

Governance is a multi-stakeholder process involving a variety of actors, ranging from the state, the private sector to the civil society. It is the mutual engagements and intermediations among these three spheres of society in realizing the common good that define the essence of governance. Figure 1 highlights the organic relationship between the various spheres of governance within the societal context.



Source: Authors (2015).

Figure 1 : The Organic Context of Governance

As indicated in figure 1, governance derives from the dynamic interactions and negotiations among the stakeholders from the state, the private sector and the civil society. The process is superintended by the government in whose stead governance acquires civic mandate. The core principles of governance have been identified as transparency, responsibility, accountability, participation and responsiveness. Table 2 highlights the main concern/thrusts of these principles.

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Table 2 : Core Principles of Governance

Principle	Explanation
Transparency	Openness and frankness of actions, processes and procedures; open access of information, etc
Responsibility	Conscientious conduct; actions that fulfils good conscience, rule of law , etc
Participation	Mutual stake-holding, inclusion and civic ownership of the process
Accountability	Stewardship; being accountable to stakeholders
Responsiveness	Ability to serve the needs and aspirations of the society

Source: Adapted from UNEP (2013:14).

III. Nature of Natural Resource Governance

Natural resource governance is a fundamental aspect of contemporary development question in developing countries (Ibeanu, 2009; Ezirim, 2010). As a development issue, it "is considered within the framework of power, process and practice; and how these shape natural resource access, control and use" (Mandondo, 2000:1). According to Roba et al (2013:1):

> Natural resource governance is defined as rules and regulations that determine (or govern) natural resources use and the way these rules and regulations are developed and enforced… It is thus about relationships and who has the power and responsibility to make and implement decisions.

Simply put, natural resources governance refers to the application of the governance concept and principles in determining how natural resources are exploited and utilized by relevant stakeholders. It encompasses norms, rules, institutions and mechanisms that regulate the decisions and conducts of governments, organizations and individual stakeholders in relation to natural resource access, control, allocation, exploitation and use. The natural resource governance concept is predicated on the assumption that natural resources are more optimally harnessed, but also more equitably, more efficiently and more sustainably exploited within a framework of control and regulation (Darby, 2010).

Natural resources governance is an important aspect of contemporary environmental governance praxis. It is a critical issue in Africa, a Continent that is currently undergoing a dialectical transition in relation to resource management. As observed by UNEP (2013:5), the Continent can be said to be adapting to a number of concurrent environmental challenges associated with population growth, urbanization, climate change, and the impacts of conflicts. This adaptation process requires a new, pragmatic ways of organizing environmental governance in such a manner that natural resources are managed and accessed by different users peacefully, equitably and sustainably.

IV. Theoretical Framework: The Stakeholder Theory of Corporate Governance

Stakeholder theory of corporate governance was developed by Freeman (1984) to emphasize that firms owe corporate accountability to a broad-range of stakeholders. A stakeholder can be defined as "any group or individual who can affect or is affected by the achievement of the organization's objectives" (Abdullah & Valentine 209:91). The theory derives its epistemological foundations from a wide range of disciplinary traditions including philosophy, ethics, political theory economics, law and organizational science (Abdullah & Valentine, 2009:91).

Stakeholder theory is premised on a number of assumptions, viz:

- firms have a network of relationships to serve;
- the purpose of a firm is primarily to create wealth for its multiple stakeholders;
- firms have obligations to society;
- firms should be socially responsible (Abdullah & Valentine, 2009; Yusuf & Alhaji, 2012).

The crux of the stakeholder theory is that businesses should be responsible and responsive to competitive cooperate and extra-corporate interests and/or concerns. The interests refer to the needs of the investors, shareholders, employees, suppliers, customers, partners, government, organized labour, host communities, and the general public. These have been categorized into consubstantial, contractual and contextual stakeholders (Rodriguez, Ricart & Sanchez, 2002).

Table 3 : Three Categories of Corporate Stakeholders

Category	Elements
Consubstantial stakeholders	Shareholders, investors, employees, strategic partners
Contractual shareholders	Suppliers, customers, sub-contractors, financial institutions
Contextual stakeholders	Public administration, civil authorities, local communities, public opinion leaders, general public.

Source: Rodriguez et al (2002).

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Applied to the purpose of the present discourse, stakeholder theory recommends a resource management paradigm that recognizes and serves the diverse needs and interests of relevant stakeholders in such a manner that makes for equitable, efficient and sustainable exploitation and utilization of natural resources. This affirms the need for a strategic synergy between the government, the corporate sector, the local communities and the civil society in effectuating natural resource governance in Nigeria.

V. Nigeria's Natural Resource Profile: *Gratia en Abundancia*

Nigeria is a typical instance of a natural resource-rich country. The country parades over forty (40) different species of natural resources that are commercially viable and globally competitive (RMRDC, 2014). These resources are graciously but arbitrarily distributed by Nature across the various states and geo-political zones of the country.

Nigeria's natural resources can be broadly categorized into liquid and solid minerals. Liquid minerals include fresh water, natural gas, crude oil and allied hydro-carbon resources. Solid minerals on the other hand include metals, stones, sand, clay, etc. In addition to the above broad categories, there are other water-based, wild-based and land-based natural resources, such as game (wildlife), timber, wood, fish, rangeland and farmland, among others. Table 3 shares some vital insights in this regard.

Table 4 : Dimensions of Natural Resources

Mining	Coal, columbite, salt, lime stone, gold, diamond, and allied solid minerals
Quarrying	Sundry stones, sand, clay and cognate solid minerals
Petroleum	Crude oil, natural gas
Forestry	Timber, wildlife (game), eco-tourism resorts, fuel-wood, charcoal
Water	Fish, fresh water, aqua-life, etc
Land	Rangeland, farmland, flora

Source: Author (adapted from Darby, 2010:13; FAO 2014).

Nigeria's natural resource base is characterized by immense diversity and abundance. The extractive sector has been dominated by the ebullient petroleum industry, which has been the mainstay of the country's political economy for decades. This sector also hosts the agricultural and solid minerals sub-sectors that have been so grossly neglected by successive governments since the era of oil and gas boom (Okoli, 2015). Within these sub-sectors, there is a bourgeoning mining/quarrying industry that is, incidentally, largely operated by artisans and small scale investors (ELI, 2001). The activities of illegal extractors have also predominated in the mining/quarrying sub-sector. By and large, Nigeria's natural resource profile reveals a richly endowed resource base that has been so poorly harnessed and exploited. The reason for this state of affairs is the absence of a robust natural resources governance regime capable of delivering the good.

Table 5 : Nigeria's Natural Resources across the 36 States and the Federal Capital

Abia	Glass-sand, limestone, salt, shale, ballclay, galena, granite, marble, laterite, bentonite, phosphate kaolin, pyrite, feldspar, petroleum, lignite, gypsum, sphalerite
Adamawa	Granite, clay, gypsum, limestone, uranium kaolin coal, trona, barite, marble, magnesite, laterite
Akwa-Ibom	Clay, sand, granite, coal, petroleum, naturalgas, kaolin, limestone, lignite
Anambra	Clay iron stone, natural gas, petroleum, sandstone, kaolin, pyrite, lignite
Bauchi	Kaolin, trona, gypsum, casiterite, mica, clay, tantalite, galena, gemstone, sphalerite, sand, barite, columbite, zinc, lead, monazite, feldspar, graphite, wolfram, coal, agate, tantalite, rutile, tungsten, copper, talc, ilmenite, zircon
Bayelsa	Salt, petroleum, natural gas, silicasand, bentonite, petroleum, limestone, glass-sand
Benue	Gemstone, barite, feldspar, marble, mica, galena, sphalerite, sand, clay, coal gypsum, kaolin, anhydrite, brick clay, crushed and dimension stone, fluorspar, wolframite, bauxite, magnetite, limonite
Borno	Silicasand, natural salt, sapphire, topaz, mica, gypsum, feldspar, granite, potash aquamarine, limestone, kaolin, bentonite, laterite, refractory clay, trona, gold, cassiterite
Cross River	Salt, limestone, coal, manganese, mica, ilmenite, gold, quartz, glass-sand, tourmaline, petroleum, natural gas, kaolin, mica, clay, spring water, talc, granite, galena, cassiterite, goethite, uranium, barite

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Delta	Kaolin, gravel, sand, natural gas, petroleum, ballclay, bauxite, granite, clay, spring water
Ebonyi	Sphalerite/Galena, salt, limestone, ballclay, refractory clay, gypsum, granite
Edo	Copper, gold, marble, granite, gypsum, petroleum, lignite, limestone, ceramic clay
Ekiti	Clay, quartzite, lignite limestone, granite gemstone, bauxite, cassiterite, columbite, tantalite feldspar, kaolin
Enugu	Crude oil, ballclay, iron-ore, petroleum, gypsum, coal, sand, ceramic clay
FCT	Kaolin, limestone, sand, uranium, coal, halite, clay, gypsum, granite
Gombe	Graphite, Kaolin, limestone, sand, uranium, coal, mica, dolomite, clay, and, talc
Imo	Crude oil, shale, natural gas, kaolin, sand, limestone, salt, marble
Jigawa	Glass-sand, granite, clay, kaolin, iron ore, quartz, potash, talc, limestone
Kaduna	Muscovite, granite, gold, manganese, clay, graphite, sand, zircon, kyanite, cassiterite, ilmenite, gemstone columbite
Kano	Clay, laterite, cassiterite, columbite, ilmenite, galna, kaolin, gemstone, silica, monazite, wolframite, thorium, granite, hylite, beryl, amethyst, gold
Katsina	Gold, manganese, feldspar, black tourmaline, amethyst, quartz, kaolin, mica, gypsum, silimanite, clay, granite, sand, uranium asbestos, tourmaline, serpentine, chromite, ilmenite, diamond, graphite, iron ore, potash
Kebbi	Salt, iron ore, gold, feldspar, marble, limestone, feldspar, dolomite phosphate, mica, cassiterite, granite, coal, kaolin
Kogi	Clay, iron ore, gemstone, marbel, limestone, feldspar, dolomite, phosphate, mica, cassiterite, granite, coal, kaolin
Kwara	Clay, kaolin, sand, quart, dolomite, marble, feldspar, god, tantalite, cassiterite, granite, limestone, tantalite
Lagos	Sand, bitumen, gravel petroleum, laterite
Nasarawa	Amethyst (Topaz garnet), barytex, barite, cassirite, chalcopyrite, clay, columbite, coking coal, dolomite/marble, feldspar, galena, iron-ore, limstone, mica, salt, sapphire, talc, tantalite, tourmaline quartz & zireon
Niger	Gold, lead/zinc & talc
Ogun	Bitumen, clay, feldspar, gemstone, kaolin, limestone & phosphate
Ondo	Bitumen, clay, coal, dimension stones, feldspar, gemstone, glass-sand, granite, gypsium, kaolin, limestone & oil/gas
Osun	Columbite, gold, granite, talc, tantalite & tourmaline
Oyo	Aqua marine, cassiterite, clay, dolomite, gemstone, gold, kaolin, marble, silimonite, talc & tantalite
Plateau	Barite, bauxite, betonite, bismuth, cassiterite, clay, coal, emeral, fluoride, gemstone, granite, iron-ore, kaolin, lead/zinc, marble, molybdenite, phrochlore, salt, tantalite/columbite, tin & wolfram
Rivers	Clay, glass-sand, lignite, marble & oil/gas
Sokoto	Clay, flakes, gold, granite, gypsium kaolin, laterite, limestone, phosphate, potash, silica sand & salt
Taraba	Lead/zinc
Yobe	Soda ash & tintomite
Zamfara	Coal, cotton & gold

Source: RMRDC (2014).

VI. Nigeria's Natural Resource Governance Deficit: Insights from the World's Resource Governance Index (RGI)

The Resource Governance Index (RGI) is an initiative of the Revenue Watch Institute, an International Non-Governmental Organization (I.N.G.O) that seeks to "promote the effective, transparent and accountable management of oil, gas and mineral resources for the public good" (RGI, 2013:ii). RGI measures the quality of governance in the oil, gas and mining sectors of 58 counties, assessing the quality of key governance components, namely: institutional and legal setting, reporting practices, safeguards and quality control, and enabling environment (RGI 2013:1). The index is predicated on the understanding that proper governance of natural resources is key to the sustainable development of countries with abundant oil,

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gas and minerals (cf. Nwala, Adekunle, Franklyn & Owolabi, 2014).

RGI ranks the focal countries as either 'satisfactory', 'partial', 'weak', or 'failing' within the aggregate score range of 100 to 1. Within this standard range, 10-71 is rated satisfactory, 70-51 is rated partial; 50–40 is rated weak; while 40-1 is rated failing. The 2013 edition of RGI lists Nigeria among the group of countries with a very weak performance in terms of natural resources governance. Table 3 is instructive in this regard.

Table 6 : RGI's Bright versus Poor Countries in Terms of Resource Governance Rating

THE BRIGHT		THE POOR	
Country	Composite Score	Country	Composite Score
Norway	98	Vietnam	41
United States	92	Kuwait	41
United Kingdom	88	Angola	42
Australia	80	Nigeria	42
Brazil	77	Papua New Guinea	43
Mexico	76	Egypt	43
Canada	75	Yemen	43
Chile	74	China	43
Colombia	74	Sierra Leone	46
Trinidad and Tobago	73	Malaysia	46

Source: RGI (2013:4-5).

Table 3 indicates that Nigeria scored 42 on the standard aggregate range of 100 to1. The implication of this record is that Nigeria was maintaining a gross governance deficit in natural resources management. Although Nigeria's assessment in the 2013 RGI was hinged upon the performance of her hydrocarbon (petroleum) sector, indications are rife to the effect that her performance in the mining/quarrying sector would be much more damning. It is to this important sector of the Nigerian natural resource domain that we now turn.

VII. Artisanal Mining/Quarrying in Nigeria: Nature, Drivers and Implications

Artisanal mining/quarrying is a pattern of natural resources extraction that is based on rudimentary and under-skilled operational modality. According to Abu-Sada (2002: 52), it is a mining activity in which a person labours at extracting certain minerals by rudimentary means and with a minimal capital or equipment. Artisanal mining/quarrying is characterized by a number of features, among which are that:

- it is essentially rudimentary and not mechanized;
- it is more or less subsistent in scale;
- it is largely informal and illegal;
- it is operated with minimal capital and equipment;
- it is operated by under-skilled artisans and local peasants;
- it is under-regulated;
- it is characterized by low productivity;
- it is labour intensive;
- it is marred by operational inefficiency;
- it is under-developed;
- it is environmentally hazardous and unsustainable.

Artisanal mining/quarrying is an important source of livelihood in the contemporary world. According to Abu-Sada (202:52-53):

> Globally, an estimated 13 to 20 million men, women and children from over fifty developing countries are directly engaged in the artisanal mining sector, and an estimated 100 million more are indirectly dependent on the sector for their livelihood.

Nigeria's mining sector is dominated by artisanal practice. As observed by ELI (2014:1), "unlike countries such as Ghana and Burkina Faso, Nigeria does not have a well developed large scale mining sector, and the majority of mining in the country is carried out by artisanal and small-scale miners". The peculiar artisanal character of the Nigeria mining sector has been vividly captured thus:

> Over 90% of mining activities in Nigeria are Artisanal and Small-scale Mining (ASM) of which 75% are carried out illegally. The sector is unguided and unregulated. The policies in place are inadequate and miners are untrained. This makes ASM to adopt poor quality operational techniques that cause environmental disaster and losses of substantial revenue through exports as well as royalties and taxes (Opafunso & Alaba, n.d:1).

Artisanal mining in Nigeria is informal by nature. This implies that it largely operates outside the extant laws and regulatory regime (ELI 2014). As pointed out by ELI (2014:1), "while the current laws and regulations do address artisanal and small-scale mining activities, mainly by focusing on extension services, they do not provide meaningful incentives and assistance for formalizing miners". The instruments have also failed to provide proper dis-incentive for unwholesome and opportunistic mining/quarrying.

Consequently, there is a prevalence of unregulated and do-as-you-please mining/quarrying artisanship in the different parts of Nigeria. This has often led to adverse environmental and public health consequences. For instance, "in 2010, unregulated

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small-scale mining in the northern states of Zamfara gave rise to an epidemic of childhood lead poisoning, with at least four hundred (400) children under the age of five dying within a six-month period" (ELI, 2014:1). The Zamfara incident underscored the vulnerability of the rural poor in the face of livelihood crisis occasioned by state neglect and associated structural imperatives. As succinctly observed by Abu-Sada (2012: 63):

> The lead-poisoning epidemic occurred within a context of poverty, inequality, high gold prices, and lack of essential public health services. High gold prices were a result of the recent global financial crisis. This created an opportunity for local villagers and subsistent farmers to supplement meagre incomes. However, without adequate safety measures or essential public health services, their efforts resulted in tragedy.

The structural materialism of lead-poisoning in Zamfara state is a subject of political epidemiology (Okoli, 2014b). The thinking in that regard is that such an occurrence is a product of human vulnerability occasioned by dire socio-economic and livelihood conditions that is made possible by governance failure. Suffice it to note that the general failure of governance by the Nigerian state was responsible for bringing about the scenario that culminated in the tragedy.

Artisanal mining/quarrying has been most prevalent in the northern part of Nigeria, with a pocket of states in the southern part of the country also taking their fair share of the incidence. Table 5 chronicles some critical flashpoints of artisanal mining/quarrying in Nigeria.

Table 7 : Some Critical Flashpoints of Artisanal Mining/Quarrying in Nigeria

State	Resources being mined
Bauchi	Clay gemstone, sand, copper
Benue	Gemstone, marble, sand, clay, diamond
Ebonyi	Salt, granite, refractory clay, sand
Edo	Gold, marble, granite, ceramic, clay
Kaduna	Granite, gold, clay, sand, gemstone
Kebbi	Salt, iron ore, gold, limestone, granite
Kogi	Clay, gemstone, marble, limestone, granite, sand
Plateau	Gemstone, glass-sand, salt, clay, sundry
Niger	Limestone, granite, old, marble, gemstone
Zamfara	Gold, granite, clay

Source: Authors, 2015.

The impacts of artisanal mining/quarrying in Nigeria have been dire. It has been associated with adverse economic, ecological, health and humanitarian consequences that negate sustainable human security in the affected population in particular and national security in general. Some of these consequences include loss of life, population displacement, human injury, environmental degradation (land, air water, pollution), as well as economic losses. The complications of the practice have been overly evident in the public health hazards that are associated with it. A case in point is the lead-poisoning incidents in Zamfara (2010) and Niger (2015), which led to huge death tolls and complex public health emergency. There have also been cases of mine collapse or implosion, leading to human casualties in some parts of Nigeria (Okoli, 2014a).Table 6 highlights the various dimensions of adverse impacts and complications of artisanal mining/quarrying in Nigeria.

Table 8 : Collateral Impacts of Artisanal Mining/Quarrying in Nigeria

Impact	Empirical Indicator(s)	Instances(s)/Remark (s)
Health impact	Lead and Mercury exposure leading to health complications and deaths	(i) 2010 lead poisoning in Zamfara State killing 400 children in 6 months (ii) 2015 lead poisoning in Niger State killing 60 children
Environmental impact	Toxic pollution of air water and land; destruction of flora and fauna; ecological instability leading to landslides, erosion and tremors; landscape degradation; radiation hazards	Abandoned mines in Osun, Kogi, Zamfara and Ebonyi States have often engendered land degradation, leading to erosion, landslides, etc
Social impact	Communal strife and violence over resource access, equity, ownership, entitlements and control	Contestations over ownership and control of mining sites have led to violent conflict in parts of Ebonyi and Kogi States

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Economic impact	Loss of public revenues through forgone export duties royalties and taxes	Most artisanal mining activities are scarcely taxed in Nigeria
Gender impact	Complicated victimhood for women and children	Lead poisoning in Zamfara and Niger States mostly affected woman and children

Source: Authors, 2015.

Despite the above adverse affects of artisanal mining/quarrying, a number of gains have been ascribed to it. This includes employment/job creation, income generation and sustenance of livelihood. These economic opportunities have made artisanal mining a flourishing enterprise in Nigeria. In recent times, the practice has been bolstered by high prices of precious metals and stones as well as industrial minerals, a sheer lack of viable alternative livelihoods for the teeming rural population, and a ready supply of rudimentary equipment for small-scale mining (ELI, 2014). Complicated by the apparent inability of the government and community authorities to effectively control and regulate the activities of the mining sector, artisanal mining in Nigeria have become a common livelihood practice that is highly lucrative for the practitioners but detrimental to the society. This underscores the imperative of effective regulation of the practice in Nigeria.

VIII. Evaluating Governance Crisis in the Nigerian Artisanal Mining Sector

The crisis of governance in the Nigerian artisanal mining sector has been evidenced by the lack of simple and transparent legal and fiscal framework, weak institutional structures, lack of capacity to implement extant regulations, and lack of political will to effectuate relevant policies (ELI, 2014:1-2). The situation has been complicated by lack of organization and stability among miners, improper mining regulations, illiteracy paucity of technical and financial capital, and livelihood insecurity among miners (ELI, 2014:2).

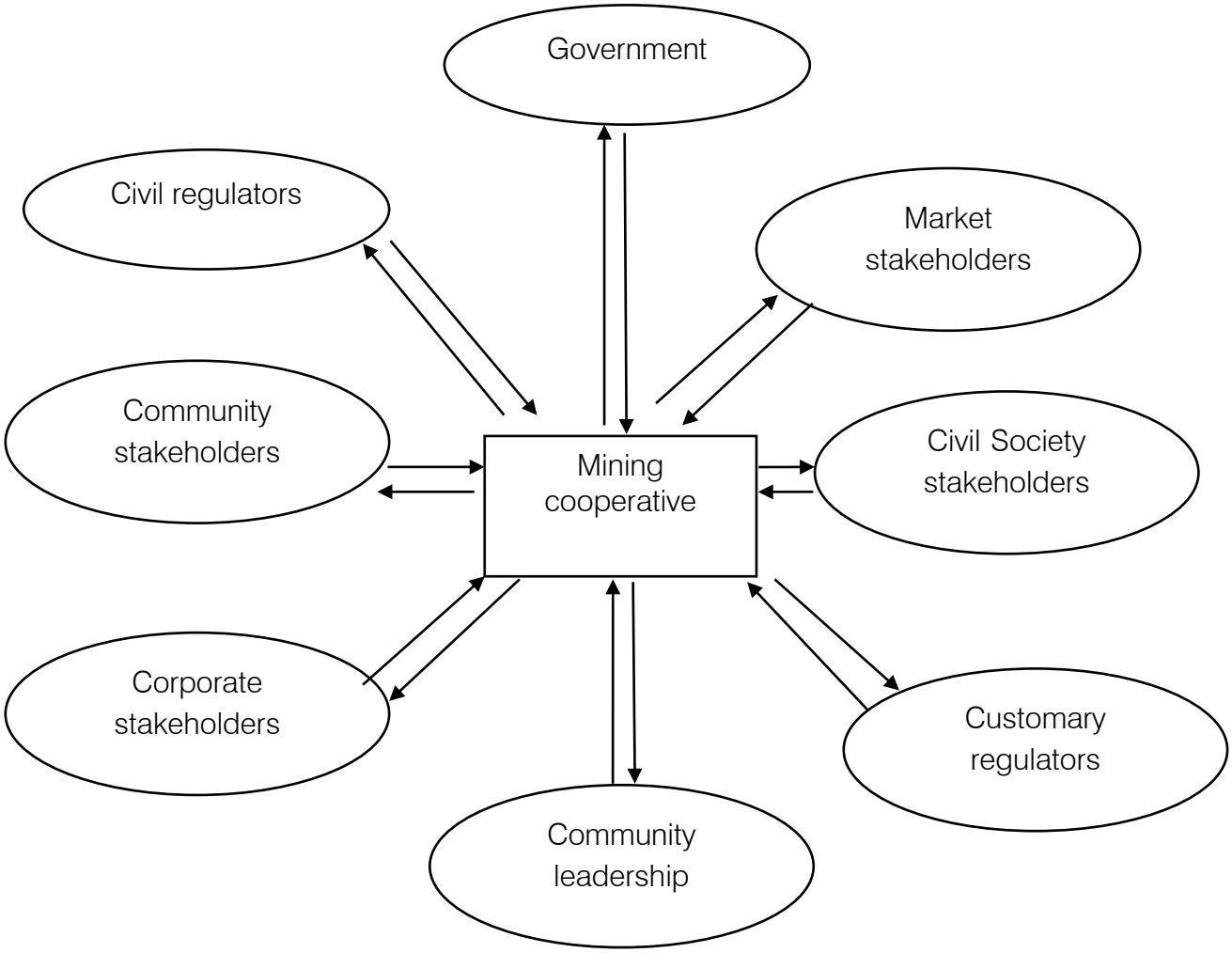
The absence of a viable regulatory mechanism in the artisanal mining sector means that there is no incentive for best corporate practices among the miners. It also implies that there is no deterrence in respect untoward mining activities. Formalizing and regularizing the activities of artisanal miners have been problematic. Existing legislations merely emphasize on the provisions of extension services to miners without any concrete plan to support them financially and technically. The requirement that artisanal miners form co-operatives in order to enable them access technical assistance from government through the instrumentality of the Ministry of Mines and Steel Development (MMSD), now Ministry of Solid Minerals (MSM), has since proved counter-productive. Artisanal miners who could not readily organize themselves into such platforms naturally relapse into informal and illegal practice (ELI 2014:2).

The operational efficiency of the existing fiscal, institutional and legal frameworks to harness and regulate artisanal mining has been, in the main, marred by the ineptitude, corruption and laxity of those mandated to enforce them. The failure of community leadership systems to mediate and moderate the activities of artisanal mining in their domains adds to the complex scenario to accentuate the artisanal mining escapade.

IX. Towards Effective Regulation of Mining Sector in Nigeria

Effective regulation of artisanal mining and quarrying in Nigeria requires a multi-stakeholder approach based on mutual and synergistic entrustment. Under this regulatory regime, artisanal miners are required to form self help co-operatives in line with their sectoral interests in specific localities. Each mining co-operative is to work in synergy with the government, local authorities and other relevant stakeholders in ensuring that exploitation of natural resources is not done in a manner that jeopardizes the common interest of all parties – the common good. The end of this is the evolvement an equitable and safe natural resource management regime that will fairly distribute the gains and pains of resource exploitation to all stakeholders and ultimately ensure sustainable societal well-being. This model of natural resources governance is sketched in figure 2.

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Source: Authors, 2015

Figure 2 : Mutual Multi-Stakeholders Entrustment Model of Natural Resource Governance

X. Conclusion

Natural resources constitute a critical aspect of wealth of nations. The manner these resources are managed hold critical implications for national sustainability of states. Where natural resources are well managed through an efficient governance regime, the outcome is economic vibrancy and prosperity for the nation. But where the resources are mismanaged through abusive or unregulated exploitation, the result is the paradox of 'resource curse' or 'unfortunate fortune'.

The natural resource domain in many developing countries has been a difficult and volatile terrain. The vacuum of governance in the sector has often engendered the dialectics of conflict, violence, corruption, crime and disaster. This has impeded national sustainability in many resource-rich nations. Nigeria is a natural resource endowed nation. However, her heritage in terms of resource gifting has not brought her any sustainable fortune owing to poor management of her abundant natural resources. Crass deficiency in terms of the state's extractive and regulatory capacities, as well as dysfunctionality of the basic institutional cum legal frameworks of governance, is at issue in this regard.

This paper has demonstrated that resource governance deficit has been the bane of efficient and sustainable exploitation of natural resources in Nigerian mining sector. The paper observed that the prevalence of artisanal mining/quarrying in Nigeria within an unguided and under-regulated operational regime is an indication of crisis of natural resource governance. Bereft of relevant effective institutional, policy, fiscal and legal operational mechanisms of regulation, artisanal mining/quarrying in Nigeria has been operated at huge social, economic, ecological and humanitarian costs that threaten economic and human security. To ensure that this sector is effectively managed in the interest of national sustainability, a multi-stakeholder approach to resource governance based on mutual entrustment is a desideratum.

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Comparative Study of 2011 and 2015 Presidential Elections in Nigeria

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Abstract- This paper investigates comparative study of 2011 and 2015 presidential elections in Nigeria with specific focus on the Fourth Republic, from the comparative analysis perspectives. Thus, through the use of comparative theory unfolds the causes responsible for the opposition travail in the 2015 election in Nigeria. By the use of the comparative analysis we try to know what is common and find out the causes and consequences for the victory and the losses. This research also presents statistical data analysis of the both elections, for comparison. It was undertaking to ascertain the nature and character of the 2011 and 2015 election. This article therefore recommends that in order for the electoral system to be free and fair, there is need for government to place priority on education through free and compulsory education, Avoid inflammatory rhetoric, publicly denounce violence, pledge to respect rules, in particular the Code of Conduct for Political Parties, and pursue grievances through lawful channels, it also indicate that the sovereign power belongs to the people. The era of political parties taking people for granted is gone. Nigerians are very conscious of their rights; they know with their votes is they can install or remove government that failed to perform.

Keywords: presidential, election, political parties, parliament.

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Comparative Study of 2011 and 2015 Presidential Elections in Nigeria

Araba, Akeem Ayanda [α] & Braimah, Joseph Odunayo [σ]

Abstract- This paper investigates comparative study of 2011 and 2015 presidential elections in Nigeria with specific focus on the Fourth Republic, from the comparative analysis perspectives. Thus, through the use of comparative theory unfolds the causes responsible for the opposition travail in the 2015 election in Nigeria. By the use of the comparative analysis we try to know what is common and find out the causes and consequences for the victory and the losses. This research also presents statistical data analysis of the both elections, for comparison. It was undertaking to ascertain the nature and character of the 2011 and 2015 election. This article therefore recommends that in order for the electoral system to be free and fair, there is need for government to place priority on education through free and compulsory education, Avoid inflammatory rhetoric, publicly denounce violence, pledge to respect rules, in particular the Code of Conduct for Political Parties, and pursue grievances through lawful channels, it also indicate that the sovereign power belongs to the people. The era of political parties taking people for granted is gone. Nigerians are very conscious of their rights; they know with their votes is they can install or remove government that failed to perform.

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I. Introduction

Nigeria's 2015 general elections the fifth since 1999, was scheduled for 14th and 28th February 2015 respectively and later changed to 28th March and 11 April 2015 respectively. All 36 states held presidential, federal parliament and House of Assemblies (state parliaments) elections. Gubernatorial polls were held in 29 states. General elections in Nigeria have always been turbulent and violent affairs. however Indeed, the 2007 election polls was widely condemned as the most violent, poorly and massively rigged in the history of Nigeria's electoral history. Even the winner of the presidential pool, a person of President Umaru Musa Yar'Adua, conceded flaws. Some analysts and observers considered the April 2011 elections as the most credible since the return to democracy, unlike 2007 pool where over 1,000 people were killed in post-election protests. (ibid)

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Nigeria has had a checkered electoral history with successive elections being marred by serious irregularities and controversy- particularly in the conduct of its electoral commission. This has led in some cases to the collapsed of democratic experiments as occurred in 1966 and 1983. The 2007 general elections in Nigeria provided a good opportunity to occasion a break with the past and rekindle public confidence in the electoral and democratic process of the country. However, this was not to be as the elections, according to several local and international observers turned out to be the worst in Nigeria's political history (European Union: 2007, Human Rights Watch: 2007, Transition Monitoring Group: 2007). Like its predecessors, INEC was accused of not being able to engender public confidence in the electoral process or organize transparent and credible elections. Unfortunately, this position has scarcely been demonstrated in a systematic manner. This paper is a systematic analysis of 2011 and 2015 presidential election in Nigeria.

The aim of this paper is on comparative analysis of the 2011 and 2015 elections in Nigeria with sole objective of comparing the nature and character of 2011 and 2015 presidential election in Nigeria, examine why the incumbent lost to the opposition, why more votes were casted in 2011 than 2015 election, and to examine the statistical analysis of 2011 and 2015 elections.

This paper is divided into seven sections. The first section is the introduction and objective of the study. The second section explains the conceptual clarifications. The Third section explores theoretical framework. The fourth section examines the statistical analysis of 2011 and 2015 election in Nigeria. The fifth sections discuss the nature and characteristics of 2011 and 2015 election. The sixth section contains conclusion and recommendation.

a) Conceptual clarification

For a proper understanding of this paper, it is necessary to define the following concepts: Presidential government and election.

b) Presidential government

The Presidential system of government is a type of government in which most executive powers are vested in the president who is the chief executive. According to Garner (1955), "Presidential government is that system in which the executive (including both the

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Head of the State and his ministers) is constitutionally independent of legislature in respect to the duration of his or their tenure and irresponsible to it for his or their political policies. In such system the chief of the state is not merely the titular executive but he is real executive and actually exercise the powers which the constitution and laws confer upon him". In this system the president enjoys real powers of the government.

c) Election

Election is an integral part of a democratic process that enables the citizenry determine fairly and freely who should lead them at every level of government periodically and take decisions that shape their socio-economic and political destiny; and in case they falter, still possess the power to recall them or vote them out in the next election. This was Obakhedo, (2011) aptly defined election thus: Election is a major instrument for the recruitment of political leadership in democratic societies; the key to participation in a democracy; and the way of giving consent to government (Dye, 2001); and allowing the governed to choose and pass judgment on office holders who theoretically represent the governed Obakhedo, (2011). In its strictest sense, there can never be a democracy without election. Huntington is however quick to point out that, a political system is democratic 'to the extent that its most powerful collective decision-makers are selected through fair, honest and periodic elections in which candidates freely compete for votes, and in which virtually all the adult population is eligible to vote' (Huntington, 1991:661). In its proper sense, election is a process of selecting the officers or representatives of an organization or group by the vote of its qualified members (Nwolise, 2007:155). Anifowose defined elections as the process of elite selection by the mass of the population in any given political system, Bamgbose (2012). Elections provide the medium by which the different interest groups within the bourgeois nation state can stake and resolve their claims to power through peaceful means (Iyayi, 2005:1). Elections therefore determine the rightful way of ensuring that responsible leaders take over the mantle of power.

An election itself is a procedure by which the electorate, or part of it, choose the people who hold public office and exercise some degree of control over the elected officials. It is the process by which the people select and control their representatives. The implication of this is that without election, there can be no representative government.

This assertion is, to a large extent, correct as an election is, probably, the most reliable means through which both the government and representatives can be made responsible to the people who elect them. Eya (2003) however, sees election as the selection of a person or persons for office as by ballot and making choice as between alternatives. Ozor (2009) succinctly gives a more encompassing and comprehensive definition of election when he noted that the term connotes the procedure through which qualified adult voters elect their politically preferred representatives to parliament legislature of a county (or any other public positions) for the purpose of farming and running the government of the country. Thus Osumah (2002) elucidates what the basic objective of election is which is to select the official decision makers who are supposed to represent citizens-interest. Elections, according to him extend and enhance the amount of popular participation in the political system.

II. Theoretical Framework

While it could be stated that there are different perspective of viewing the electoral process the researcher adopt the comparative analysis approach to the study. This theory tells us that in order to find out the causes responsible or the political happenings; we must compare the various events, recorded in the world history. Gilchrist believes that this method or theory is rather a supplement to the historical method. This theory aims at the study "of existing politics or those which have existed in the past to assemble a definite body of material from which the investigator, by selection, comparison and elimination, may discover the ideal types of progressive forces of political history". Lord Bryce says "that which entitles it to be called scientific is that it reaches general conclusions by tracing similar results to similar causes, eliminating those disturbing influence which are present in one country and are absent in another, make the results in the examined cases different in some points while similar in others.

The very essence of this theory lies in comparing different historical facts and political events with a view to finding out the causes responsible for any changes. By the use of the comparative method we try to know what is common and seek to find out common causes and consequences. This theory provides an opportunity to find out the lacuna between 2011 and 2015 general election in Nigeria.

a) The Statistical analysis of 2011 and 2015 elections

March 28th and April 11th 2015 election marked another turn in Nigeria's democratic history as registered voters took to the polls to elect the next set of leaders into the Presidential and National Assembly positions. The elections, conducted in the thirty six states of the country and the Federal Capital Territory, witnessed the emergence of the opposition party- the All Progressives Congress (APC) and its candidate. This outcome was also the first time an opposition party would unseat the ruling party- People Democratic Party (PDP) since Nigeria's transition into civil rule in 1999.

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Table 1 : 2011 and 2015 Presidential Political Parties and Voters Statistics Distribution

Party 2011	Party Logo	Votes received 2011	% of Vote received 2011	Party 2015	Party Logo	Votes received 2015	% of Vote received 2015
ADC		51,682	0.14%	AA		22,125	0.08
ANPP		917,012	2.40%	ACPN		40,311	0.14
APS		23,740	0.06%	AD		30,673	0.11
ARP		12,264	0.03%	ADC		29,666	0.10
BNPP		47,272	0.12%	APA		53,537	0.19
CAN		2,079,151	5.41%	APC		15,424,921	53.96
CPC		12,214,853	31.98%	CPP		36,300	0.13
FRESH		34,331	0.09%	KOWA		13,076	0.05
HDP		12,023	0.03%	PDP		12,853,162	44.96
LDPN		8,472	0.02%	PPN		24,475	0.09
MPPP		16,492	0.04%	UDP		9,208	0.03
NCP		26,376	0.07%	HOPE		7,435	0.03
NMDP		25,938	0.07%	NCP		24,455	0.09
NTP		19,744	0.05%	UPP		18,220	0.06
PDC		82,243	0.21%				
PDP		22,495,187	58.89%				
PMP		56,248	0.15%				
PPP		54,203	0.14%				
SDMP		11,544	0.03%				
UNPD		21,203	0.06%				

Source: 2011 and 2015 Election in Nigeria (Africa elections database). African elections tripod. http://www.inecnigeria.-org/?page-id=31

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The following report can be inferred from table 1 above:

- *16 April 2011 Presidential Election*

Registered Voters 73,528,040. Total Votes (Voter Turnout) 39,469,484 (53.7%). Invalid/Blank Votes 1,259,506. Total Valid Votes 38,209,978

- *28 March 2015 presidential Election*

Registered Voters 67,422,005. Accredited 31,746,490 (47.08%). Total Votes (Voter Turnout) 29,432,083. Invalid/Blank Votes 844,519. Total Valid Votes 28,587,564 (97%). The 2015 presidential election and the eventual outcome were in many ways different from other elections, especially the 2011 election:

14 Political parties participated in 2015 compared to 21 political parties in 2011 that contested the election. More votes were cast in 2011 (38,209,978) than in 2015 (28,587,564) by a 25% difference. The incumbent lost to the opposition: 45% (12,853,162) to 54% (15,427,943). The incumbency lost by a relatively wide margin of the total votes cast for the opposition, about 20% (2,574,781). The opposition won more states (21) and had at least 25% of votes in more states. The PDP lost approximately 43% of the votes it once controlled (22,495,187 in 2011 to 12,853,162 in 2015). In contrast, the APC gained approximately 26% more votes between 2011 and 2015 (12,214,853 to 15,424,921). The PDP won 31 states in 2011, but could only muster 16 states in 2015. The PDP not only lost 15 of the 31 states, it also lost some percentage of votes in the states it retained. There was an increase in the number of total votes cast for the two main parties; 98.92% in 2015 compared to 90.84 in 2011 marginal parties saw their support erode.

Table 2 : Nigeria Presidential Election Regional Voters Turnout

Zone	2015 approximate	2011 approximate
North Central	43.47	49
North East	45.22	56
North West	55.09	56
South East	40.52	63
South South	57.81	62
South West	40.26	32

Source: 2011 and 2015 Election in Nigeria (Africa elections database). African elections tripod. http://www.-*inecnigeria.org/?page-id=31*

(The above diagram is represented below)

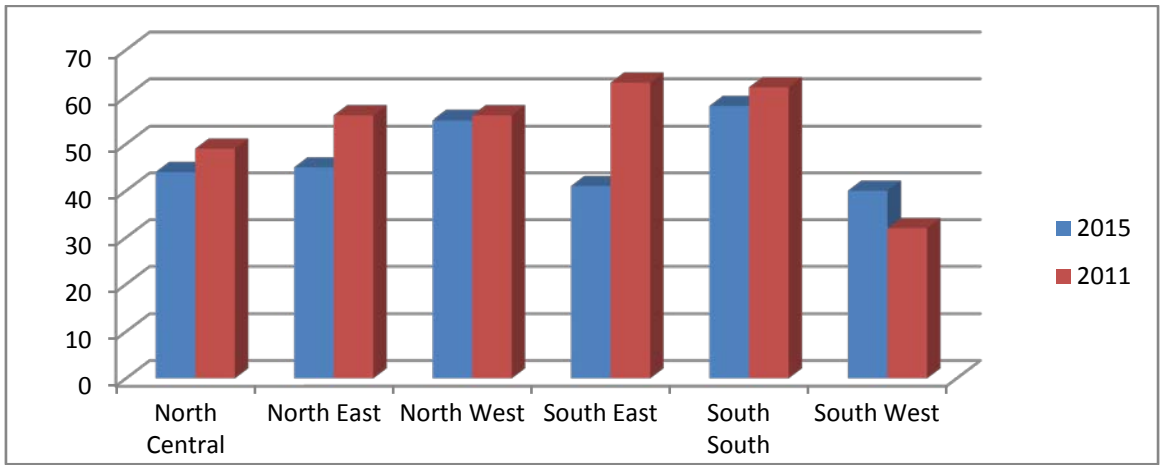


Fig. 1 : Multiple Bar Chart of 2011and 2015 Presidential Election Regional Voters Turnout among the six Geopolitical Zones

From table 2, the values displayed were obtained by dividing the number of those who turned out to vote by the total registered voters and then multiplying by 100 in each geopolitical zone. From this table, it was observed that in 2011, five of the six geopolitical zones had higher voters turn-out except the South-West region.

b) The nature and character of 2011 and 2015 presidential election

The Presidential election was initially scheduled to hold on 9th April 2011, but later held on 16th April, 2011. Similarly in 2015, general election was scheduled to hold on 14th February 2015 but was held on 28th march 2015. The elections were reported in the international media as having run smoothly with relatively little violence or voter fraud in contrast to

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previous elections. It was one exercise that showed that election should not be a do-or-die affair as in this clime. The election exposed the supremacy of the interest of the nation above that of self or a cabal as in Nigeria.

Politics is a game of compromise gained expression in the recent Nigeria election. Among the two contending parties of All Progressive Congress and Peoples Democratic Party, what it showed was that in Nigeria, the incumbency factor did not confer any undue advantages, there was a level playing field for all parties in 2015 contention, contrary to earlier tradition in 2011, which always been the opposite with the ruling party taking advantages of its position to lord it over others. Since 1999 that democracy was reintroduced in Nigeria, the Peoples Democratic Party (PDP) has literally eclipsed the opposition. Analysts argue that though Nigeria has about 58 parties, the reality on ground is that it is the PDP and others. While politics here is a do-or-die affair. Over the years, politics in Nigeria has been a game of "winner takes all" while in the recent election and how the government emerged out of a consensus between the CPC, ACN and the allies showed that politics is a game of numbers and one of compromise. What matters is the collective interest of the people.

Moreover, despite the level of competition among the two main political parties in 2015, a spirit of sportsmanship prevailed in their actions before and after the elections. None of the candidates including the incumbent was desperate for power. The idea was to win the election and not to "capture it". There were minimal reported cases of rigging, manipulation of the votes, intimidation of the electorate and violence including outright assassination of opponents. Throughout the period of campaign and election, there was room for alternative views unlike in 2011, 2007 and 2003, where opponents are viewed as enemies.

Furthermore, the 2015 campaign was based on issues and not persons, but there some personality attack, the ultimate preoccupation of politicians and parties is to grab power at all cost. The campaign was based on issues as the PDP campaigned for a second term in office and battled to restore support lost while the APC struggled for dominance after losses in the 2011, they hoped to make gains and to hold the balance of power in a possible hung parliament. The parties delved into several issues particularly the economy and foreign policy including the insurgency of Boko Haram in Northern parts of the country, in contrary to many believe that Nigerians play "politics of the stomach" and not of issue.

Finally, the 2015 Nigerian election was a proof of the supremacy of the national interest above that of self. This is not the case where the nation is sacrificed on the altar of self aggrandizement. Many believe that part of why Goodluck Jonathan signed Accord Agreement was to ensure that the polity was not subjected to undue tension arising from the election eventually won by Muhammad Buhari, the new President of Nigeria.

c) Why the incumbent lost

The Jonathan government was riddled with serious allegations of corruption. A former Central Bank governor, Lamido Sanusi alleged that about $40 billion of oil revenue was unaccounted by the Nigerian National Petroleum Corporation (NNPC). In 2013, Nigeria ranked 144th of 177 in the "Corruption by Country" rating of Transparency International. PDP was in turmoil before the elections and it is very likely that some members may have worked against the interest of the party at the polls. The Jonathan presidency was also believed to have performed woefully in the different sectors of the economy like the power, road, aviation and many other sectors. Even though Nigeria was rated the largest economy in Africa during the Jonathan presidency, not many Nigerians could feel the impact. Youth unemployment was put at over 50% (Durotoye, 2014b). Surprisingly, it appeared the Boko Haram insurgency and the kidnap of over 200 school girls in Chibok, Borno state also play a major role. This may be due to the fact that the government had sufficiently rooted out the insurgents a few weeks before the elections. Another explanation might be that not many people in the North East where Boko Haram holds sway partook in the polls. The religion factor was also contributed to lost.

III. Conclusion and Recommendation

a) Conclusion

The cornerstone of competitive elections and democracy is free and fair election. The credibility and legitimacy accorded an election victory is determined by the extent to which the process is free and fair (Garuba, 2007; Bogaards, 2007). Free and fair election serves the purpose of legitimizing such government.

In fact, the quality of elections is part of the criteria for assessing the level of consolidation of new democracies. Elections are therefore considered as vital and indispensable for determining the democratic nature of a political system. When election is not managed quite satisfactorily, it can pave the way for deeper ethnic and regional divisions, lost of legitimacy of elected authorities, protest, violent contestation, social explosion, and doubt about institutions, violence, and instability or even threaten the entire democratization process. In fact, poor management of elections is a real and prolific source of conflicts, violence, insecurity and instability (Hounkpe & Gueye, 2010).

Low turnout in the 2015 compared to 2011 may be attributed to some factors. First, it might be an indication that previous election results were inflated. Second, there was a heightened sense of insecurity

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among Nigerians, with causes such as the Boko Haram insurgency in the North, the possibility of the incumbent not willing to accept the outcome of the election should it not be in its favour, the effects of the election postponement, Also, there is the perception that 'votes do not count' and that the outcomes have been pre-decided by an elite minority.

The successful of the election can also be attributed to: determination of the opposition party to win the election, the positive attitudes of politics, the introduction of card readers, the competence of the electoral commission to manage the election, a well organized opposition, effective of the social media and the peace accord agreement signed by the candidates.

b) Recommendations

- To sustain ongoing capacity building programs for major institutions involved in the elections, particularly INEC and the police, the government should increase technical and financial support to relevant civil society organizations.
- The Electoral body should deploy observer missions for longer periods before and after the votes to monitor the process more comprehensively.
- The civil societies should engage more actively with youth leaders especially in poor urban and rural areas, strengthen participatory early warning and early response systems, and raise timely alerts of possible violence.
- The mass media should ensure that there are factual and balanced reporting of all election-related developments, and avoid publishing hateful, divisive and inflammatory statements.
- The government should direct publicly all officers to ensure neutrality in relations with all parties and apply exemplary sanctions against any officer who fails to comply.
- The politicians should avoid inflammatory rhetoric, publicly denounce violence, pledge to respect rules, in particular the Code of Conduct for Political Parties, and pursue grievances through lawful channels.
- The political parties should respect party constitutions and particularly allow democratic candidate selections.

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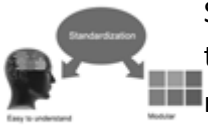


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Based on potential and nature, the manuscript can be categorized under the following heads:

Original research paper: Such papers are reports of high-level significant original research work.

Review papers: These are concise, significant but helpful and decisive topics for young researchers.

Research articles: These are handled with small investigation and applications

Research letters: The letters are small and concise comments on previously published matters.

5.STRUCTURE AND FORMAT OF MANUSCRIPT

The recommended size of original research paper is less than seven thousand words, review papers fewer than seven thousands words also.Preparation of research paper or how to write research paper, are major hurdle, while writing manuscript. The research articles and research letters should be fewer than three thousand words, the structure original research paper; sometime review paper should be as follows:

Papers: These are reports of significant research (typically less than 7000 words equivalent, including tables, figures, references), and comprise:

(a)Title should be relevant and commensurate with the theme of the paper.

(b) A brief Summary, "Abstract" (less than 150 words) containing the major results and conclusions.

(c) Up to ten keywords, that precisely identifies the paper's subject, purpose, and focus.

(d) An Introduction, giving necessary background excluding subheadings; objectives must be clearly declared.

(e) Resources and techniques with sufficient complete experimental details (wherever possible by reference) to permit repetition; sources of information must be given and numerical methods must be specified by reference, unless non-standard.

(f) Results should be presented concisely, by well-designed tables and/or figures; the same data may not be used in both; suitable statistical data should be given. All data must be obtained with attention to numerical detail in the planning stage. As reproduced design has been recognized to be important to experiments for a considerable time, the Editor has decided that any paper that appears not to have adequate numerical treatments of the data will be returned un-refereed;

(g) Discussion should cover the implications and consequences, not just recapitulating the results; conclusions should be summarizing.

(h) Brief Acknowledgements.

(i) References in the proper form.

Authors should very cautiously consider the preparation of papers to ensure that they communicate efficiently. Papers are much more likely to be accepted, if they are cautiously designed and laid out, contain few or no errors, are summarizing, and be conventional to the approach and instructions. They will in addition, be published with much less delays than those that require much technical and editorial correction.

The Editorial Board reserves the right to make literary corrections and to make suggestions to improve briefness.

It is vital, that authors take care in submitting a manuscript that is written in simple language and adheres to published guidelines.

Format

Language: The language of publication is UK English. Authors, for whom English is a second language, must have their manuscript efficiently edited by an English-speaking person before submission to make sure that, the English is of high excellence. It is preferable, that manuscripts should be professionally edited.

Standard Usage, Abbreviations, and Units: Spelling and hyphenation should be conventional to The Concise Oxford English Dictionary. Statistics and measurements should at all times be given in figures, e.g. 16 min, except for when the number begins a sentence. When the number does not refer to a unit of measurement it should be spelt in full unless, it is 160 or greater.

Abbreviations supposed to be used carefully. The abbreviated name or expression is supposed to be cited in full at first usage, followed by the conventional abbreviation in parentheses.

Metric SI units are supposed to generally be used excluding where they conflict with current practice or are confusing. For illustration, 1.4 l rather than 1.4 × 10-3 m3, or 4 mm somewhat than 4 × 10-3 m. Chemical formula and solutions must identify the form used, e.g. anhydrous or hydrated, and the concentration must be in clearly defined units. Common species names should be followed by underlines at the first mention. For following use the generic name should be constricted to a single letter, if it is clear.

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Abstract, used in Original Papers and Reviews:

Optimizing Abstract for Search Engines

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Key Words

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One must be persistent and creative in using keywords. An effective keyword search requires a strategy and planning a list of possible keywords and phrases to try.

Search engines for most searches, use Boolean searching, which is somewhat different from Internet searches. The Boolean search uses "operators," words (and, or, not, and near) that enable you to expand or narrow your affords. Tips for research paper while preparing research paper are very helpful guideline of research paper.

Choice of key words is first tool of tips to write research paper. Research paper writing is an art.A few tips for deciding as strategically as possible about keyword search:

- One should start brainstorming lists of possible keywords before even begin searching. Think about the most important concepts related to research work. Ask, "What words would a source have to include to be truly valuable in research paper?" Then consider synonyms for the important words.
- It may take the discovery of only one relevant paper to let steer in the right keyword direction because in most databases, the keywords under which a research paper is abstracted are listed with the paper.
- One should avoid outdated words.

Keywords are the key that opens a door to research work sources. Keyword searching is an art in which researcher's skills are bound to improve with experience and time.

Numerical Methods: Numerical methods used should be clear and, where appropriate, supported by references.

Acknowledgements: Please make these as concise as possible.

References

References follow the Harvard scheme of referencing. References in the text should cite the authors' names followed by the time of their publication, unless there are three or more authors when simply the first author's name is quoted followed by et al. unpublished work has to only be cited where necessary, and only in the text. Copies of references in press in other journals have to be supplied with submitted typescripts. It is necessary that all citations and references be carefully checked before submission, as mistakes or omissions will cause delays.

References to information on the World Wide Web can be given, but only if the information is available without charge to readers on an official site. Wikipedia and Similar websites are not allowed where anyone can change the information. Authors will be asked to make available electronic copies of the cited information for inclusion on the Global Journals Inc. (US) homepage at the judgment of the Editorial Board.

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20. Use good quality grammar: Always use a good quality grammar and use words that will throw positive impact on evaluator. Use of good quality grammar does not mean to use tough words, that for each word the evaluator has to go through dictionary. Do not start sentence with a conjunction. Do not fragment sentences. Eliminate one-word sentences. Ignore passive voice. Do not ever use a big word when a diminutive one would suffice. Verbs have to be in agreement with their subjects. Prepositions are not expressions to finish sentences with. It is incorrect to ever divide an infinitive. Avoid clichés like the disease. Also, always shun irritating alliteration. Use language that is simple and straight forward. put together a neat summary.

21. Arrangement of information: Each section of the main body should start with an opening sentence and there should be a changeover at the end of the section. Give only valid and powerful arguments to your topic. You may also maintain your arguments with records.

22. Never start in last minute: Always start at right time and give enough time to research work. Leaving everything to the last minute will degrade your paper and spoil your work.

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24. Never copy others' work: Never copy others' work and give it your name because if evaluator has seen it anywhere you will be in trouble.

25. Take proper rest and food: No matter how many hours you spend for your research activity, if you are not taking care of your health then all your efforts will be in vain. For a quality research, study is must, and this can be done by taking proper rest and food.

26. Go for seminars: Attend seminars if the topic is relevant to your research area. Utilize all your resources.



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27. Refresh your mind after intervals: Try to give rest to your mind by listening to soft music or by sleeping in intervals. This will also improve your memory.

28. Make colleagues: Always try to make colleagues. No matter how sharper or intelligent you are, if you make colleagues you can have several ideas, which will be helpful for your research.

29. Think technically: Always think technically. If anything happens, then search its reasons, its benefits, and demerits.

30. Think and then print: When you will go to print your paper, notice that tables are not be split, headings are not detached from their descriptions, and page sequence is maintained.

31. Adding unnecessary information: Do not add unnecessary information, like, I have used MS Excel to draw graph. Do not add irrelevant and inappropriate material. These all will create superfluous. Foreign terminology and phrases are not apropos. One should NEVER take a broad view. Analogy in script is like feathers on a snake. Not at all use a large word when a very small one would be sufficient. Use words properly, regardless of how others use them. Remove quotations. Puns are for kids, not grunt readers. Amplification is a billion times of inferior quality than sarcasm.

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33. Report concluded results: Use concluded results. From raw data, filter the results and then conclude your studies based on measurements and observations taken. Significant figures and appropriate number of decimal places should be used. Parenthetical remarks are prohibitive. Proofread carefully at final stage. In the end give outline to your arguments. Spot out perspectives of further study of this subject. Justify your conclusion by at the bottom of them with sufficient justifications and examples.

34. After conclusion: Once you have concluded your research, the next most important step is to present your findings. Presentation is extremely important as it is the definite medium though which your research is going to be in print to the rest of the crowd. Care should be taken to categorize your thoughts well and present them in a logical and neat manner. A good quality research paper format is essential because it serves to highlight your research paper and bring to light all necessary aspects in your research.

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Key points to remember:

- Submit all work in its final form.
- Write your paper in the form, which is presented in the guidelines using the template.
- Please note the criterion for grading the final paper by peer-reviewers.

Final Points:

A purpose of organizing a research paper is to let people to interpret your effort selectively. The journal requires the following sections, submitted in the order listed, each section to start on a new page.

The introduction will be compiled from reference matter and will reflect the design processes or outline of basis that direct you to make study. As you will carry out the process of study, the method and process section will be constructed as like that. The result segment will show related statistics in nearly sequential order and will direct the reviewers next to the similar intellectual paths throughout the data that you took to carry out your study. The discussion section will provide understanding of the data and projections as to the implication of the results. The use of good quality references all through the paper will give the effort trustworthiness by representing an alertness of prior workings.

Writing a research paper is not an easy job no matter how trouble-free the actual research or concept. Practice, excellent preparation, and controlled record keeping are the only means to make straightforward the progression.

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To make a paper clear

· Adhere to recommended page limits

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- Insertion a title at the foot of a page with the subsequent text on the next page
- Separating a table/chart or figure - impound each figure/table to a single page
- Submitting a manuscript with pages out of sequence

In every sections of your document

· Use standard writing style including articles ("a", "the," etc.)

· Keep on paying attention on the research topic of the paper

· Use paragraphs to split each significant point (excluding for the abstract)

· Align the primary line of each section

· Present your points in sound order

· Use present tense to report well accepted

· Use past tense to describe specific results

· Shun familiar wording, don't address the reviewer directly, and don't use slang, slang language, or superlatives

· Shun use of extra pictures - include only those figures essential to presenting results

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Choose a revealing title. It should be short. It should not have non-standard acronyms or abbreviations. It should not exceed two printed lines. It should include the name(s) and address (es) of all authors.



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The summary should be two hundred words or less. It should briefly and clearly explain the key findings reported in the manuscript--must have precise statistics. It should not have abnormal acronyms or abbreviations. It should be logical in itself. Shun citing references at this point.

An abstract is a brief distinct paragraph summary of finished work or work in development. In a minute or less a reviewer can be taught the foundation behind the study, common approach to the problem, relevant results, and significant conclusions or new questions.

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- Fundamental goal
- To the point depiction of the research
- Consequences, including definite statistics - if the consequences are quantitative in nature, account quantitative data; results of any numerical analysis should be reported
- Significant conclusions or questions that track from the research(es)

Approach:

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- What you account in an conceptual must be regular with what you reported in the manuscript
- Exact spelling, clearness of sentences and phrases, and appropriate reporting of quantities (proper units, important statistics) are just as significant in an abstract as they are anywhere else

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The **Introduction** should "introduce" the manuscript. The reviewer should be presented with sufficient background information to be capable to comprehend and calculate the purpose of your study without having to submit to other works. The basis for the study should be offered. Give most important references but shun difficult to make a comprehensive appraisal of the topic. In the introduction, describe the problem visibly. If the problem is not acknowledged in a logical, reasonable way, the reviewer will have no attention in your result. Speak in common terms about techniques used to explain the problem, if needed, but do not present any particulars about the protocols here. Following approach can create a valuable beginning:

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- Shield the model - why did you employ this particular system or method? What is its compensation? You strength remark on its appropriateness from a abstract point of vision as well as point out sensible reasons for using it.
- Present a justification. Status your particular theory (es) or aim(s), and describe the logic that led you to choose them.
- Very for a short time explain the tentative propose and how it skilled the declared objectives.

Approach:

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- Shape the theory/purpose specifically - do not take a broad view.
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- Explain materials individually only if the study is so complex that it saves liberty this way.
- Embrace particular materials, and any tools or provisions that are not frequently found in laboratories.
- Do not take in frequently found.
- If use of a definite type of tools.
- Materials may be reported in a part section or else they may be recognized along with your measures.

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- Report the method (not particulars of each process that engaged the same methodology)
- Describe the method entirely
- To be succinct, present methods under headings dedicated to specific dealings or groups of measures
- Simplify - details how procedures were completed not how they were exclusively performed on a particular day.
- If well known procedures were used, account the procedure by name, possibly with reference, and that's all.

Approach:

- It is embarrassed or not possible to use vigorous voice when documenting methods with no using first person, which would focus the reviewer's interest on the researcher rather than the job. As a result when script up the methods most authors use third person passive voice.
- Use standard style in this and in every other part of the paper - avoid familiar lists, and use full sentences.

What to keep away from

- Resources and methods are not a set of information.
- Skip all descriptive information and surroundings - save it for the argument.
- Leave out information that is immaterial to a third party.

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The principle of a results segment is to present and demonstrate your conclusion. Create this part a entirely objective details of the outcome, and save all understanding for the discussion.

The page length of this segment is set by the sum and types of data to be reported. Carry on to be to the point, by means of statistics and tables, if suitable, to present consequences most efficiently.You must obviously differentiate material that would usually be incorporated in a study editorial from any unprocessed data or additional appendix matter that would not be available. In fact, such matter should not be submitted at all except requested by the instructor.



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Content

- Sum up your conclusion in text and demonstrate them, if suitable, with figures and tables.
- In manuscript, explain each of your consequences, point the reader to remarks that are most appropriate.
- Present a background, such as by describing the question that was addressed by creation an exacting study.
- Explain results of control experiments and comprise remarks that are not accessible in a prescribed figure or table, if appropriate.
- Examine your data, then prepare the analyzed (transformed) data in the form of a figure (graph), table, or in manuscript form.

What to stay away from

- Do not discuss or infer your outcome, report surroundings information, or try to explain anything.
- Not at all, take in raw data or intermediate calculations in a research manuscript.
- Do not present the similar data more than once.
- Manuscript should complement any figures or tables, not duplicate the identical information.
- Never confuse figures with tables - there is a difference.

Approach

- As forever, use past tense when you submit to your results, and put the whole thing in a reasonable order.
- Put figures and tables, appropriately numbered, in order at the end of the report
- If you desire, you may place your figures and tables properly within the text of your results part.

Figures and tables

- If you put figures and tables at the end of the details, make certain that they are visibly distinguished from any attach appendix materials, such as raw facts
- Despite of position, each figure must be numbered one after the other and complete with subtitle
- In spite of position, each table must be titled, numbered one after the other and complete with heading
- All figure and table must be adequately complete that it could situate on its own, divide from text

Discussion:

The Discussion is expected the trickiest segment to write and describe. A lot of papers submitted for journal are discarded based on problems with the Discussion. There is no head of state for how long a argument should be. Position your understanding of the outcome visibly to lead the reviewer through your conclusions, and then finish the paper with a summing up of the implication of the study. The purpose here is to offer an understanding of your results and hold up for all of your conclusions, using facts from your research and generally accepted information, if suitable. The implication of result should be visibly described. Infer your data in the conversation in suitable depth. This means that when you clarify an observable fact you must explain mechanisms that may account for the observation. If your results vary from your prospect, make clear why that may have happened. If your results agree, then explain the theory that the proof supported. It is never suitable to just state that the data approved with prospect, and let it drop at that.

- Make a decision if each premise is supported, discarded, or if you cannot make a conclusion with assurance. Do not just dismiss a study or part of a study as "uncertain."
- Research papers are not acknowledged if the work is imperfect. Draw what conclusions you can based upon the results that you have, and take care of the study as a finished work
- You may propose future guidelines, such as how the experiment might be personalized to accomplish a new idea.
- Give details all of your remarks as much as possible, focus on mechanisms.
- Make a decision if the tentative design sufficiently addressed the theory, and whether or not it was correctly restricted.
- Try to present substitute explanations if sensible alternatives be present.
- One research will not counter an overall question, so maintain the large picture in mind, where do you go next? The best studies unlock new avenues of study. What questions remain?
- Recommendations for detailed papers will offer supplementary suggestions.

Approach:

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