Supreme Court Judgment On Osun Guber Poll: 'Minority' Judgment As True Reflection Of The Expectations Of Nigerians
...Intersociety

Onitsha, Eastern Nigeria: Sunday, 7th July 2019: It is the position of **Int'l Society for Civil Liberties and Rule of Law, Intersociety,** that what the Supreme Court of Nigeria said on Friday, 5th July 2019, with respect to the Osun State Governorship Poll is nothing short of **a Cross of Calvary judgment lacking elements of fair justice**. The Apex Court's "majority judgment" is also described as "judgment derived juridical technicalities, irrelevancies and biased opinions"; all anchored on *hearsay evidence.*

Intersociety hereby celebrates the Court's 'minority judgment' and sees same as *true reflection of the expectations of Nigerians* particularly the lovers of democracy and rule of law. **Intersociety** stated this in a statement issued today and signed by Obianuju Igboeli, head of Civil Liberties and Rule of Law Program and Emeka Umeagbalasi, chair of the Board.

Further, we are aware that "cut-and-join" judgments have become part of the trademark of other courts of superior records in Nigeria particularly the Court of Appeal, but it concerns and worries us more seeing such dangerous trends creeping into the country's Supreme Court; which is Nigeria's international mirror of democracy and rule of law.

The moment the Nigerian Supreme Court ends up adopting 'juridical technicalities, irrelevancies and biased opinions' or *hearsay evidence* as its core modus operandi, then the country's democracy and rule of law are doomed; with tyranny and authoritarianism as its new governance styles. The Supreme Court must therefore avoid leading the country's democracy and rule of law to the path of perdition and complex extremism.

It is also saddening that Nigeria's Supreme Court appears to have been taken over by experts in jurisprudential and juridical technicalities, irrelevancies and biased opinions. In other words, technicalities, irrelevancies and biased opinions appear to have taken over, ousting and relegating the principles of justice, rule of law and constitutionalism upon which the foundation of the Supreme Court of Nigeria, its rules, proceedings and verdicts are premised.

Truly speaking, there is no other better way to understand and describe the Friday's judgment than linking it to the Cross of Calvary judgment leading to the execution of Jesus Christ of Nazareth around 33 AD. It must be remembered that the judgment that led to the execution of Jesus Christ of Nazareth never contained elements of fair justice; to the extent that even when it was clear to the Pontus Pilate that the accused was innocent, he was still flimsily convicted because the political authorities had so ordered or wanted it to be so done. The Pontus Pilate, also known as the fifth Prefect of the Roman Province of Judaea, was appointed by Emperor Tiberius from AD 26 to AD 36. He had convicted Jesus Christ outside the confines of elements of fair justice and ordered him executed in 33 AD

Domestically, that sort of judgment with zero fair justice effect can also be traced to the **Ogoni Nine Military Tribunal Judgment** leading to the execution on 10th Nov 1995 of Ken Saro-Wiwa and eight others whose criminal execution was in connection with a campaign against the environmental degradation of the land and waters of Ogoni Nation-State. Like Prefect Pontus Pilate, the jungle Military Tribunal was headed by now retired Justice Ibrahim Ndahi Auta, who retired as Nigeria's Chief Judge of the Federal High Court in September 2017.

Therefore, having carefully reviewed the said judgment of Nigeria's Supreme Court, we are totally in disagreement with the so called "majority judgment of five against two". The judgment is nothing short of **ratio decidendi as it ought not to be** and **orbita dictum as it ought not to be**. In other words, the judgment was a reversal of what should have been **orbita dictum,** now given as "majority judgment" and ratio decidendi, now given as "minority judgment".

As a matter of fact, *the fair justice content* of the Osun Guber Poll clearly lies in the majority Judgment of the Tribunal, now turned "minority judgments" of the Appellate and Apex Courts. **Intersociety** hereby stands or agrees with the majority judgment of the Tribunal and the "minority judgments" of the Court of Appeal and the Supreme Court. Nigerians of moral and democratic conscience are also called upon to take public and memorable notice of the Tribunal's majority judgment of 22nd March 2019 and the "minority judgments" as given by the Court of Appeal on 9th May 2019 and the Supreme Court on 5th July 2019.

The two judges of the Tribunal responsible for the majority judgment (Hon Justices Ayinla Gbolagunte and Pete Obiora), the one responsible for the Court of Appeal's "minority judgment" (Hon Justice George Mbaba) and the two Justices of the Supreme Court responsible for the Apex "minority judgment" (Hon Justices Kumai Akaas and Paul Galinje) are hereby commended and celebrated as true beacons of democracy and hopes of the commoners. They are truly learned and conscientious.

While the "majority judgment" of the Supreme Court in the instant case has been accepted only as "the court/judgment of the last resort" and enforced executively in compliance with Section 287 (1) of the Constitution of the Federal Republic of Nigeria 1999, it must be morally or conscientiously pointed out that the Apex Court's "majority judgment" is democratically disastrous and a bad reference point, incapable of advancing and consolidating the country's democracy and rule of law. From available records, the judgment, seen by many as morally harmful and hurtful has independently been found to be a product of *juridical technicalities and* speculation of the highest order.

It must be recalled that the major ground (technical) ground relied upon by the Apex Court's "majority judgment panelists" in its July 5 "majority judgment" was that *the failure of a Tribunal member (Hon Justice Pete Obiora) to sit on its 6th Feb 2019 proceedings rendered the Tribunal's proceedings and its majority judgment, delivered by him on 22nd March 2019 invalid or null and void;* a curious position earlier taken by the Court of Appeal in its "majority judgment" of 9th May 2019.

But in their "minority judgment", the Apex Court's Hon Justices Kumai Akaas and Paul Galinje disagreed and. described same as highly speculative. The two learned Justices further pointed out that *there were no verifiable records including a valid affidavit of facts deposed by the respondents (Oyetona and his APC) validating their claims.* **Intersociety** also did not see or read anywhere where it was credibly reported that the respondents at the Apex Court tendered a verifiable video clip of the entire proceedings of the Tribunal on 6th Feb 2019, showing Hon Justice Pete Obiora as being conspicuously absent.

Corroboratively and specifically, Hon Justice George Mbaba of the Court of Appeal had this to say in his "minority judgment" of 9th May 2019: *I think the allegation that Justice Pete Obiora did not sit on the 6th Feb was founded on speculation and a well articulated speculation. It is curious that the record of the day showed that he did not sign on the 6th of Feb, but he signed on 5th and 7th (Feb), but curiously he did not sign on the 6th of Feb. There are many inferences to be drawn; one is that the Secretariat (of the tribunal) deliberately did not show that he signed. One cannot rule out the possibility of sabotage in the secretariat of the tribunal.*

It must be stated further that the main purpose of setting up election petitions' tribunals in Nigeria is for *fact-findings (judicial enquiries)* and not for "fault-findings". As clearly stated in the Constitution and the Electoral Act of 2010 as amended, the chief business of every election tribunal is to fully apply elements of justice and principles of rule of law including fair proceedings, fair hearing and fair verdict as well as ensuring *public interest, interest of justice and prevention of abuse of legal process.*

It must finally be pointed out that the "majority judgment" of the Supreme Court in the instant case did not provide answers as to *whether it is democratically correct and proper for an electoral umpire and a ruling party/government that appointed it to engage with reckless abandon in the militarization, intimidation and suppression of a voting population and their votes so as to produce the ruling party and its candidate as winners at all costs; even when the candidate and his party are rejected or not wanted by majority of the voting population.*