

THE WHITE COLLAR

IDOWU OLOFINMOYIN

idowu.olofinmoyin@norfolk-partners.com



The Lost Chambers and The Case of the Frivolous Petitions Bill

"For we have a resolution of the senate, a formidable and authoritative decree against you, O Catiline; the wisdom of the republic is not at fault, nor the dignity of this senatorial body. We, we alone,—I say it openly,—we, the consuls, are waiting in our duty." —Marcus Tullius Cicero Against Catiline

We meet Cicero one of history's great orators, in his element, delivering a revealing and scathing oratory against Catiline in the ancient Roman Senate. In the grand scene depicted Cicero as Consul of the Roman Republic—(a sort of modern day alternate Head of State) has uncovered a plot by Catiline, a member of the Senate, to overthrow the Republic by *Coup D'etat*, and the day after the *Coup* is averted Cicero reveals Catiline's dastardly plot to members of the Senate. The imagery reminds us of the revered and hallowed nature of the chambers of the legislature, their ancient heritage and the quality of men (and subsequently women) with great powers of reasoning, persuasion and deduction that have graced them throughout history.



Custodians of Democracy

The word "Senate" is derived from the Latin word "*senex*" which means "Old Man". "Senate" therefore means "assembly of elders", connoting the necessary sombre, astute and considered nature of such a group of decision makers, elders not only in age but in skill and reasoning. A character we ought to still associate in our modern day, with the Legislature. Through our bi-cameral legislative system we impute the reliance, responsibility and reputation for wise and guided deliberations such as those delivered by Cicero, on the people that occupy these revered positions today.

They are to be Custodians of our Democracy, reflecting the heart and spirit of the Nigerian people, an epitome of our collective will and intellect. What is expected, in fact what is needed, is a committee of astute, considered and deliberate men and women to represent the best of our predispositions and to elevate the union of our Republic from a collective of different tribes and creeds into the Nigerian ideals of strength and brotherhood we aspire to. These hallowed chambers historically have been the preserve of those who have demonstrated exceptional quality of leadership and an exemplary ability to serve the interest of those they represent. Therefore the leadership and service the men and women in them provide, or do not, is a representation of our greater society today.

The King and His Men

Bringing it closer to our African philosophies, Chinua Achebe's *Things Fall Apart* reminds us of a structured society that existed before the Colonialist era headed by an *Ndichie*, or council of esteemed Chiefs, a group of men that had by their work achieved acclaim and therefore become accepted as the collective leaders of secular society. This concept of a "collective of law makers" is thus clearly not foreign to us; it is seen replicated across different tribes and customs in Nigeria. In the West the Yorubas historically had a functioning Council of Chief-law makers that advised the Oba called *Ijoye* and in the North the Emir relied on the council of Chiefs.

Renascent Nigeria

With this historic perspective in view we ought to circumspectly assess if we still hold the men and women in the hallowed chambers of our Legislature, to the same high standards to which the Custodians of our democracy ought to be.

It has been discussed at great length, here and on other platforms that in 2013 the Economist Magazine reported Nigerian Legislators as the highest paid in the world at \$189,500 per annum, some N30million then. We may be persuaded to believe that those entitlements are lower today (which many would in itself dispute), and yet the mechanisms of the Legislature's entitlements and salaries are still structured so that they approve their own remuneration in the absence of all external scrutiny or any accountability whatsoever.

Regarding the structure of external scrutiny and accountability generally, Legislators are supposed to be answerable to their Constituents who have the power to recall them but the cumbersome nature of the recall process is such that it is near impossible to recall a legislator without support from the sponsoring political party. The effect is therefore that there is no accountability to the Constituents whatsoever; all that is left is party alliances.

Rather than attempting to open up these essential issues to productive discourse as the true Custodians of democracy of history have done our Legislature finds itself embroiled in attempts to increase the arbitrary power it has, we saw this in the attempted Constitutional Amendment to remove Presidential Assent from all subsequent Constitutional Amendments in the 7th Assembly, and a renewed campaign to create a 'new' Legislative Immunity.

The Frivolous Petitions Bill an Affront to Democracy

If all these were unable to shift the faith of the staunchest believer in the collective intent and deliberate nature in the Legislature's motives, the introduction of the **Frivolous Petitions (Prohibitions Etc.) Bill** in the Senate would at least shake it. The Frivolous Petitions Bill widely known as the "Anti-Social Media Bill" introduced in the Senate purports to criminalise the making of any accusatory statements without the use of an affidavit of court. Yes take a moment to process that idea.

While the Bill may not appear to be out of place, the subtle and longstanding consequences of such a law will be devastating for our young democracy. All hopes of any *Whistleblower* culture on corruption for example will thoroughly be stamped out by an Orwellian stronghold on communications that can be deployed at will.

The Bill, a two page document is simple and unassuming enough until it is observed that section 1 reads

"Notwithstanding anything contained in any law, it shall be unlawful to submit any petition, statement intended to report the conduct of any

person for the purpose of an investigation, inquiry and or inquest without a duly sworn affidavit in the High Court of a State or the Federal High Court confirming the content to be true and correct in accordance with the Oaths Act."

Section 2 reads:

"Any petition and or complains not accompanied by a sworn affidavit shall be incompetent and shall not be used by any government institution, Agency or bodies established by any law for the time being enforced in Nigeria"

In one fell swoop all reasonable avenues for receiving information about stolen public funds, illegal activities, information that should be brought to the notice of the public by virtue of good journalistic investigation, information to be used to prosecute other criminal offences are prohibited and become acts of criminality. At best this provision is ill considered and sweeping to the extent that it allows legitimate avenues of receiving hidden and undisclosed information to be grouped with the "frivolous" petitions it intends to criminalise. At worst it is a calculated and malicious attack on the only remaining form of accountability that remains for acts of graft and abuse of power that are undisclosed.

Section 3 then goes on to prescribe penalties of six (6) months imprisonment without the option of a fine for publishing a petition/complaint not supported by an affidavit, N200, 000 or two (2) years imprisonment for the use of any petition/complaint not accompanied by an affidavit and N4,000,000 or two (2) years imprisonment for making an allegation/petition/statement with malicious intent to discredit through any of the traditional forms of media. These penalties are irrespective of if the petition, complaint or allegations are in fact true or common knowledge. The emphasis is therefore that the prohibition is on the making of the statement, petition or complaint, rather than the requirement that they are true.

Another consideration we must make objectively is that in a democratic society such as ours the laws of Libel and Slander have for half a century prohibited the misuse of public platforms to publish precisely the kind of information that the Frivolous Petitions Bill purports to prohibit. In fact the laws of Libel and Slander do so much more effectively, maintaining the delicate balances between the need to protect the public reputations of individuals and the essential right and freedom of expression guaranteed under section 39 of the Constitution.

The Constitution guarantees every Nigerian Citizen:

"Every person shall be entitled to freedom of

expression, including freedom to hold opinions and to receive and impart ideas and information without interference."

We therefore rightly ask ourselves, given the safeguards that are already in place in our municipal law and in the Constitution, why this 'new' introduction? What does a law based on the prohibition of the making of statements, complaints or petitions against a person have to benefit Nigerians?

The Straw that Broke the Camel's Back

Section 3(4) then goes further and criminalises the most personal forms of communication through SMS messages, Tweets, WhatsApp messages or any other form of Social Media. It criminalises messages on these platforms deemed to be abusive and false with intent to discredit etc with a fine of N2,000,000 or 2 years imprisonment. This it appears was the straw that broke the camels back.

Nigeria's population is predominantly made up of young people under 25 years (63%) and social media is their domain. This population can ignore a lot, even the sack of the government (as we saw in March), but one thing they cannot endure is anyone prohibiting their treasured access to information and the right to express themselves. The same social media largely acclaimed for the success of the new administration's victory in the elections this year is now a means to reprimand Nigerians.

It is further reported that the backers of the Bill decry any attempts to pull it, going as far as insisting on death before it is removed, prompting another question. If the electorate, the people Legislators were elected to serve protest by their outcry, the proposed law, and the proposers insist on it, who does the bill serve? Close attention needs to be paid to the origins of this bill and they are sure not to disappoint the astute minded.

With Great Power Comes Great Responsibility

It would seem, that in this one matter the assembly of elders has lost its way. The last standing preserve of accountability, public discourse is now to be censored by the very people it seeks to hold accountable. What greater affront to democracy is there? Than that those who ought to guard democracy jealously, now use the powers given to them to deprive those who elected, them of their Constitutional rights? In every reckoning of responsibility there must be accountability. No power is wielded absolutely forever, there will come a time to give account to the people. It may come sooner than later for some.