



NIGERIAN BAR ASSOCIATION

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STATEMENT OF THE NBA PRESIDENT, YAKUBU CHONOKO MAIKYAU, OON, SAN, ON THE PRESIDENTIAL AND NATIONAL ASSEMBLY ELECTIONS HELD ON 25 FEBRUARY 2023

Dear Colleagues,

1. I have in the last couple of days, since my interview with Channels Television was aired, read and received messages from some colleagues and Nigerians, expressing their displeasure over my assessment and rating of the Independent National Electoral Commission (INEC) on the elections held on Saturday, 25 February 2023. As one who spoke on the platform of the privileged position I currently occupy, President of the Nigerian Bar Association (NBA), it is imperative that I make some clarifications in that regard in order to put matters in context and set the records straight.
2. Let me, as prelude, make it very clear that the NBA has no candidate in this election and would never have a candidate in any election; it is not a political party, has no affiliation with any political party either directly or indirectly and so is not sympathetic towards any political party. Therefore, whenever I speak from the privileged position of the NBA President, I do so conscious of these facts and, most particularly, always reminded of our primary responsibility as legal practitioners; to provide direction to the people and advance the cause of this nation.
3. Like I had said in my previous statements and/or remarks, there is no better cause in which we, as legal practitioners, are called to provide direction to the people than in the business of electing our leaders. Insufficient as the Constitutional framework may be in terms of its content and context, particularly with regards to the limitation of our choice of those who occupy elective offices (given the fact that only persons sponsored by political parties can contest elections), elections remain one of the greatest causes – a veritable tool by which all Nigerians, properly guided, participate in the exercise of their franchise individually and collectively, to literally chart a course for the future of our dear nation.
4. I therefore in all humility, have an appreciable understanding of the magnitude of this national task and will not, under any guise or circumstances, make light of this exercise nor in any way treat same with levity or disdain. Like Malcolm X said ***“I am for truth no matter who tells it. I am for justice, no matter whom it is for or against.”*** This is what I strive to be known for; live by and I am committed to – it is the legacy I hope to leave and be remembered for, God Almighty helping me. Let me add that, as one who is privileged to be a Christian by the grace of God, I do have some understanding that it is God Almighty and Him alone, Who permits anyone to come to the place of authority. I therefore know without a doubt, that there is nothing I can do or omit to do, to “help” God bring His plans and purposes for Nigeria to come to pass. Like you all know, and I

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do not mind saying it again, I am one who God has permitted to take the place of leadership in the NBA.

5. With all the emotions surrounding the general elections, particularly the Presidential elections, I quite understand how quickly one may forget how far we have come as a country in our journey towards a more perfect electoral process. We are not where we should be, but we definitely have made some progress. Needless to recount the human and material losses we suffered as aftermaths of previous general elections; the fear of disintegration as a nation and even recently, the “prophecy” of doom which saw many, if not all, foreign nationals evacuated out of Nigeria by their respective governments; they moved out with their pets (dogs and cats) signifying lack of hope and confidence in our survival and continued existence as a people.
6. The movement by the foreign nationals out of Nigeria was sudden, almost spontaneous, created a terrible sense of emergency, and heightened concerns/fears about the security and stability of this nation. But these same nationals sneaked back into Nigeria. There was no drama when they came back; they joined in monitoring/observing the elections that were not to hold, were we to go by that prophecy of doom. When whatever made foreign nationals to scamper out of Nigeria in October 2022 either ceased to be or was overcome, we were not informed. We also, at least speaking for myself, do not know what caused the anxiety that was responsible for that exodus. Whatever that was, we weathered the storm.
7. That we are here today not only thinking about the possibility of the conduct of the elections, but that Presidential and National Assembly elections have actually held, is in itself one of the greatest successes recorded by us as a nation. The level of cynicism and suspicion about the holding of the elections was so palpable that many Nigerians either contemplated moving their families out of Nigeria or already did so. The situation became so bad that insinuations of military takeover were so rife which necessitated the spokesperson of the Defence Headquarters, Brigadier General Tukur Gusau, to make a public statement and reassure Nigerians that the Nigerian Armed Forces has no intention, desire, and/or plans to do such an uncivilized, unpatriotic, unlawful and unconstitutional act.
8. This, however, does not in any way reduce the burden on INEC, or the expectation of Nigerians, of a free, fair, and credible election. But it is only fair and realistic that, while we deal with the issues confronting us in these elections, we must not fail to appreciate and be grateful for the function of the grace of God Almighty in the life of our Nation.
9. To be very clear, there were challenges with the presidential elections which no one could have ignored and which I have not failed to acknowledge in my previous reports and public statements.
10. I do note that evolving a culture of civility in our political debates and discussions is, in many respects, still work in progress. Given the level of animosity within large parts of the Nigerian society and the divide along our traditional fault lines leading up to the elections, including the shocking levels of hate speech on social media, it was in itself a miracle that the usual disappointing levels of infractions in certain parts of Nigeria on Election Day were limited.

11. On 25 February 2023, the Election Day, there were challenges. For the most part, the challenges of logistics including security, delayed deployment of INEC personnel and electoral materials, have sadly continued to haunt our elections. This is obviously a reflection on our struggling transportation architecture amongst other factors like the twin effects of the more recent fuel scarcity and cash shortages caused by the naira redesign, which added to the logistical challenges on election day.
12. It is true that INEC encountered challenges as it reported specifically in relation to the use of BVAS which I had, in one of my pre-election interviews, described as a game changer in this election, in terms of voter accreditation and the upload of results from polling units. Recognizing that our electoral process is always fraught with suspicion and conspiracy theories, no doubt this was disappointing and predictably raised concerns about the integrity of the collation process, notwithstanding the fact that party agents remain entitled to statements of results from the point of the polling units.
13. With the declaration of the results, it is now left for the court and tribunals, as the case may be, to pronounce on the impact of the lapses allegedly recorded on the use (or non-use) of BVAS and other alleged infractions on the day of the elections.
14. In addition to this, while I agree that the electoral process is as important as the outcome, it is simply not possible to diminish the significance of the outcome of this election. It would appear that, in the heat of the debates around the reported failure to upload or delayed upload of election results (and these are genuine and legitimate concerns which should not be unexpressed), the sense of some of the positive achievements of these elections may have been lost on some of us. I say this without prejudice to the rights of parties to ventilate their grievances in Court as the legally permissible way to contest any alleged wrongdoing or electoral infractions.
15. To be more specific, this was an election where much of what was hitherto thought an impossibility became possible: a sitting President's party lost elections in his State; Lagos State flipped out of the control of the ruling party and the presidential candidate, now President-Elect; many governors lost their states and their senatorial ambitions; a vice-presidential candidate lost in his State where he is a sitting Governor. Then we have the incredible story of a political party that was considered to be without grassroots structures, shaking up the political landscape and re-defining politics in Nigeria. While this was not the ultimate objectives of the contests, as all candidates desired to breast the tape of victory at the polls, these achievements cannot be ignored, discounted, or discountenanced.
16. Also, worthy of note is that some of the states which counted and recorded votes in millions in previous elections, were now barely able to pass the quarter of a million mark. And even if for the purposes of argument, but without conceding that the election results were mere contraptions (which can only be determined through judicial process), the thought of the outcomes as noted above, should come with a significant reckoning of the change in our society.
17. When all these are put together, it may then be understood why I said that despite all the challenges, I recognize that we have made significant progress in our electoral process. I am certain that when the dust is settled, our politics will never be the same again. It remains my view that this particular election, without prejudice to the outcomes of any

post-election challenge(s), will go down in history as the most revolutionary of all the elections ever held in this country.

18. I acknowledge that the results of the elections having been declared have gained ascendancy in law with the rebuttable presumption of regularity to wit: that all that were legally required to be done in law had been so done until otherwise proven. At this point, I could not with every sense of responsibility have pronounced any verdict on the elections other than from this standpoint. At this stage of the elections, whatever opinions we hold regarding the conduct of these elections, arising from allegations of electoral law infractions howsoever described, would only remain so – mere allegations – until they are translated into evidence demonstrated before the Court or Tribunals for the purpose of dislodging or negating the presumption of regularity so stated. My colleagues are not unfamiliar with this position.
19. So please understand me if I belong to the school of thought that recognizes the elections from this standpoint, knowing that whatever we may say or however we may view the elections, would not derogate from the position of the law until otherwise decided by the Court or Tribunals.
20. My rating for INEC is from this understanding and from data-points/information on the conduct of the elections from our observers, which were collated, verified, and analysed in the NBA situation room. This was made available to the public in the NBA's Pre-Noon Election Report of the same day. I equally did grant a press conference where I addressed varying issues that were observed and reported by our observers across the country, including my personal observation within the FCT. As one that is privileged to lead an association of lawyers at this time, my expectation is that the standpoint of the Law would be our viewpoint for assessing the elections. Though my assessment does not seem to be representative of the views/ assessments of some members of the Bar, this remains the primary basis for my assessment.
21. For me, these elections undoubtedly indicate progress, and I am one who recognizes and celebrates steady progress. It will be simply unfair, in my opinion, to throw away the role of INEC in this regard. As earlier said, even though candidates get into the race with the expectation of winning, the positives recorded in the process should not, in my view, be ignored, while recourse to the Court or Tribunal may be had, to challenge the elections and/or the outcome.
22. That said, let me make it abundantly clear that I have no preference for any of the candidates winning the elections and I know without a doubt that, in addition to all other legal requirements to be satisfied for any candidate to be elected President, the God-factor is one that cannot be ignored under any circumstances. I know this just as I know that the result of the elections did not surprise God Almighty, and the outcome of the post-election challenges in the Court or Tribunals, however that may be, will not, cannot and shall never be a surprise to God Almighty.
23. Without prejudice to the rights of the parties or candidates to challenge the outcome of the elections, I salute the efforts, doggedness, sacrifices and contributions of all political parties for the political momentum generated by all of them in our polity. These, I believe, have engendered a democratic revolution that has progressively changed our political landscape for which history will remember each and every one of them for good.

24. As I noted earlier, it is obvious that some of our colleagues, like other members of the society, are unhappy or feel a sense of hurt by my remark on the performance of INEC in the conduct of the last elections. May I at this juncture respectfully urge that my position is taken and understood in the context of all I have stated herein with no hurt intended.
25. As the President of the NBA, my commitment is to the members of the Bar and our loyalty remains to the people of Nigeria. The legal profession must continue to live for the direction of the people and the advancement of the cause of the nation. My call to all members of the legal profession – Bench and the Bar, remains that we owe Nigerians honest and sincere participation in the election and this we must do. The NBA under my leadership will not be used to celebrate nor encourage any form of disrespect for the rule of law. The NBA is NOT partisan and will continue to maintain its neutrality in its response(s) to all issues concerning Nigeria’s socio- economic and political matters.
26. In the Interim Report issued on the elections held on 25 February 2023, the NBA made some recommendations to INEC, the Nigerian Police and the Political Parties. I repeat and adopt those recommendations. For the avoidance of doubt, they are reproduced hereunder:

“RECOMMENDATIONS

INEC

- a. NBA urges INEC to identify issues from the 25 February election, and the lessons drawn therefrom, with a view to addressing the same in the 11 March 2023 Governorship and State Houses of Assembly elections.***
- b. INEC should ensure that election materials are dispatched on time to the Polling Units so that the accreditation process will commence on time. This will ensure that registered voters are given the opportunity to exercise their right to vote without being unduly disenfranchised.***
- c. INEC should make provisions at all PUs for persons living with disabilities.***
- d. INEC should ensure that all bugs or glitches in the BVAs machines and other election technology are fixed and improved for the 11 March 2023 Governorship and State Houses of Assembly elections, to reduce technical issues experienced in the 25 February elections.***
- e. All INEC staff (including collation and returning officers) with proven cases of misconduct in the 25 February 2023 election be excluded from the 11 March 2023 election, without prejudice to further disciplinary action including criminal prosecution, where appropriate.***
- f. INEC should ensure further training of its polling staff on the use of BVAS machines, including how to upload the results of the elections directly from the PUs to its result portal.***

- g. INEC should urgently investigate all petitions received on the elections and ensure effective and transparent redress.*

The Nigerian Police

- h. The Inspector-General of Police should urgently convene a review of the conduct of its officers during the Presidential and National Assembly elections with a view to identifying and disciplining officers who are found complicit in the violation of the Electoral Act and the Nigeria Police Act.*
- i. The Inspector-General of Police should ensure the immediate processing of persons arrested during the elections for various offences to ensure their speedy prosecution by relevant authorities.*
- j. The Inspector- General of Police should ensure the timely deployment of police officers on duty for the 11 March 2023 Elections.*

Political Parties

- k. NBA appeals to all political parties, in preparation of the 11 March 2023, State Elections, to continuously educate their members and supporters on the need to eschew all forms of violent conduct, voter intimidation and other actions in violation of the Electoral Act.”*

27. With the postponement of the Governorship and State Houses of Assembly elections, I urge Nigerians to remain steadfast, to persevere and be patient to come out in our numbers to exercise our franchise in the second phase of the general elections. This is a civic task which cannot be performed by proxy.
28. I equally call on Government at all levels to continue to provide conducive atmosphere for citizen participation in the electoral process by ensuring the security of the lives and properties of Nigerians.

Long live the NBA!

Long live the Federal Republic of Nigeria!!

God Bless you all.

**Yakubu Chonoko Maikyau, OON, SAN
PRESIDENT**