Due Process, Fairness and Nation Building

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Abstract

One area where Nigeria has not done well as a country is in the observance of due process. Lack of due process cuts across all sectors of public life, and unfortunately, lack of due process also cuts across almost all aspects of the private or business sector in Nigeria. Oftentimes, there is no due procession the award of public sector contracts, appointment, removal from office, nomination of candidates to contest for electoral positions, and in the electoral process itself. The end result is that there is that there is a myriad of problems, such as, inefficiency, lack of transparency, lack of accountability, corruption, and collapse of public and private enterprises, and slow national development. This paper examines the need to follow due process in Nigeria, in order to promote fairness, justice, transparency, accountability and fast track national development.

1. Introduction

The phrase "due process" has been in much use in recent times in this country,[1] probably due to the fact that Nigerians have come to realize that the observance of due process in every aspect of our national life is a critical factor for propierty, fairness, justice and development in every sector of national life, and in the overall development of Nigeria. Indeed, the observance of due process is a critical factor and a necessity for the development of any country.

The fact that western societies, or the advanced democracies[2] are seen as fair, stable and are developed, and are not experiencing sudden political and social upheaval is due to many critical factors, one of which is the observance of due process in every sector of national life. Indeed, advanced western societies can be said to be countries that are regulated

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1 The phrase "due process" has been in much use in Nigeria since the regime of Chief Olusegun Obasanjo, (1999 – 2007).

2 For instance the United States of America, United Kingdom, France, Germany, Italy and the Scandinavian countries.

and run by law, and not according to the sudden wild, unpredictable, arbitrary whims and caprices of men.

2. Definition of Due Process

The Oxford Advanced Learners Dictionary of Current English defines due process of law also known as due process as:

> The right of a citizen to be treated fairly, especially the right to a fair trial. (Underlining mine for emphasis) [3]

The Black's Law Dictionary[4] defines "Due process rights" as:

> The rights to life, liberty, and property, so fundamentally important as to require compliance with the due process standards of fairness and justice.

And finally the Black's Law Dictionary[5] defines "Substantive due process" as:

> The doctrine that the Due Process Clauses of the 5th and 14th Amendments require legislation to be fair and reasonable and to further a legitimate governmental objective. (Underlining mine for emphasis).

From the above definitions, it is submitted that due process means more than fair hearing. The phrase "due process" has two meaning. It has a narrow and a wide meaning:

1. In the narrow sense, it means the right to fair hearing, for instance as contained in section 36 of the 1999 Constitution; and
2. In the wide sense, it means the observance of rule of law or proper procedure in every sector of life. It includes the entire

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3 A.S. Hornby, *Oxford Advanced Learners Dictionary of Current English*, (7th ed.) by S. Wehmeier *et. al*, (Oxford: Oxford University Press, 2005), p. 474. See also L.B. Curson, *Dictionary of Law*, (5th ed.), (London: Financial Times-Pitman Publishing Co., 1978), p.127.

4 H.C. Black, *Black's Law Dictionary* (8th edn.) by B. Garner, (St Paul U.S.A.: West-Thomson Publishing Co., 2004), p. 539.

5 *Ibid*.

> fundamental rights contained in the 1999 Constitution, and much more. It means that legislation should be fair and reasonable and it should be to further a legitimate government objective. It means that the actions of individuals and government should be just, fair and be in accordance with the civil and reasonably justifiable laws of the land and the proper procedure prescribed therein. It means rendering to every man or woman his or her due and rendering to the state or country its due.

Due process is the total protection the law gives to a person. In a nutshell, due process is the name for what is fair, just, right, proper, due, or ought to be done in the opinion of the general public. Explaining due process in this wide sense in the case of *Murray's Lessee v Hoboken Land and Improvement Co*,[6] the U.S. Supreme Court stated that:

> The words 'due process' were undoubtedly intended to convey the same meaning as the words by the law of the land".[7](Underlining mine for emphasis.)

Taking it further, Cooley[8] said that:

> Due process of law in each particular case, means such an exertion of the powers of government, as the settled maxims of law sanction, and under such safeguards for the protection of individual rights, as those maxims prescribe for the class of cases to which the one in question belongs.

From the above explanations, it is submitted that due process applies to every area of life, even though, it is often thought that due process only means the right to a fair trial, that is, the right to fair hearing as provided in section 36 of the 1999 Constitution. Rightly stated, due process is proper procedure, orderly conduct, and meticulous

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6 59 US 272 (1855).

7 *Ibid*., p. 276.

8 T. M. Cooley, *A Treatise on Constitutional Limitations*, (New Jersey: the Law Book Exchange, Ltd, 1868), p. 356.

observance of the laws of the land, and observance of the rights of other persons. Due process requires every person to observe the laws and procedures of the land. Due process requires us to be fair and just.

Bearing in mind that due process is first and foremost proper procedure; therefore due process necessarily cuts across every sector of life. This being the case, a full discussion of due process will involve a discussion of the observance of due process in every sector of national life. Since, this is practically impossible, I will restrict myself to an examination of due process in the following areas of life in Nigeria:

1. Removal of a Governor from office
2. Lack of internal democracy in the political parties
3. The partisan role of the Independent National Electoral Commission (INEC)
4. Election rigging
5. Lack of due process in the privatization of public enterprises
6. Disobedience of court orders

3. **Lack of Due Process in the Removal of Governors from Office**

One area where government, and in this case the legislative arm of government, in a supposedly constitutional and democratic Nigeria has repeated failed to follow the due process of law, as provided in section 188 of the 1999 Constitution, has been in the impeachment or removal of a Governor from office.

Since the return to constitutional democracy on May 29, 1999 a number of Deputy Governors have been removed from office.[9] A number of Governors were also removed or purportedly removed from office by the House of Assembly of a number of States. The Governors who were removed, or purportedly removed from office were:

1. Chief Diepreye Solomon Peter Alamieyesegha – then Governor of Bayelsa State. who was removed from office.
2. Mr. Ayo Fayose – then Governor of Ekiti State, who was removed from office.

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9 *Abaribe v Abia State House of Assembly* [2002] 14 NWLR (pt 788), p. 466 CA, and so forth.

3. Mr. Peter Obi – Governor of Anambra, whose purported removal was nullified by court.
4. Chief Joshua Chibi Dariye – then Governor of Pleateau State; whose purported removal was nullified by court.
5. Senator Rashidi Adewolu Ladoja – then Governor of Oyo State, whose purported removal from office was also nullified by court.

Surprisingly, the removal of each of the five Governors enumerated above did not follow due process. The removal of each of the said five Governors was preceded by political crises in their respective states, and in the midst of the ensuing confusion, each of the said Governors was removed by such members of the divided State House of Assembly that were opposed to him.

Chief Diepreye Alamieyesegha due to some intervening factors could not successfully challenge his removal in the law court.[10] Similarly, Chief Ayo Fayose could not reverse his removal from office as a state of emergency was declared in Ekiti State. Mr. Peter Obi, Governor of Anambra State successfully challenged his purported removal from office by a handful of legislators, who supposedly deliberated and removed him from office in a parliamentary proceedings held at Grand Hotel, in Asaba, Delta State, far away from the State House of Assembly in Awka, Anambra State. He was promptly reinstated to office by the Court of Appeal.

In the case of Chief Joshua Dariye, he was removed by 8 legislators who participated and voted in all the processes leading to his removal, in a State House of Assembly legally made up of 24 members. There were many irregularities in his purported removal, and the Supreme Court ordered his reinstatement back to office.[11]

Section 188 of the 1999 Constitution which provides for the removal of a Governor or Deputy Governor from office stipulates as follows:

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10 *Alamieysegha v Igoniwari* (No. 2) [2007] 7 (Pt 1034), p. 524 CA.

11 [2007] 8 NWLR (pt 1036), p. 332 SC.

188(1) The Governor or Deputy Governor of a State may be removed from office in accordance with the provision of this section.

2. Whenever a notice of any allegation in writing signed by not less than one-third of the members of the House of Assembly:-
   a. is presented to the Speaker of the House of Assembly of a State.
   b. stating that the holder of such offence is guilty of gross misconduct in the performance of the functions of his office, detailed particulars of which shall be specified, the Speaker of the House of Assembly shall, within seven days of the receipt of the notice, cause a copy of the notice to be served on the holder of the office and on each member of the House of Assembly, and shall also cause any statement made in reply to the allegation by the holder of the office, to be served on each member of the House of Assembly.

3. Within fourteen days of the presentation of the notice to the Speaker of the House of assembly (whether or not any statement was made by the holder of the office in reply to the allegation contained in the notice), the House of Assembly shall resolve by motion, without any debate whether or not the allegation shall be investigated.
4. A motion of the House of Assembly that the allegation be investigated shall not be declared as having been passed unless it is supported by the votes of not less than two-thirds majority of all the members of the House of Assembly.

5. Within seven days of the passing of a motion under the foregoing provisions of this section, the Chief Judge of the State shall at the request of the Speaker of the House of Assembly, appoint a Panel of seven persons who in his opinion are of unquestionable integrity, not being members of any public service, legislative house or political party, to investigate the allegation as provided in this section.

6. The holder of an office whose conduct is being investigated under this section shall have the right to defend himself in person or be represented before the Panel by a legal practitioner of his own choice.

7. A Panel appointed under this section shall:
a. have such powers and exercise its functions in accordance with such procedure as may be prescribed by the House of Assembly; and
b. within three months of its appointment, report its findings to the House of Assembly.

8. Where the Panel reports to the House of Assembly that the allegation has not been proved, no further proceedings shall be taken in respect of the matter.
9. Where the report of the Panel is that the allegation against the holder of the office has been proved, then within fourteen days of the receipt of the report, the House of Assembly shall consider the report, and if by a resolution of the House of Assembly supported by not less than two-thirds majority of all its members, the report of the Panel is adopted, then the holder of the office shall stand removed from office as from the date of the adoption of the report.

10. No proceeding or determination of the Panel or of the House of Assembly or any matter relating to such proceedings or determination shall be entertained or questioned in any court.

11. In this section:
"gross misconduct" means a grave violation or breach of the provisions of this Constitution or a misconduct of such nature as amounts of the opinion in the House of Assembly to gross misconduct.

In the case of Ladoja, who was then Governor of Oyo State, the Supreme Court extensively examined the removal of a Governor from office as stipulated in section 188 of the 1999 Constitution. The facts of

the case of Ladoja, known as *Inakoju v Adeleke* [12] wherein Ladoja was the 3rd plaintiff respondent is briefly as follows:

The third plaintiff appellant Senator Rashidi Adewolu Ladoja was elected Governor of Oyo State and was sworn into office on May 29, 2003, for a four year term which was to end on May 29, 2007. Following political disagreements, the 33 member Oyo State House of Assembly was divided into two factions, with 18 members against the governor, and 14 members including the first and second plaintiff's/appellant's supporting the Governor. On December 13, 2005 the 18 legislators at a meeting held at D'Rovans Hotel, Ring Road, Ibadan, drew a notice of gross misconduct against the Governor. The meeting excluded the 1st and 2nd appellants who were the Speaker and Deputy Speaker respectively of the legislature. The Governor was subsequently removed from office by the 18 members. The purported removal from office was riddled by many procedural irregularities or constitutional breaches of section 188(1) – (9) of the 1999 Constitution:

Niki Tobi JSC delivering the judgment of the Supreme Court enumerated the constitutional breaches committed by the State House of Assembly, which included holding of the meeting at D'Rovans Hotel, Ring Road, Ibadan; instead of holding it on the floor of the House of Assembly, absence of a notice of holding it the alleged gross misconduct and non service of same on the Governor, failure to obtain the constitutional two third majority of all members of the House for the said removal from office, non-involvement of the Speaker, in the proceedings leading to the removal of the Governor, the unconstitutional suspension of the Order of proceedings of the House and so forth.

The remaining 14 members and the Governor challenged the purported impeachment in the High Court of Oyo State, which declined to hear the suit on the ground that its jurisdiction was excluded by section 188(10) of the 1999 Constitution. The Court of Appeal heard the matter, reversed the judgment of the High Court and granted all the reliefs sought. Both parties cross appealed to the Supreme Court which held: in favour of the plaintiff appellant governor and granted all the relief's, on the ground that the purported removal of the Governor from

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12 [2007] 4 NWLR (pt 1025), p. 423 SC.

office was unconstitutional, null and void for being in breach of the several procedural requirements stipulated by the 1999 Constitution.

Concluding his lead judgment of the Supreme Court, Niki Tobi JSC correctly stated that once one of the procedural requirements stipulated by the 1999 Constitution was breached, the removal was ultra vires, and court has jurisdiction to hear the matter and set aside the purported removal from office.

4. Lack of Internal Democracy in the Political Parties

In most of the political parties in Nigeria today, if not in all of the parties, there is lack of internal democracy. Therefore, it is submitted that, as part of the ongoing electoral reform, the political parties should be reformed to entrench and enhance internal democracy in the parties.

This internal reform will enable members of a party to insist on observance of internal democracy in line with a Democratic Party constitution, if a party has a truly democratic party constitution. So many unbecoming practices have been witnessed in the past ten years of democratic rule. In some instances, party congresses were not held, primaries were not conducted, but candidates to fly the flag of the party and stand for elective positions were selected, or nominated exclusively by a god father(s) or nominated by a cabal and imposed on a party, sometimes making dissatisfied aspirants to cross carpet to another party with the hope of realizing their electoral ambition.

In other instances, candidates who have been nominated to contest election and whose names have been submitted to the Independent Electoral Commission (INEC), have had their names withdrawn and their candidacy substituted with the name of a "more favoured" or "anointed" candidate without any cogent reason given therefore, on the eve of a scheduled election, sometimes leading to the challenge and nullification of the election of the so called "anointed" candidate, as was the case in *Amaechi v INEC and Celestine Omehia*.[13]

It is therefore submitted that political parties should dutifully and regularly hold party meetings, congresses and conventions at the relevant levels. These meetings, congresses and conventions when held

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13 (2007) 18 NWLR (Pt 1065), p 105 SC *Ugwu v Ararume* [2007] 12 NWLR Pt 1048, p. 367 SC.

should be in accordance with the scope, power and authority of the constitution of the party, and party members and organs should actively play their role in determining and ensuring that suitably qualified persons are nominated to contest for executive positions in each party, and for elective positions in government.

Party procedures to nominate candidates for election should be open, transparent, inclusive and democratic, and party members seeking nomination for elective positions should not resort to intimidation, violence, bribery, sharp practices, or any other unacceptable method to gain nomination or office, and above all god fathers, cabals and moneybags should not maintain a strangle hold of a political party, dictate the pace, play tin gods, nor otherwise manipulate the process.

Furthermore, political parties should have a clear ideology, party manifesto, and a clear road map for the development of Nigeria, by which each party can be identified, and will make it easy for party leaders and their members to sell the party and its programmes to the public and attract prospective party members, and also attract votes from the electorate during elections. Having a clear ideology and manifesto will also prevent strange bedfellows and ideologically irreconcilable people from flocking together in a political party, and minimize the frequent incident of cross carpeting, and the acrimonies that do attend some cross-carpeting.

5. Partisanship by the Independent National Electoral Commission (INEC)

Prior to and during the 2007 General Elections, the Independent National Electoral Commission (INEC) unfortunately went about its duties as if it were an organ of the executive arm of government, and it willy-nilly did the bidding of the ruling political party and the incumbent in the executive arm of government.

An examination of some of the election petition cases decided just after the 2007 General Elections reveal that INEC was not independent administratively and financially from the ruling Peoples' Democratic Party (PDP) and the Federal Government of Nigeria.

INEC as presently appointed is a partisan and biased umpire that cannot midwife free and fair elections in Nigeria. INEC actively subverted the will of the people to elect whom they wanted in the

various elections held; whether in the elections into the State Houses of Assembly, House of Representatives, Senate, Governorship and Presidential elections and perpetrated great injustices by declaring candidates who were defeated as the winners, whilst those who genuinely won election were declared losers and were thereby kept away from occupying office. Some were fortunate and their mandate was restored by court.

An illustration is the case of *INEC v Comrade Adams Oshiomhole.*[14] The plaintiff respondent contested election for the governorship of Edo State. However, Prof. Oserheimen Osunbor who contested on the platform of the Peoples Democratic Party (PDP) was declared winner of the election by INEC. The plaintiff respondent challenged the result of the election at the election tribunal. He established that he was duly elected Governor of Edo State. The tribunal held in his favour, and the Court of Appeal upheld the judgement of the tribunal, and the plaintiff respondent Adams Oshiomhole was sworn in as the duly elected Governor of Edo State, almost two years after Prof. Oserhemen Osunbor had assumed office.

As part of the proposed electoral reform, it is submitted that the President of Nigeria should not be allowed by law to appoint INEC chairman directly or indirectly. In other words, the President should have nothing to do with the appointment of INEC chairman. INEC members should be allowed to appoint INEC chairman from among themselves. For the purpose of appointing INEC chairman it is submitted that all political parties in Nigeria should be divided into 3 (three) groups. The political parties in a group should nominate a member each, who is of proven integrity to represent each political party on the board of INEC, Nigerian Labour Congress (NLC), Trade Union Congress (TUC), Academic Staff Union of Universities (ASUU), Nigerian Bar Association (NBA), civil society groups, National Council of Women Society (NCWS), Manufacturers Association of Nigeria (MAN) and National Association of Nigerian Student (NANS) should also nominate a member each to represent it on the INEC commission. These representatives should constitute INEC.

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14 [2008] 48 WRN 24

The list of these members should be forwarded to the Senate for confirmation after necessary security check by the security agencies.

After the nominees have been approved by the Senate as the new INEC, this body of nominees should in their inaugural meeting vote one member from among themselves to be the INEC chairman. This body that makes up INEC together with its chairman should serve for a single term of five years only, and without the possibility of re-appointment. Removal of the INEC chairman or of any member of INEC should be by a simple majority vote in the Senate upon a complaint. If INEC is appointed in this manner, INEC will be more independent of the ruling political party and the executive arm of government at the federal level. Similarly, if the independent electoral commission at the state level are also constituted in the same manner, the electoral commission will be less disposed to do the bidding of the executive, and manipulate election in favour of the ruling political party, whether at the federal, or state level respectively.

6. Election Rigging

Another sector where due process has not been observed is in the conduct of elections. Election rigging, outright brigandage and other electoral malpractices are not new in Nigeria, and allegations of election rigging have trailed every election held in Nigeria,[15] since the 1959 general elections. However, over the years, election rigging and malpractices have continued to grow and have increasingly dented Nigeria's image in the international arena. Former Vice President Atiku Abubakar, in a comparison of the 2003 general elections with that of 2007, stated that the 2003 election that returned him and the former President Olusegun Obasanjo to power for a second term in office in 2003 were massively rigged, but cannot be compared with the rigging that took place in the 2007 general elections. In the words of former Vice President Atiku Abubakar:

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[15] *Obafemi Awolowo v Shehu Shagari* (1981) 2 NCLR 399 SC. *Falae v Obasanjo* [1999] 6 NWLR (Pt 606), p.282; *Abubakar v Yar' adua* [2008] 19 NWLR (Pt 1120), p. 1; *Ojukwu v Yar' adua* [2009] 4-5 SC 13, *Agagu v Mimiko* (2007) 7 NWLR Pt 1140, p. 342. See also D.A. Ijalaye: "Executive and Legislative Lawlessness: A Challenge to Rule of Law in Nigeria," (Lagos: LASU Press, 2008), p. 24.

> The fraud in this election (2007 election) was so monumental in its completeness, that the word rigging is inadequate to describe it.[16]

The European Union Election Observer Mission in its assessment of the 2007 general election in Nigeria stated that the elections fell short of international and regional democratic standards and practices. The observer mission in its report stated among other things that: [17]

> We feel extremely disappointed that things were worse in 2007 than they were in 2003… The elections were marred by very poor organization; lack of essential transparency; widespread and procedural irregularities; substantial evidence of fraud; widespread voter disenfranchisement; lack of equal conditions for political parties and candidates; and numerous incidents of violence.

The members of the mission in its conclusion stated *inter alia* that:

> Our report contains two clear messages. First, that the 2007 election process was not credible, and in view of the lack of transparency and evidence of fraud, there can be no confidence in the results. Second, that an urgent and comprehensive reform is required to improve the framework and conduct of future elections.[18]

Following the multitude of local and international condemnations of the conduct of the 2007 general elections President Umaru Musa Yar'adua on August 28, 2007 set up an Electoral Reform Committee (ERC) under the chairmanship of Justice Mohammed Lawal Uwais, a former Chief Justice of Nigeria to recommend electoral

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16 The Nation Newspaper, Tuesday January 22, 2008 p. 1 at 4.

17 The Punch Newspaper; "EU Writes Off April Poll," August 24, 2007. p. 8.

18 *Ibid*.

reforms within a 12-months time limit. President Yar'adua inaugurating the Electoral Reform Committee reminded the committee that: [19]

> One sad recurrent feature of our political development has been the consistency with which every general election result has been disputed and contested. Beginning with the 1959 general elections, almost every poll has suffered controversy resulting from real and perceived flaws, structural and institutional inadequacies, and sometimes deficiencies in the electoral laws and even the constitution.

Mr. Justice Uwais, accepting the task assured Nigerians that the committee would come up with an electoral process that would ensure sanity, fairness, due process, and peace. In his words: [20]

> Experience in this country has shown that our elections are not free and fair. We cannot continue that way. It is imperative for us to achieve success in meeting the international standards for what constitutes a democratic election. The world is said to be a global village. It is our ardent desire to fashion an electoral system that would produce free and fair elections acceptable to both the electorate and the candidates.

Following the flawed elections, those who felt cheated went to court. Fortunately, the tribunals and courts have lived up to the duty of dispensing justice, and many election results were voided, and fresh elections ordered. Regrettably, the fresh elections that were held were not seen to be free and fair and in accordance with due process, and contestants who are aggrieved by the newly conducted elections are back in court, challenging the results of the fresh elections.

For instance, in River State, the Supreme Court on October 25, 2007 nullified the election of Omehia and ordered that Amaechi be sworn in immediately as the Governor of Rivers State.[21]

Lack of due process and fairness in the electoral process has made a mockery of Nigeria before the international community.

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19 The Nation Newspaper, Wednesday, August 29, 2007, p.2.

20 *Ibid*.

21 The Nation Newspaper, Saturday January 19, 2007, pp. 1 – 2.

Whereas, Nigeria ought to lead the way in setting an example in free and fair electoral process and democratic governance, smaller neighbouring countries in the West African sub-region have become the leading lights in the conduct of free and fair elections, and good governance, for instance, Liberia, Sierra Leone and Ghana. Indeed, Nigeria has a lot to learn from these smaller countries.

The electoral process in Nigeria has being characterised for too long by irregularities, ballot stuffing, hijack, or destruction of ballot boxes, disenfranchisement by deletion and omission of voters names, party symbols, and contestants, shortage of electoral materials, intimidation, delayed voting, and outright falsification of election results [22], and other electoral malpractices. Nigeria cannot continue this self destructive trend. There must be true and proper electoral reforms, so that there will be free and fair elections in Nigeria and by extension true democracy, and economic development in Nigeria.

It is submitted that the National Assembly should fast track the electoral reform process by passing the relevant reform bills pending before it into laws. With credible, transparent, free and fair elections in Nigeria, peace will reign, foreign investors will invest more funds in Nigeria, the business sector as well as other sectors of national life will thrive, more jobs will be created and poverty will be reduced.

7. Lack of Due Process in the Privatisation of Public Enterprises

Another sector where there has been lack of due process is in the privatization of public enterprises. It is over 20 years since the privatization of public enterprises began under the Babangida regime, however, the divestment has not brought the anticipated benefits of efficiency, productivity of privatized firms, employment generation, capital inflow from foreign investors into the privatized firms, enhanced private sector contribution to the national economy, and better performance of the privatised enterprises generally.

Due to lack of due diligence check and lack of due process generally by the Bureau of Public Enterprises, avoidable mistakes were made in the privatization of many public enterprises, such as with

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22 *Okumagba v Egbe* (1965) All NLR 64; *Awolowo v Shagari* (1979) 9 SC 65; (1981 2 NCLR 399.

Ajaokuta Steel Company, Delta Steel Company, Daily Times of Nigeria Ltd, Nigeria Airways Ltd, Nigerian Newsprint and Paper Company, Oku-Iboku, Nigeria Telecommunications Plc (NITEL) which was sold to Transcorp[23] was recently revoked by the Federal Government of Nigeria, and forth.

Scores of the privatized enterprises are comatose and the private investors who acquired them have not turned around the fortunes of these firms, which was the philosophy as was promised in the propaganda that preceded government divestment. For instance, newsprint is still being imported into the country, whereas the Nigerian Newsprint and Paper Company, Oku-Iboku could have met this need and so forth.

Furthermore, a sizeable number of civil servants who were working in these privatized firms were laid off without due process, and are being owed severance packages and serious backlog of pensions, while those who are still serving these companies are owed a huge backlog of salary arrears.

Some of the privatized enterprises were sold for ridiculous sums which are not up to the market value of the said enterprises. Asset stripping is going on in some of the privatized enterprises. Some core investors including Nigerian investors are known to have shut down some of these enterprises, and resorted to importation of the items usually produced by these firms. In many instances, the private investors who acquired these firms have not proved that they are better business managers, and as a result many of the privatized firms are either shut down, or are struggling to survive and are owing their staff arrears of salary.

For instance, the concessioned seaports in Lagos have experienced sporadic port congestion and the ports are not as competitive and user friendly as one would expect, consequently, many importers and exporters are are resorting to seaports in the neighbouring countries of Benin Republic, Togo, Ghana and Cameroun, thereby denying the Federal Government of revenue that could have been earned

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23 The Guardian Newspaper; "Govt Revokes Sale of Nitel to Transcorp," June 2, 2009. p.1.; The Guardian Newspaper; "The Presidency, The Case against Transcorp," June 30, 2009 p. 59.

from the seaports, by way of collection of customs and excise duties and so forth.

In view of the above distressing situation, it is imperative that the Bureau of Public Enterprises (BPE) must implement the privatization and commercialization process right. To save the process and put things right, it is submitted as follows that:

1. Stakeholders in the various public enterprises concerned should avail the BPE of constructive inputs.
2. The BPE should intensify due diligence check on prospective investors to ensure that the concerned investors have the financial and managerial skills to keep the enterprises alive and administer it efficiently, and profitably for the good of all concerned.
3. BPE should embark on regular post-privatization monitoring and assessment to prevent asset stripping, mismanagement, and other inimical and unbecoming tendencies, and
4. The BPE should be re-organized and re-oriented to curb deficiencies and ethical lapses on the part of its personnel, and in its ability to manage and direct the process of privatization and commercialization of public enterprises and make it a worthwhile programme. The personnel of the BPE should avoid dishonesty and wilful negligence. In house re-structure of the BPE is necessary to address incompetence, and other lapses in the discharge of its statutory responsibility, so that BPE will be given a new lease of life and the requisite capacity to perform its task, in accordance with its enabling law.

Billions of naira was invested by the Nigerian government on establishing and managing the privatized enterprises and those slated to be privatized. [24] Therefore, the Nigeria government and public cannot afford to have this huge resources go down the drain. Accordingly, it is also submitted that the National Council on Privatization (NCP) headed

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[24] See also A. Arowolo: "Keep Privatization on Course," The Punch Newspaper, October 15, 2007 p. 13.

by the Vice President of Nigeria, and which is the supervisory authority of the BPE should ensure that:

1. The BPE should strictly adhere to its statutory obligations.
2. The BPE account books are audited and necessary follow up action taken. The Nigerian public is entitled to the finding, whether proper accounting is being observed by it; and.
3. The BPE should be made to publish the list of enterprises privatized to date, names of their buyers, and how much was paid. It should also publish the names of the remaining public enterprises slated for sale, the schedule for their sale, and the list of bidders, if any.

If the above recommendations, among other due process procedures are observed, public confidence in the privatization of public enterprises will be restored, and the process can be redeemed from the bad image that has trailed it so far.

8. Disobedience of Court Orders

Another realm where there has been lack of due process is in the failure of government at the Federal and State levels to respect court orders. Disobedience of court orders by the federal and state governments was common in Nigeria, especially during military regimes. The cases of the *Governor of Lagos State v Ojukwu,*[25] and *Obeya Memorial Hospital v A.G. Federation*[26] are *locus classicus* in this regard. Describing the situation then, Jegede rightly observed that: [27]

> The height of executive lawlessness is the disobedience to court orders, which has become such a common feature, that the very essence of law in society has been put in doubt.

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25 (1986) 1 NWLR (pt 18), p. 621 SC

26 (1986) 3 NWLR (pt 60), p. 325 Sc. See also Ijalaye, *op. cit.*, note 16, at p. 1.

27 M.I.Jegede: "What is Wrong with the Law?" *Nigerian Institute of Advanced Legal Studies, Annual Lecture Series*, 12, 1993, p. 56 .

Justice O'Leary in the case of *Canadian Metal Co Ltd v Canadian Broadcasting Corp (No. 2)* described the danger of disrespecting court orders thus: [28]

> To allow court orders to be disobeyed would be to tread the road towards anarchy. If orders of court can be treated with disrespect, the whole administration of justice is brought to scorn… If the remedies that the courts grant to correct wrongs can be ignored, then there will be nothing left for each person but to take the law into his own hands. Loss of respect for the courts will quickly result in the destruction of our society.

However, disobedience of court orders is not restricted to military governments; civilian governments have equally being guilty of disobeying court orders. A case in point is *A.G. Lagos State v A.G. Federation,*[29] The brief facts of this case is that, following the creation of additional 37 local governments areas by the Lagos State Government in the State, President Olusegun Obasanjo by a letter directed the Minister of Finance not to release statutory allocation of funds due to the Local Government Councils of Lagos State until the State returned to the erstwhile 20 constituent Local Government Areas specified for Lagos State in Part 1 of the Schedule to the 1999 Constitution. Dissatisfied with the withholding of the local government funds, the Lagos State Government went to the Supreme Court and challenged the legality of the President to stop the release of the statutory allocation. After an extensive examination of the matter the Supreme Court held *inter alia*, that neither section 162 (2) nor any other section of the 1999 Constitution provided for the stoppage of statutory funds from the Federation Account to Local Governments in any State.

Delivering the judgment of the Supreme Court Niki Tobi JSC frowning at the decision of the Federal Government to resort to self-help instead of follow the due process of law, said *inter alia* that: [30]

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28 (1980) AC 952 at 957 HL.

29 (2004) 12 SCNJ p. 1.

30 Ibid at 73

> If the Federal Government felt aggrieved by Lagos State creating more Local Governments, the best solution is to seek redress in a court of law, without resorting to self-help. In a society where the rule of law prevails, self-help is not available to the Executive or any other arm of government. In view of the fact that such a conduct could breed anarchy and totalitarianism, and since anarchy and totalitarianism are antitheses to democracy, courts operating the rule of law, the life-blood of democracy, are under a constitutional duty to stand against such action. The courts are available to accommodate all sorts of grievances that are justifiable in law, and section 6 of the 1999 Constitution gives the courts power to adjudicate on matters between two or more competing parties. In our democracy, all the Governments of this country as well as organizations and individuals must kowtow to the due process of the law and this they can vindicate by resorting to the courts for redress in the event of any grievance.

In a modern society, disobedience of court orders must be condemned, for as the U.S. Supreme Court said in *Olmstead v USA*:

> If the government becomes a law breaker, it breeds contempt for the law; it invites every man to be a law unto himself, it invites anarchy.[31]

Fortunately, the President Alhaji Umaru Musa Yar'adua has made the observance of rule of law, one of his 7 points agenda. He has promised countless times, that he will uphold the rule of law. It is hoped that this will not be a mere song or rhetorics, but that the government will lead in example by upholding the rule of law, and that it will strengthen relevant public institutions and processes, and it will bequeath and leave for Nigeria, a heritage and culture of obeying court orders, observing due process, and rule of law.

The above areas examined among others, are some of the sectors where Nigeria as a country has not followed due process. The observance of due process or doing things properly is a necessity for any people or country to develop.

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31 277 US 439 (1928).

In the final analysis, it is hoped that the above solutions among others, will be implemented by government, so that Nigeria will be on the part to meaningful development, and more Nigerians will choose to stay in Nigeria and be part of the development efforts of Nigeria. The observance of due process, rule of law, accountability and transparency in the Nigeria polity, will create the necessary just, fair, and investment friendly environment that will lead to a prosperous Nigeria, so that the country can join the league of fast developing economies of the world, standard of life will improve, crime index will reduce, and Nigeria will gain respect in the international community.