

October 26, 2021

INTERNAL MEMO

From: National Legal Adviser (NLA)

To: National Organizing Secretary (NOS)

SUBJECT: LEGAL OPINION ON OSUN & EKITI STATES.

As we have just a few days to exit office as members of the NWC of our great Party, except the NVCs, I believe that having done some great services by unprecedented sacrifices in the face of very challenging circumstances, we should end strong by taking our last decisions in accordance with the law and in clear conscience so that we do not, wittingly or unwittingly, leave for our successors baggage of litigations and our Party dangerous precedents that will haunt the soul of the Party after us.

Conscious of the above, I decided to offer the following legal advice in respect of:

1. OSUN STATE:

(a) Ward Congress:

By the reports received from Osun State as packaged by the NOS, there was no known parallel Ward Congress known to law in the conduct of the Ward Congress in Osun State. This is particularly so when the Report of the Congress Committee was signed unanimously by all five (5) members. The mere protest by some members of the Party in Osun who would have preferred the results of the Congress to be different does not amount to a parallel Congress in any form.

The Report of the majority members of the Appeal Panel does not have the support of the law. It was for such circumstances that Paragraph 15(5) of the Electoral Guidelines regulating the Congresses was provided enabling the NWC to reject the result of an Congress Appeal Committee.

An impartial review of all Congresses across the country, especially, the South West, will disclose that there is hardly any Congress conducted in any State where there are no dissenting voices. If we graduate and upscale that to amount to a parallel Congress, then we would have left a very dangerous precedent in our Party.

(b) **Election Of National Delegates at the LGA Congress:**

As shown in the Memo presented by the NOS, there was a successful conduct of the LGA Congress which elected the National Delegates in 28 out of 30 LGAs of the State.

This result of the Congress was affirmed by the Appeal Panel.

However, I have been served with a letter written by Messrs Edmund Z. Birimoni, Esq, on behalf of Hon. Olasoji Adagunodo, the erstwhile State Chairman of our Party, forwarding the list of pending cases in Osun State and urging the Party **"to reject and or discountenance any list of National Delegates purported to have emanated from the 30 Local Government Congress of Osun State and Mr. Sunday Bisi as Chairman."**

Again, this letter cannot stay the hand of the Party from accepting the result of the LGA Congress conducted in Osun State so as to stop those National Delegates from attending the planned Convention for the following reasons:

(i) There is no pending case and or injunction against the conduct of the LGA Congress in Osun state upto this moment.

(ii) The cases referred to have to do with the State Chairmanship dispute and has nothing to do with the Congresses whether Ward or LGA. The only order of injunction which ordered for the Party to reinstate the erstwhile State Chairman was set aside by the Court of Appeal in **Appeal No. CA/AK/349/2020** in a judgment

delivered on March 5, 2021 in an appeal that was filed by the Party.

(iii) If a Party Congress and or Convention can be stopped or delegates stopped from attending such Congress or Convention, merely because a suit has been filed, then we would not be here planning for a National Convention with the number of cases pending in different courts in Nigeria.

The South West Congress would not have held as it did because there were cases pending against it when it was conducted. The South South Congress would not have held on March 9, 2021. But it was held because even when there was a positive order restraining the South Congress we went ahead because we took the position that the originating processes and the ex parte order of injunction were not served. There is hardly any state in the country where the party conducted any Congress, including Kaduna, Yobe, Katsina, Plateau, Nassarawa, Jigawa, Taraba, Kano, Cross River States, where there were no pending cases but we advised that we should continue to conduct the Congresses because there were no order of injunction or restraining order issued. The last state Congress in Cross River State was conducted even when an appeal which is still pending had been lodged by even the Appellant, Venatius Ikem, who eventually became the winner of the Congress as State Chairman.

(iv) The Party cannot be seen to be playing double standards. That will not be healthy.

(c) **LEGAL ADVICE:**

My advice is that there is neither legal nor political impediment against the Congresses: Ward and LGA, conducted in Osun State. Therefore the results of both congresses should be accepted.

2. **EKITI STATE:**

The Congresses: Ward, LGA and State, were conducted in Ekiti State like many other States.

Am aware that Notice of Congress was given to INEC for all Congresses in all the States by the office of the NOS which has been dutiful in that regards.

NWC will recall that the results of the Ward, LGA and State congresses have been approved by National Executive Committee (NEC) of our party which has the final say on all matters of Congresses.

Once the Party had given notice of Congress to INEC, the Party does not have a further responsibility to ensure or compel INEC to attend such Congress. The discretion to attend is INEC's. The failure of INEC to attend and or monitor any Congress, notice of which has been duly communicated cannot, under any guise, nullify the said decision of Congress. Please see the decision of the Supreme Court in **SHINKAFI & ANOR V YARI & ORS (2016) LPELR-26050(SC)** at Pp.61-62, paras. E-A, where it was held:

"It should be kept in mind, always, that the purpose of giving the 21 days notice to INEC is not a precondition for validation of any election at the congress conference meeting etc but for INEC to put together a team of observers. Also that where INEC is not so notified the consequences is as contained in Section 86(1) of the Electoral Act, 2010 as amended to wit; Payment of N500,000= fine upon conviction"

Similarly in the earlier case of **CPC & ANOR V LADO & ORS (2011) LPELR-3997(CA)** P.36, paras. D-E, the Court of Appeal held that:

"Therefore it is the party at the national level that has the responsibility under the Electoral Act to give notice of congresses for nomination (b) The commission need

not attend and observe the congress, it is optional. In effect the non attendance of INEC to observe congress is of no legal consequence to the primary election which is an intra-party election."


Furthermore, it is to be noted that those who are challenging the results of the Ward, LGA and State Congresses in Ekiti today had earlier challenged the conduct of the Congress in the Federal High Court in Ekiti and the Court dismissed the matter for want of jurisdiction as the matter is an internal affairs of the party. A further appeal to the Court of Appeal was similarly dismissed. They are now in the Supreme Court.

They cannot be allowed to turn around to challenge the results of the Congresses already approved by NEC on any grounds whatsoever as if there is an organ higher NEC.

3. LEGAL ADVICE

My advice on Ekiti is that the results of the Congresses: Ward, LGA and State, having been approved by NEC, are valid and should be implemented by the party for all purposes including admitting delegates therefrom into the National Convention.

Accept the assurances of our esteemed regards.


Emmanuel Enoidem
National Legal Adviser

Copy:

1. The Acting National Chairman
2. The Deputy National Chairman, North
3. The National Secretary
4. The Deputy National Secretary
5. The National Publicity Secretary
6. The National Financial Secretary
7. The National Auditor
8. The National Women Leader
9. The National Youth Leader
10. The National Vice Chairman, South South
11. The National Vice Chairman, South East
12. The National Vice Chairman, South West
13. The National Vice Chairman, North Central
14. The National Vice Chairman, North East
15. The National Vice Chairman, North West