

**AN EXAMINATION OF THE PROSECUTION OF  
ELECTORAL CRIMES AND ITS EFFECT ON DEMOCRATIC  
DEVELOPMENT IN NIGERIA**

**BY**

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DELTA STATE UNIVERSITY  
OLEH CAMPUS.**

**SEPTEMBER, 2016.**

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**BEING A LONG ESSAY IN PARTIAL FULFILMENT OF THE  
REQUIREMENT FOR THE AWARD OF MASTERS IN LAW  
AND DIPLOMACY DEGREE**

**SEPTEMBER, 2016.**

**CERTIFICATION**

**I, SAM-OLIGIDA JEREOMA** with Matriculation Number **PG/12/13/214945** hereby certify that, apart from references to other people's work which have been duly credited and acknowledged, the entire work is a product of my personal research and that this dissertation has neither in whole nor in part been presented for another degree elsewhere.

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**SAM – OLIGIDA Jereoma**

### **APPROVAL**

I certify that this dissertation was completed by **I, SAM-OLIGIDA JEREOMA** with Matriculation Number **PG/12/13/214945 OF THE FACULTY OF LAW, DELTA**

**STATE UNIVERSITY, OLEH CAMPUS** in partial fulfillment of the requirements for the award of the degree of Masters of Law (LLM) by the post graduate school, Delta State University, Abraka.

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*Signature & Date*

### **DEDICATION**

This dissertation is dedication to God Almighty for giving me the strength and the zeal to conclude this programme.

## **ACKNOWLEDGEMENT**

My profound gratitude goes to God Almighty for giving me the strength, the zeal and will to complete my LLM Programme.

I wish to express my sincere gratitude to all the lecturers in the Faculty of Law, Delta State University Oleh Campus, for their dedication to academic work which immensely contributed to the possibility of my acquisition of the LLM Degree.

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### TABLE OF ABBREVIATION

AC	-	Appeal Court
AC	-	Action Congress
APC	-	All Peoples Congress
ANPP	-	All Nigeria Peoples Party
ALL NLR	-	All Nigerian Law Report
EFCC	-	Economic & Financial Crime Commission
ERC	-	Electoral Reform Commission
NCP	-	National Congress Party

NJC	-	National Judicial Council
NPP	-	New Patriotic Party
NWLR	-	Nigeria Weekly Law Report
PAC	-	Progressive Action Congress
PDP	-	People Democratic Party
S.C	-	Supreme Court
SCNLR	-	Supreme Court of Nigeria Law Report
WRN	-	Weekly Report of Nigeria

### **ABSTRACT**

Nigeria is a secular state with diverse social cultural and ethnic division. The political process of the present political era came to a reality on May 29<sup>th</sup> 1999 after thirty years of military entanglement. Since 1999 till date the political land scope has fallen below par, from violence to greater violence. The electoral process has been alternating power between ruling party and opposition parties. The usurpation of power incumbency has relegated good governance to the background in Nigeria, this has deprived the electorates their franchise in the electoral market due to aggressive quest for political power among political actors. This research examines prosecuting electoral crimes and its impact on democratic development in Nigeria, in relationship with the concept of electoral process and good governance, the evolution of elections and challenges affecting electoral process and good governances as meted by some political class to jeopardize the political system. The 1999 constitution (as amended) bestores the right on the citizen to freely elect Government of their choices for Federal, State or Local Government, Individuals in whom they have confidence, but this has not been the case in the various past elections, where all manner of electoral crimes were brazenly committed by most of our politicians through the act of violence, rigging and snatching of ballot boxes, which has led to the subversion of the will of the people. The objective of this paper is to examine the various electoral malpractices and problem it poses to

democratic development in Nigeria. Furthermore the paper examines the electoral process vis-a-vis the provisions of the Electoral Act, 2010 (as amended) together with the attendant problems of the functions. The paper found out that electoral offences / crimes in Nigeria is closely related to the type and form of historical system practiced by each society, social stratification, ethnicity and religious differences. It is concluded that until a liberal political process is put in place, electoral offences / crimes will continue to persist. In the contribution to knowledge the work was able to identify the best ways to tackle arrest and prosecute electoral offenders. Gave suggestion as to the Independence of the National Electoral Commission who should have their own Legal Practitioners to oversee legal matters regarding election, integrating of electoral offences as part of crimes provided in the various state laws.

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## **CHAPTER ONE**

### **1.0. INTRODUCTION**

An election is a procedure by which members of communities and organizations choose representative to hold an office.<sup>1</sup> The general idea of the meaning of election is reflected in the definition below. “Elections are the democratic method of choosing representations of the people”. The integrity of any election lies mostly in the processes and procedures which are at all times sacrosanct and should be well managed to ensure that elections are not questionable. Frauds that happen before and during elections can result in litigations or at worst trigger post election violence. Electoral fraud is not peculiar to Nigeria; however the country has had its fair share of frauds in elections. There has been considerable debate as to whether the existing legal framework for the prosecution of electoral offenders as encapsulated in the Electoral Act, 2010 (as amended) is appropriate and adequate for the arrest, investigation and prosecution of electoral offenders. There had also been considerable debate as to the capacity and willingness of the Independent National Electoral Commission to prosecute electoral offenders in a professional and ethical manner. Debates are also ongoing as to the willingness of some elements within the political parties to act within the compass of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2010 (as amended) for winning elections and abandon fraudulent means and ways of doing the same. These debates are hinged on the fact that the refusal, inability or

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<sup>1</sup> Dieter, N (1996) Elections and Electoral System. New Delhi, Macmillian India Ltd P. 28.



incapacity of the Independent National Electoral Commission to prosecute electoral offenders encourages electoral impunity, voter's apathy and the gradual disengagement of the Nigeria people from the electoral process as some of them believe that electoral fraud and malpractices renders their votes meaningless and even if they vote, their votes may not count. The debates are also hinged on the fact that if nobody is prosecuted successfully, it may then be more profitable to engage in electoral fraud and malpractices. By section 150(1) & (2) of the Electoral Act,<sup>2</sup> an offence committed under the Act shall be triable in a magistrate court or a High Court of the state in which the offence is committed, or the Federal Capital Territory, Abuja. A prosecution under the Act shall be undertaken by legal officers of the Commission or any legal practitioner appointed by it.

However, the arrest and prosecution of electoral offenders have been fraught with a lot of challenges. Most electoral offenders are also not prosecuted because the Independent National Electoral Commission has less than 100 legal officers serving the headquarters and the 36 states including the Federal Capital Territory, Abuja and do not have the capital and resources to prosecute offences committed in 119 (One Hundred and Nineteen) 973(Nine Hundred and Seventy Three) polling units, 8, 809 (Eight Thousand Eight Hundred and Nine) Federal Constituencies, 774 (Seven Hundred and Seventy Four) Local Governments in Nigeria. It is more difficult to see how legal officers of the Commission will prosecute cases of multiple registrations detected by the Independent National Electoral Commission during the 2011 voters registration exercise because offenders are hardly prosecuted and some get away with impunity on account of their

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<sup>2</sup> Electoral Act,2010 (as amended)

political affiliation. Impunity is recycled, people disengage from the electoral process on account of electoral fraud and violence, and the credibility of the electoral process is called to question. The effect of this state of affairs is that there will be an electoral process on account of electoral fraud and violence, and the credibility of the electoral process is called to question. The effect of this state of affairs is that there will be retrogression in the Nigeria Democracy rather than being progressive and developing, the citizenry will lose faith in the entirety of the electoral process. Consequently, it will stall the process of our developing Democracy. Like most human endeavors, the framers of the constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2010 (as amended) proceeded from the assumption that elections must be free and fair and it is its freeness and fairness that guarantees its integrity.

They also proceeded from the assumption that elections are subject to human imperfections and that since every stage of the electoral process is vulnerable, electoral fraud and manipulation may be difficult to prevent. It is the acknowledgment of human imperfections in the conduct and management of elections that accounts for electorate provisions in part Viii of the Electoral Act<sup>3</sup>, relating to electoral offences and the penalties and sanctions for infraction of the provisions of the law.

## **1.1. STATEMENT OF PROBLEM**

This research examines the extent to which election malpractices pose a threat to national security and democratic governance in Nigeria. Electoral process refers to all the activities and procedures involved in the election of representatives by the

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<sup>3</sup> Electoral Act,2010 (as amended)

electorates. It refers to all the pre and post election activities without which an election is meaningless. These include the registration of political parties, review of voter's register, delineation of constituencies, resolution of electoral disputes, return of elected representatives, swearing in elected representatives. In addition electoral process is the rules that guide the conduct of election, and important activities that make up electoral process. Any process that threatens the electoral process is a subversion of the people's sovereignty<sup>4</sup>.

The electoral process is a complex process that encompasses the good intentions and undesirable outcomes of electoral administration, particularly in emerging democracies where general elections are often marred by culturally hued electoral malpractices. In Nigeria, the truth remains that the electoral process is immensely characterized by a culture of electoral malpractices. Electoral malpractices refer to illegalities committed by government officials responsible for the conduct of elections, political parties, group or individuals with sinister intentions to influence an election in favor of candidate or candidates.<sup>5</sup> Intense electoral malpractice leads to electoral violence which every polity must consider undesirable and discouraged by all means necessary. The underlying focus of this research is the desire to bridge the gap which the electorate faces with the electoral processes and consequently prosecuting electoral offences adequately and promptly this will serve as deterrent to electoral offenders in Nigeria in particular.

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<sup>4</sup> Akamere F.A (2001) *Government made Easy*. Lagos Olu Abbas Modern Press P. 55.

<sup>5</sup> Ezeani, E.O.(2004):*Electoral Malpractice in Nigeria "The Case Of 2003 General Election"* Nigerian Journal of Public Administration and Local Government. XII(1)143-162. Vol.1 NSULCA Nigeria

## **1.2. AIM AND OBJECTIVES OF THE RESEARCH**

The primary aim of this research will be to explore or investigate the possibilities of challenges and fears associated with political or electoral fraud in a democracy. It is equally to show that election rigging is a threat to national security and democratic development.

### **The Specific Objectives of This Research Are:**

1. Examine the various challenges that the Nigeria Populace face in the various elections conducted in Nigeria.
2. Examine various electoral malpractices and the problems they pose to democratic development in Nigeria.
3. Examine the electoral process *vis-a-vis* electoral malpractices together with the attendant problems and functions of prosecuting electoral offences/offenders.
4. Analyze reasons of the inabilities of the Nigeria state to prosecute electoral offenders.
5. Explore realistic methods in which the Nigeria state should take in prosecuting electoral offences/offenders.

## **1.3. RESEARCH METHODOLOGY**

In the course of this research both analytical and empirical methods would be explored in achieving all stated objectives. The research methodology to be adopted involves both doctrinal and empirical techniques and recourse will be made to both primary and secondary sources of materials. The doctrinal technique to be adopted will be analytical. In the case of primary sources, these will include the constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act 2010 (as amended). References will be made to indigenous and foreign literatures on the issues of election and electoral malpractices as it relates to Democratic development and related materials. These will include books, Journals, articles, chapters in books, conference papers, news papers and materials from the web (internet).

The non-doctrinal method to be adopted would include using a semi – structured questionnaire and interviews. Face to face interviewing method would be used to elicit answers from participating electoral officials, individuals and practicing professionals in Electoral matters.

#### **1.4. LITERATURE REVIEW**

Though there are some text and materials from plethora of jurist and authors on elections and electoral matters and procedures, these texts and materials mainly focus on areas of the theoretical principles of electoral issues. The procedural issues faced by the people are hardly discussed in textbooks. Although there have been articles and materials written on the issues of elections that takes place in different political system. These are distinguished from each other due to the fact that in certain countries, the voters may choose from among several parties and reach their decisions freely, while in

others the situation is different, but none has adequately addressed this area of the challenges and prospect faced with prosecuting electoral offences/offenders that this research intends to highlight.

Furthermore, the issues of the prosecution of Electoral Crimes in Nigeria as it relates to Democratic Development are not sufficiently addressed by the few authors as aforesaid.

The short comings above would be redressed in this dissertation by focusing on the causes and effect of Electoral Crimes in Nigeria. Suggestions for the resolution of the menace of electoral crimes in Nigeria, flaws in the regulation of Elections and other factors responsible for the in effectiveness of the statutory laws on regulation of Election in Nigeria and a suitable legal frame work for the regulation of election in Nigeria shall be examined in this work. Having made these points, the researcher shall now review some major contributions in Electoral matters. *Okubote & Aduloju* in their book titled “Fundamentals of Electoral Reforms in Nigeria<sup>6</sup>, writes extensively on electoral reforms in this seven (7) chapter book. Chapter one of this book extensively discusses the meaning and history of election. It provides the background to elections in Nigeria and reviews the various constitutions that had been used in the nation.

Chapter two gives an insight into the preparations for election. It gives a clear impression of the role of the Electoral Commission in pre-election arrangement.

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<sup>6</sup> A.Okubote and B. M. Oduloju, Fundamentals of Electoral Reforms in Nigeria, Pensbury Publishers Abuja, Nigeria 2011, 978 - 285.

Chapter three appears to be important in that it gives account of the conduct of election in Nigeria. The importance of this chapter is in the information it gives on elections in Nigeria. This will no doubt assist in the conduct of elections in Nigeria in the future.

After elections, usually there are conflicts; these conflicts come by way of litigation from aggrieved parties. The effects of the conflicts if not well managed, could have heavy negative consequences on the nation. This is the focus of chapter four of the book. It is closely followed by chapter five which gives a comprehensive account of the ground for petition in elections. It discusses the procedure in election matters. The chapter is also followed by chapter six which gives an eloquent account of hearing an appeal of election petitions.

Chapter seven is a complete discussion of the reform on Nigeria Electoral system and an appraisal of the report of the Honourable Justice Uwais Committees Report. The authors of this book deserves commendation for this monumental intellectual effort from the above, but it still did not touch on the subject matter of this dissertation which is prosecution of electoral crimes and its effect on Democratic Development in Nigeria. ***Olatubora*** in his book titled: *Electoral Law and Practice in Nigeria*<sup>7</sup>. The book is a unique and scholarly contribution to the search for justice through the application of law to election matters. The author examines various issues relating to electoral matters in this seventeen (17) chapter book.

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<sup>7</sup> A. Aderemi Olatubora, *Electoral Law and Practice in Nigeria*.  
Published by: Aderemi Olatubora & Co, Akure, Ondo State, Nigeria 2006, P. 112 – 118.

Chapter one of this book introduces the legal frame work for elections. It considers the functions of the State Independent Electoral Commissions, the limits of the power of INEC to make bye Laws or subsidiary legislations. This chapter also deals with important pre-election matter and several other issues on which may turn the much-desired victory of a party to an election matter.

Chapter two deals with the concept of jurisdiction. The learned author revisited the popular dictum of Diplock, LJ, in the English case of *Graith waite v. Graith waite* the dictum of Bairamian, FJ, in *Madukolu & Ors v. Nkwmdilim* on what confers jurisdiction on a court or tribunal. He then goes further to discuss the issue of jurisdiction of election courts and tribunal on the context of the principles enunciated in the judicial dicta under reference as applicable to election petition cases. The result of this is that, as usual, the issues of the constitution of composition of a tribunal or court, the nature of the subject matter brought before a court or tribunal and compliance with due process of commencing actions are as crucial in election petition matters as they are in ordinary civil legislations.

Chapter three of this book deals comprehensively with the statutory and constitutional ground of election petition through the cases. Such as non-qualification of a successful candidate, invalidity of election as a result of corrupt practices or noncompliance with provisions of the Election Act, unlawful exclusion of the petitioner from election and the constitutional ground that the successful candidate has not been duly elected. In addition case law are also reviewed in this chapter.



Chapter four of this book deals with the issue of the essentiality of time in the presentation of election petition. This chapter also concluded with some notes on the essentiality of the payment of security for costs and filling fees to the validity of election petitions.

Chapter Five, Six, Seven, Ten, Eleven and Twelve deals seriatim with the procedural issues of service of processes.

Chapter Eight of this book deals with the twin issues of *locus stand* to present election petition and the respondents to election petition.

Chapter Nine of this book is where the learned writer restated exhaustively and in very elucidating grandeur, the basic requirements as to the content of election petition, such as specific parties. Specification of the right to present the petition, the holding of the election scores of candidates, the person returned as a winner, the grounds of petition, statement of relevant facts, relief sought, paragraphing of claims, signature of the petitioner or his solicitor and address for services. As it often happens, election petitions are usually replete with allegation of civil wrong and commission of crimes. More often than not, it becomes difficult to prove allegations of commission of crimes for several reasons ranging from inadequacy of time, inadequacy of resources e.t.c. It may then be necessary to sever those averments in the petition that relates to the commission of crime.

Chapter Thirteen touches briefly on the issue of the right of statutory respondents to be represented by either legal officers who are employees of the INEC, legal officers from

the Federal and State Ministry of Justice, the Attorneys General of the Federation and the State as well as private legal practitioners.

Chapter Fourteen deals with procedure for bringing preliminary objection the mode of application for objection, defect that can warrant objection, when such objection could be raised and the attitude of courts and election tribunals towards undue technicalities in election petitions.

In Chapter Fifteen, the learned writer deals with statutory provisions on the necessity for acceleration of the hearing of election petitions and the constitutionality or otherwise of setting time limit within which election tribunals or courts must dispose of election cases. This chapter also deals with the application of the law of evidence to election petitions on such issues as the burden of proof, standard of proof and practice and procedure relating to documentary evidence, the chapter concluded with the importance of address of counsel at the conclusion of evidence.

In Chapter Sixteen, the learned writer outlines the types of judgments and orders that election tribunals or courts can make and under which circumstances. The author highlights the needs for claimant to claim the appropriate relief as an election court or tribunal may not grant a relief not claimed by the party.

Chapter Seventeen, which is the last chapter of this book deals with appeal. This book is indeed a weighty contribution to scholarship, but the research of the writer did not

touch on the object matter of my dissertation, which is prosecution of Electoral Crime and its effect on democratic development in Nigeria.

*Okechukwu* in his article titled: Electoral process and challenges of good governance in the Nigeria State<sup>8</sup>, writes extensively on the democratic transitions that has taken place in Nigeria from 1999, 2003, 2007, 2011 with 2015 election in view. He also talked so much on incumbency factor from the holders of power as a stumbling block to good governance. The author further talked on factors affecting electoral process and good governance in Nigeria to include conflicts generated by ethnic chauvinism, sectional interest and religious divide, malpractices, violence from political class to outdo one another in pursuit of their parochial interest and this makes the process undemocratic.

The author failed to mention the subject matter of this dissertation which is the prosecution of electoral crimes in Nigeria and how it affects Democratic development in Nigeria. These short comings will be addressed in this dissertation.

*Ebirim* in his article titled: The Effects of Electoral Malpractices on Nigeria Democratic Consolidation<sup>9</sup>, examines the concept of Democracy as an inherent difficult concept. It means many things to many people. As a general summary concept, it holds numerous implications and connotations which are frequently complex and often contradictory. The author asserts that the essential idea of Democracy is that the people have the right to determine who governs them. In most cases they elect principled

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<sup>8</sup> Nnamani, Desmond Okechukwu, Journal of Good Governance and Sustainable Development in Africa (JGGSDA) Vol.2 No3. December, 2014 Website: <http://www.rcms.com> issn: 2354 – 158x (online, ISSN: 2346-724x print).

<sup>9</sup> S. I. Ebirim, The Effect of Electoral Malpractices on Nigeria Democratic Consolidation. Public Policy and Administration Report, Vol. 4, No. 2, 2014.

governing officials and hold them accountable for their action. Democracy also impose legal limit on the Governments authority by guaranteeing certain rights and freedom to their citizens. The author refers to electoral malpractice as one of the major obstacles to Democratic consolidation in Nigeria. That electoral fraud has been one major challenges to the growth and development of the country and this has steadily worsen and more daring as the elections progresses.

However some of the challenging issues which this dissertation seeks to address was not touched on by this author. Indeed, it is certain that Nigeria's desire democracy above any form of social political factors. These short comings will be addressed in this dissertation.

Finally *Olawole* in his article titled: Electoral Malpractices and Problems in Africa, a Critical Analysis<sup>10</sup>. Examines various electoral malpractices and problems in Africa looking critically at suffrage, franchise and elections and the attendant problems as well as the malpractices associated with it. The people espoused the theory of franchise as postulated by various school of thoughts such as the Natural school, with writers like Montesquieu and Roldseau while the other school is of the view that the right to vote is rather a public office or function conferred upon the citizen for reason of social expediency. Furthermore the author examined the electoral malpractices together with the attendant problems and functions. Olawole in his article opined that electoral malpractice in Africa is closely related to the type and forms of historical system

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<sup>10</sup> O. Olawole; Electoral Malpractices and Problems in Africa: A Critical Analysis. Department of Political Science and Public Administration, Babcock University, Journal of Research and Development Vol. 1, No. 6, 2013.

practiced by each society coupled with the class structure, social stratification, estheticism and religious differences. The author concluded that until elections become completely competitive and the electorates are free to make a choice between alternatives and that a liberal political system is put in place, there will always be electoral malpractice. However, this author failed to mention ways or suggestions to tackle malpractices and how to prosecute electoral crimes. These lacunae will be filled in this dissertation.

## CHAPTER TWO

### 2.0 CONCEPTUAL DEFINITIONS

An Election is a decision making process by which a population chooses an individual to hold formal office. This is the usual mechanism by which modern representative democracy fills offices in the legislature, sometimes in the executive and judiciary, and business organizations, from clubs to voluntary associations and corporations.<sup>11</sup> In the case of *People's Progressive Alliance v. Saraki*<sup>12</sup> the meaning of election was stated by Edozie JSC, who expressed the view in *Ojukwu v. Obasanjo & Ors*,<sup>13</sup> that the word election in the context in which it is used in Section 137 (1) (b) of the 1999 constitution<sup>14</sup>, means “the process of choosing by popular votes a candidate for political

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<sup>11</sup> Encyclopedia Accessed on 2/21/14

<sup>12</sup> (2007) 17 NWLR 453 C.A

<sup>13</sup> (2004)19 NSCQR P. 90

<sup>14</sup> Constitution of Federal Republic of Nigeria 1999

office in a democratic system of government” According to Black Law Dictionary<sup>15</sup>, election can be defined as

*the exercise of a choice; the act of choosing from several possible right or remedies in a way that precludes the use of other rights or remedies (2) the doctrine by which a person is compelled to choose between accepting a benefit under a legal instrument and retaining some property right to which the person is already entitled, an obligation imposed on a party to choose between alternative rights or claims, so that the party is entitled to enjoy only one. (3) the process of selecting a person to occupy an office (a public office)*

The Oxford Advanced Learner’s Dictionary<sup>16</sup>, defined election as “the process of choosing a person or a group of people for a position by voting” the universal use of elections as a tool for selecting representatives in modern democracies is in contrast with the practice in the democratic archetype, ancient Athens. Elections were considered an oligarchic institution and most political offices were filled using a system, also known as allotment, by which officeholders were chosen by lot. Electoral reform describes the process of introducing fair electoral systems where they are not in place, or improving the fairness or effectiveness of existing systems.

## **2.1 CHARACTERISTICS OF ELECTIONS**

The question of who may vote is a central issue in elections. The electorate does not generally include the entire population; for example, many countries prohibit those judged mentally incompetent from voting, and all jurisdictions require a minimum age for voting. For example in Nigeria, a person must attain the age of eighteen years (18

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<sup>15</sup> Eight Edition.P.536

<sup>16</sup> Eight Edition. P 421

years) before that person can have the right to vote for a person or to be voted for. Under section 12(1) (b)<sup>17</sup> as “a person shall be qualified for registration as a voter if such a person has attained the age of eighteen years” Historically other groups of people have also been excluded from voting for instance, the democracy of ancient Athens did not allow women, foreigners or slaves to vote. But in Nigeria, women have the right to vote or to be voted for. Example of such women are, Senators Hon(Mrs.) Oluremi Tinubu and Hon (Mrs)Stella Oduah e.t.c. There is no place where it is stated in Nigerian constitution that women or slaves were excluded, except foreigners, who are not citizens of Nigeria and they have no right to vote or be voted for.

The United States constitution left the topic of suffrage to the states. Formerly only white male property owners were able to vote. Much of the history of elections involves the effort to promote suffrage for excluded groups. The women’s suffrage movement gave women in many countries the right to vote, and securing the right to vote freely was a major goal of the America countries rights movement. Extending the right to vote to other groups which remain excluded in some places (such as convicted felons, members of certain minorities, and the economically disadvantaged) countries to be a significant goal of voting rights advocates.

Suffrage is typically only for citizens of the country. Further limits may be imposed: for example, in Kuwait, only people who have been citizens since 1920 or their descendants are allowed to vote. A condition that the majority of residents do not fulfill.

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<sup>17</sup> Electoral Act 2010(as amended)

But in Nigeria, a person that naturalizes his or herself as a citizen of Nigeria under sections 26 and 27<sup>18</sup> of the Nigerian constitution is allowed to vote thus:

*section 26 (1) provides “subject to the provisions of section 28 of this constitution, a person to whom the provisions of this section apply may be registered as citizen of Nigeria, if the president is satisfied that-*  
*(a) He is a person of good character;(b) He has shown a clear intention of his desire to be domiciled in Nigeria; and (c) He has taken the oath of Allegiance prescribed in the seventh schedule to this constitution (2) the provisions of this section shall apply to (a) Any woman who is or has been married to a citizen of Nigeria, (h) Every person of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria”*  
*“Section 27 (1) provides subject to the provisions of section 28 of this constitution, any person who is qualified in accordance with the provisions of this section may apply to the president for the same of a certificate of naturalization (2) No person shall be qualified to apply for the grant of a certificate or naturalization, unless he satisfies the president that-*

*(a) He is a person of full age and capacity; (b) He is a person of good character; (c) He has shown a clear intention of his desire to be domiciled in Nigeria; (d) He is, in the opinion of the Governor of the state where he is or he proposes to be resident, acceptable to the local community in which he is to live permanently, and has been assimilated into the way of life of Nigerians in that part of the federation;*

*(e) He is a person who has made or is capable of making useful contribution to the advancement; progress and well-being of Nigeria; (f) He has taken the Oath of Allegiance prescribed in the seventh schedule to this constitution; and (g) He has, immediately preceding the date of his application, either —(i) Resided in Nigeria for a continuous period of fifteen years; or (ii) Resided in Nigeria continuously for a period of twelve months, and during the period of twenty years immediately preceding that period of twelve months has resided*

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<sup>18</sup> Constitution of the Federal Republic of Nigeria 1999(as amended)



*in Nigeria for periods amounting in the aggregate to not less than fifteen years.*

It is when he or she has fulfilled the above requirements for he or she to be naturalized as a citizen of Nigeria before he or she has the right to vote or be voted for. However, in the European Union, one can vote in municipal elections if one lives in the municipality and is an EU citizen; the nationality of the country of residence is not required. In some countries, voting is required by law; if an eligible voter does not cast a vote, he or she may be subjected to punitive measure such as a small fine.

**a. Nomination**

Non-partisan systems tend to differ from partisan systems as concerns nominations, in a direct democracy, in one type of non partisan democracy, any eligible person can be nominated. In some non-partisan representative systems no nominations (or campaigning electioneering. e.t.c.) take place at all, with voters free to choose any person at the time of voting with some possible exceptions such as through a minimum age requirement in the jurisdiction. In such cases, it is not required (or even possible) that the members of the electorate be familiar with all of the eligible persons, though such systems may involve indirect elections at larger geographic levels to ensure that some firsthand familiarity among potential candidates can exist at these levels (i.e. among the elected delegates). In some countries, only members of a particular political party can be nominated, and where a party nominated a person to be voted for, in which the Independent National Electoral Commission (INEC) have registered such nominees

and later it is discovered that the nominee is not the actual person that has been voted for, such election shall be valid in the eyes of the court and the court will give an order that the actual nominee should be the real person that will hold such political office. As it was in the case of *Rotimi Amaechi v. INE*<sup>19</sup> “it was held that Amaechi was wrongly substituted by its party (PDP) and that the indictment on which his disqualification was anchored could not stand in the face of law.” His Lordship, Hon. Justice Aloysius Katsina- Alu, who read the lead judgment, consented to the remaining six justices of the court including Justices George Oguntade, Dairu Mustapha, Tanko Muhammad, Aderemi and others on the panel, said the candidate of the PDP in the election was Amaechi. According to Justice Katsina- Alu: in the Eyes of the law, he (Amaechi) remains the candidate and this court must treat him as such, the appellant and not the respondent must be seen as having won the election. The argument that the appellant must be held to his claim overlooks the fact that this court has the wide jurisdiction to give circumstantial orders and grant reliefs, which the circumstances and situations dictate, he also went further to state that:

*This court shall rise up to do substantial justice without regard to technicalities. We would not make an order which does not address the grievances of the party before this court. The only way to accord recognition to his right not to be trampled upon is to declare him and not the 2nd respondent to have won the April 14 gubernatorial election.*

In the case of *Justice Party v. INEC*<sup>20</sup>, the Court of Appeal per Adekoye, JCA said “nomination at an election is the act of suggesting or proposing a person to an election body, which currently is the INEC as a candidate for an election office.” Nomination is part of the preliminary process before an election. A person will have to possess the

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<sup>19</sup> (2007) 9 NWLR (Pt 1040) 170 C.A

<sup>20</sup> (2006) ALLNCLR pt 339 P 907 at 942

mandate of INEC to contest the election, publication of his name e.t.c he will then contest in the election. An eligible person can be nominated through a petition; thus allowing him or her to be listed on a ballot.

**b. Who is Elected?**

The government positions for which elections are held vary depending on the locality. In a representative democracy, such as the United States and Nigeria, some positions are not filled through elections, especially those which are seen as requiring a certain competency or excellence. For example judges are usually appointed rather than elected to help protect their integrity and impartiality.

There are exceptions to this practice, however; some judges in the United States are elected but in Nigeria, the judges can only be appointed and in ancient Athens military generals were elected. However, in most representative democracies, this level of indirection usually is nothing more than a formality. For example, the President of the United State is elected by the Electoral College, and in the Westminster system, the Prime Minister is normally chosen by the Head of State (and in reality by the legislature or by their party), but in Nigeria the President is usually elected by the electorate by their votes. This is the more reason the votes need to count, in order to restore hope to the electorate and the electoral system.

**c. Scheduling**

The nature of democracy is that elected officials are accountable to the people and they must return to the voters at prescribed intervals to seek their mandate to continue in

office. For that reason most democratic constitutions provide that elections are held at fixed regular intervals. In the United States, elections are held between every three and six years in most state, with exceptions such as the U.S House of Representatives, which stands for election every two years. But in Nigeria before, the general election which holds at every four year since 1999-2007, but after April 2007 general election, in which there is general rigging and so many electoral offences committed nationwide, which leads to so many problems that there will be no more general Election in Nigeria as a whole because, every state affected have to schedule their various elections. For example, the President of Ireland is elected every seven years. The President of Finland every six years. The President of France every five years, the President of Russia, the President of United States and the President of Nigeria every four years.

#### **d. Election Campaigns**

When elections are called, politicians and their supporters attempt to influence policy by competing directly for the vote of constituents in what are called campaigns.<sup>21</sup> Supporters for a campaign can be either formally organized or loosely affiliated, and frequently utilize campaign advertizing. It is common for political scientists to attempt to predict elections via political forecasting methods.

#### **e. Difficulties with Elections**

In many countries with weak rule of law, the most common reason why elections do not meet international standards of being “free and fair” is interference from the incumbent

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<sup>21</sup> Encyclopedia accessed on 05/21/15

government. Dictators may use the powers of the executive (police, martial law, censorship, physical implementation of the election mechanism, etc) to remain in power despite popular opinion in favour of removal. Members of a particular faction in a legislature may use the power of the majority or supermajority (passing criminal laws, defining the electoral mechanisms including eligibility and district boundaries) to prevent the balance of power in the body from shifting to a rival faction due to an election.

Non-governmental entities can also interfere with elections, through physical force, verbal intimidation, or fraud which results in improper casting or counting of votes. Monitoring for and minimizing electoral fraud is also an ongoing task in countries with strong traditions of free and fair elections. The Nigerian Legal system and law enforcement agencies are not able to arrest, prosecute, and convict offenders; as such victims of violence normally receives little or noredress. Members of security forces who are implicated in violations of civil and political rights, including electoral violence, are also usually not held accountable.

## **2.2 THE MEANING OF AN ELECTORAL SYSTEM OR VOTING SYSTEM**

By electoral system, we mean the process or means of voting. The electoral system recognized by the Electoral Act 2010, to be used for voting in any election, is open secret ballot. Section 52 (1) (a) Of the Electoral Act<sup>22</sup> provides that “voting at an election under this Act shall be by open secret ballot”. In early parliamentary elections, local government elections in the east and west, and in town council elections in the

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<sup>22</sup> Electoral Act, 2010 (as amended)

north, votes were cast secretly by the insertion of a ballot paper into a box that is marked with the name of the candidate, an optional photography, symbol of the party.

In rural areas of northern Nigeria, open voting was practiced. When the electoral college system was in operation, votes were in the primary and intermediate colleges normally balloted by a show of hands. 'The secret ballot system has been used in almost all elections in the history of Nigeria<sup>23</sup>.

Electoral systems refer to the detailed constitutional arrangements and voting systems which convert the vote into a determination of which individuals and political parties are elected to positions of power. The first step is to tally the votes, for which various different vote counting systems and ballot types are used. Voting systems then determine the result on the basis of the tally. Most systems can be categorized as either proportional. Among the former are party-list proportional representation and additional member system. Among the latter are first past the post (FPP) (relative majority) and absolute majority. Many countries have growing electoral reform movements, which advocate systems such as approval voting, single transferable vote, instant runoff voting or a Condorcet method; these methods are also gaining popularity for lesser elections in some countries where more important elections still use more traditional counting methods, while openness and accountability are usually considered cornerstones of a democratic system. The act of casting a vote and the content of a voter's ballot are usually an important exception. The secret ballot is a relatively modern development,

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<sup>23</sup> Afe Babalola; Election Law and Practice, Second Edition 2007, Volume 1, Chapter 9. P. 201 - 233

but it is now considered crucial in most free and fair elections, as it limits the effectiveness of intimidation.

In Nigeria nascent democracy, the use of open secret ballot system has left much to be desired by the electorates. A number of electoral malpractices, fraud and gross misconduct have been the order of the day. There have been cases of missing ballot boxes after voters have cast their votes, cases of individuals or groups of even political parties who see the election as a “do or die” affair and forcefully (with the help of political thugs of course) “seize” or hijack the ballot boxes to an undisclosed place and begin to illegally thumb print ‘these acquired ballot papers. It is pertinent, at this point to attempt a definition of the word ballot.

Black Law Dictionary<sup>24</sup> defines ballot “as a small ball or ticket used for indicating a vote; the system of choosing a person for office by marking a paper or by drawing papers with names on them from a receptacle; the formal record of a person’s vote. The ballot papers remain the only weapon by which the electorates give expression to their approval or disapproval of contestants or candidate in any given election. This voting power is in no doubt very potent.

Thus to forestall manipulation and rigging, the regulations require ballot boxes to be constructed in such a way that once a ballot paper is put therein, it cannot be withdrawn unless the box is unlocked. Section 48 (1) and (2)<sup>25</sup>, provide that “the presiding officer is under a duty to open all ballot boxes for persons who were present at the polling

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<sup>24</sup> Eighth Edition.P138

<sup>25</sup> Electoral Act 2010 (as amended)

station before the commencement of the voting to show that the ballot box is empty”. Section 55<sup>26</sup> provides for a voter who inadvertently dealt with the ballot paper in such a manner that it cannot be conveniently used as ballot paper, may be given another ballot paper in place of the ballot paper so damaged. Similarly a person whose name is on the register but discovers that another person has voted in his name may be given a ballot paper called “tendered ballot paper” to enable him cast his vote. Tendered ballot paper, which is of a different colour from the real ballot paper, must be endorsed by the presiding officer Section 60(1)<sup>27</sup> these safety measures are to guard against election malpractice and to ensure a hitch free election.

### **2.3 MEANING OF OFFENCE**

Section 2<sup>28</sup> defines offence as “an act or omission which renders the person doing the act or making the omission liable to punishment under this code, or under any Act, or law. According to Oxford Advanced Learner’s Dictionary<sup>29</sup> define an offence as “an illegal act, which it can be a crime offence, sexual offence”. Also according to Osborn’s Concise Law Dictionary<sup>30</sup> an offence is “generally synonymous with crime.” Lastly according to Black Law dictionary<sup>31</sup>, offence is a violation of the law; a crime often a minor one.

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<sup>26</sup> Electoral Act 2010 (as amended)

<sup>27</sup> Electoral Act 2010 (as amended)

<sup>28</sup> Criminal code cap c38, law of federation 2004.

<sup>29</sup> Ninth Edition P.815

<sup>30</sup> Eighth Edition P. 910

<sup>31</sup> Seventh Edition P. 1108



According to Oxford Dictionary of Law,<sup>32</sup> different types of offences which are: Against international law and order “means crimes that affect the proper functioning of international society. Some authorities regard the so called international crimes as crimes of individuals that all or most state are bound by treaty to punish in accordance with national laws for that purpose of offences. Examples of such crimes are piracy, hijacking and war crimes” offence against public order: “crimes that affect the smooth running of order in society. The main offences against public order are riot, violent, disorder, affray and threatening behavior”. Offences against The person are “crimes that involve the use or threat of physical force against another person. The main offences are homicide, infanticide, illegal abortion, causing death by dangerous driving, rape and torture”

#### **2.4. THE MEANING OF DEMOCRACY**

Democracy may be a word familiar to most people, but it is a concept still misunderstood and misused in a time when Totalitarian Regimes and Military Dictatorships alike have attempted to claim popular support by printing Democratic labels on themselves. According to Black Law Dictionary<sup>33</sup>, democracy means “government by the people, either directly or through representatives”. Also according to the Oxford Advanced Dictionary,<sup>34</sup> “it is the government by the people in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system”

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<sup>32</sup> Seventh Edition P.815

<sup>33</sup> Seventh Edition P. 444

<sup>34</sup> Ninth Edition P. 361

Late Chief Obafemi Awolowo in his book, 'Thought on Nigeria Constitution'<sup>35</sup> said "that the best level democracy has reached is the Government of the People, by the elected representatives of the People for the benefit of the People"

In the popular phrase of Abraham Lincoln,<sup>36</sup> "democracy is a government of the People, by the People and for the People." Thus in democracies, it is the people who hold sovereign power over legislatures and government. In the present stage of the political evolution of man, democracy is said to exist, when the adult citizens of any state freely elect a group of people from among their numbers periodically to be their representatives' for the purpose of administering public affairs, for the benefit of the entire populace. Democracies rests upon the principles of majority rule, coupled with individual rights. All democracies, while respecting the will of the majority, zealously protect the fundamental rights of individual and minority groups; democracies conduct regular free and fair election open to all citizens.

Elections in a democracy cannot be facades that dictators or a single party hide behind, but authentic competitions for the support of the people. Democracies have independent judicial institutions where individuals, political groups or any aggrieved party seek redress when disputes arise. Democracy is more than a set of constitutional rules and procedures that determine how a government functions. In a democracy, government is only one element coexisting in a social fabric of many varied institutions, political parties, organizations and associations. This diversity is called pluralism, and it assumes that the many organized groups institutions in a democratic society do not depend upon

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<sup>35</sup> [w.w.w.lawandhumanright.org](http://w.w.w.lawandhumanright.org).accesses 20/01/16

<sup>36</sup> [w.w.w.voiceofAmerica.com](http://w.w.w.voiceofAmerica.com).accessed on 21/04/16

the government for their existence. Democracies fall into two basic categories, direct and representative. In a direct democracy, all citizens, without, the intermediary of elected or appointed officials can participate in making public decisions. Representative democracy, which is the most common form of democracy, is one in which citizens elect officials to make political decisions, formulate laws and administers programs for the public good. Public officials in a representative democracy hold office in the name of the people and remain countable to the people for their actions.<sup>37</sup> Nigeria and indeed most developed states of the world practice representative democracy.

## **2.5 ELECTORAL OFFENCES**

Part VIII of the Electoral Act, 2010<sup>38</sup> (as amended) creates different categories of electoral offences and prescribes punishment for them; there are pre-election offences and Election Day offences. In the general sense, electoral offences means election malpractices or unlawful act which are committed before or during any election in a country.

It is no longer news that the 2003, 2007 and 2011 general elections was a sham. The polls were characterized by all manner of irregularities ranging from ballot box stuffing, swarpping and snatching of ballot boxes, inflation of figures, falsification of results, underage voting, violence, thuggery, intimidation of voters, multiple voting and every other imaginable electoral crime. The perpetrators of this electoral evil cut across Independent National Electoral Commission (INEC) staff and ad-hoc staff, politicians,

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<sup>37</sup> Representative Democracy, Published by Harper Collins New York, 1975, P. 242

<sup>38</sup> Electoral Act 2010 (as amended)

security agents especially the police, hired thug and government officials and agents. Proof of the magnitude of the fraud that was in the 2007 elections was visible, as not less than eight governorship elections was seen nullified across the country. The figure is even higher with other elective positions namely; State House of Assembly, House of Representatives and the Senate. Most of the nullifications and cancellations were as a result of rigging and other forms of irregularities perpetrated by some or all of the various factors identified above in the states and the Federal Capital Territory.

However, despite the glaring cases of fraud at the elections which necessitated the various nullification and cancellations of these results, curious enough not a single perpetrator has either been apprehended or prosecuted. Worried by this development pundits are asking, is it that electoral crime is not a punishable offence? Are there no provisions in our law books on how to deal with those who commit crime during elections? Or are these criminals invisible? If the tribunals could affirm that the irregularities necessitating the nullification of these elections and the call for fresh elections were actually committed, can't they also identify the perpetrators and met out punishment to them accordingly to serve as a deterrent? These and many more are questions that have bogged the minds of political observers who are of the opinion that something must be wrong somewhere.

The boldness and audacity of those who engage in this unwholesome practice is a direct consequence of the fact that although rigging has featured in virtually all the elections held in the country since independence except may be the 1993 elections, no single individual has been known to have been apprehended prosecuted and duly punished.

In some countries, the deceased seem to cast ballots from the grave. Children too are on the electoral rolls. Ballot boxes disappear into thin air. Candidates are arrested, poisoned, even murdered. Although elections are now held in most countries around the globe, in many cases they are anything but free and fair.<sup>39</sup>

Part VIII of the Electoral Act, 2010 (as amended) creates different categories of electoral offences and prescribes punishment for them. There are pre-election offences and Election Day offences. Any person who contravenes section 12<sup>40</sup> relating to voters registration in one registration centre or registering more than once in the same registration centre or section 16(2)<sup>41</sup> relating to possession of more than one valid voters card, or section 24(1)<sup>42</sup> relating to registration of voters shall be liable on conviction to a fine not exceeding ₦100,000 or imprisonment for a term not exceeding one year or both. Offences of buying or selling voters cards in contravention of section 23 attracts a fine not exceeding ₦500,000 or imprisonment not exceeding two years or both.

Any person who uses duress or threats of any kind to cause or induce any person or persons generally to refrain from registering as a voter or voters or in any way hindering another person from registering as a voter commits an offence and is liable on conviction, to a fine not exceeding ₦500,000 or imprisonment not exceeding 5 years.

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<sup>39</sup> Daniel Calingaert, *Rigged Elections and How to Stop Them*. American University Summer Institute on Democracy and Elections, 2009. Vol. 2 P.16

<sup>40</sup> Electoral Act 2010 (as amended)

<sup>41</sup> Electoral Act 2010 (as amended)

<sup>42</sup> Electoral Act 2010 (as amended)

Section 31 of the Act relates to the submission of list of candidates and their affidavit by political parties, while a political party which presents to the commission the name of a candidate who does not meet the qualifications stipulated in section 31 commits an offence and is liable on conviction to a maximum fine of ₦500,000 while a person who nominates more than one person for election to the same office in contraventions of section 32 commits an offence and is liable on conviction to a maximum fine of ₦100,000 or imprisonment for 3 months or both.

Section 77(1)<sup>43</sup> of the Act guarantees access to election documents by parties in an election petition and by section 77(2)<sup>44</sup> any Resident Electoral Commissioner who willfully fails to comply within 7 days of an application for access to such documents commits an offence and is liable on conviction to a maximum fine of ₦2,000,000 or imprisonment for a term not exceeding 12 months, or both.

By section 81<sup>45</sup> of the Electoral Act, a political party or association which contravenes the provisions of section 227 of the Constitution of the Federal Republic of Nigeria<sup>46</sup>, which prohibits retention, organization, training or equipping quasi-military organizations commits an offence and is liable on conviction to a fine of ₦500,000 and ₦700,000 for any subsequent offence; and ₦50,000 for every day that the offence continues. While a person who aids and abets a political party to contravene section

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<sup>43</sup> Electoral Act 2010 (as amended)

<sup>44</sup> Electoral Act 2010 (as amended)

<sup>45</sup> Electoral Act 2010 (as amended)

<sup>46</sup> 1999 Constitution (as amended)

227<sup>47</sup> commits an offence and is liable on conviction to a fine of ₦500,000 or imprisonment for a term of 3 years or both.

Section 86<sup>48</sup> of the Act criminalizes the refusal of political parties to provide information or clarification to the Independent National Electoral Commission in connection with their activities and consequently attracts a fine of not less than ₦500,000. While offence relating to finances of political parties in section 88 and 89<sup>49</sup> of the Act attract the same penalty.

Section 91<sup>50</sup> of the Act criminalizes contravention of limitation of election expenses. A Presidential Candidate who knowingly contravenes it is liable to a maximum fine of ₦1,000,000 or imprisonment for a period of 12 months or both. In the case of Governorship election contravention and conviction attracts a fine of ₦700,000 or imprisonment for 9 months or both. In the case of Senatorial seat elections in the National Assembly contravention and conviction attracts a fine of ₦600,000 or imprisonment for 6 months or both. In the case of House of Representative seat election in the National Assembly contravention of the law and conviction attracts a fine of ₦500,000 or imprisonment for 5 months or both. In the case of State House of Assembly election, contravention of the law and conviction attracts a fine of ₦ 300,000 or 3 months imprisonment or both. In the case of Chairmanship election to an Area Council, contravention of the law and conviction attracts a fine of ₦300,000 or 3

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<sup>47</sup> 1999 Constitution (as amended)

<sup>48</sup> Electoral Act 2010 (as amended)

<sup>49</sup> Electoral Act 2010 (as amended)

<sup>50</sup> Electoral Act 2010 (as amended)

months imprisonment or both. In the case of councillorship election to an Area Council, contravention and conviction attracts a fine of ₦100,000 or 1 month imprisonment or both. Section 91(9)<sup>51</sup> of the Act also provides that no individual or other entity shall donate more than one million naira (₦1,000,000) to any candidate and any individual who knowingly contravenes the section shall on conviction be liable to a maximum fine of ₦500,000 or 9 months imprisonment or both. Moreover, by section 91(12)<sup>52</sup> of the Act, any accountant who falsifies or conspires or aids a candidate to forge or falsify a document relating to his expenditure at an election or receipt or donation for the election or in any way aids and abets the breach of the provisions of section 91 of the Act commits an offence and on conviction is liable to 10 years imprisonment.

Part IV of the Electoral Act, 2010<sup>53</sup> (as amended) also creates separate offences and prescribes penalties for them. Offences in relation to voters registration, etc (Section 117) attracts a maximum fine of ₦1,000,000 or 12 months imprisonment or both; offences in respect of nomination, etc in section 118(1) carries a maximum term of imprisonment for 2years while offences in respect of nomination under section 118 (3) is liable on conviction to a maximum fine of ₦50,000 or for a term of imprisonment of not less than 10years or both. Disorderly behaviour at political meetings (Section 119) carries a maximum fine of ₦500,00 or imprisonment for 12 months or both; improper use of voters cards (Section 120) attracts a maximum fine of ₦1,000,000 or imprisonment for 12 months or both; improper use of vehicles (Section 212) attracts a maximum fine of ₦500,000 or imprisonment for 6 months or both; Impersonation and

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<sup>51</sup> Electoral Act 2010 (as amended)

<sup>52</sup> Electoral Act 2010 (as amended)

<sup>53</sup> Electoral Act 2010 (as amended)



voting when not qualified (Section 122) attracts a maximum fine of ₦500,000 or imprisonment for 12 months or both; dereliction of duty (Section 123) by any officer appointed under the Act or by any polling officer attracts a maximum fine of ₦500,000 or imprisonment for 6 months or both; while anybody who announces or publishes an election result knowing same to be false shall be liable to 36 months imprisonment. A Returning Officer or Collation Officer who delivers or causes to be delivered a false Certificate of Return shall be liable to 3 years imprisonment without an option of fine and the same punishment applies to any person who delivers or causes to be delivered a false Certificate of Return knowing it to be false; bribery and conspiracy (Section 124) attracts a maximum fine of ₦500,000 or imprisonment for 12 months or both; requirement of secrecy in voting (Section 125) attracts a maximum fine of ₦100,000 or imprisonment for 6 months or both; wrongful voting and false statements (Section 126) attracts a maximum fine of ₦100,000 or imprisonment for 6 months or both; voting by unregistered person (Section 127) attracts a maximum fine of ₦100,000 or imprisonment for 6 months or both; disorderly conduct at elections (Section 128) attracts a maximum fine of ₦500,000 or imprisonment for 12 months or both; offences on Election Day (Section 129) (1) attracts a maximum fine of ₦100,000 or imprisonment for 6 months or both; while by (Section 129)(4) anybody who snatches or destroys any election material shall be liable on conviction to 24 months imprisonment; undue influence (Section 130) attracts a maximum fine of ₦100,000 or imprisonment for 12 months or both; threatening (Section 131) attracts a maximum fine of ₦1,000,000 or imprisonment for 3 years.

Despite the creation of these offences by the law and the sanctions provided for them, few offenders are apprehended and prosecuted by the various security agencies in Nigeria. The consequence is that the offences remain in the statute books as mere offences while candidates engage in competitive rigging. Consequently, the candidate who out-rigs the other is declared the winner while the opponent is forced to proceed to the election tribunal as the underdog to struggle with the person with the power of incumbency.

Those, who cannot stand the corruption and violence that attend the electoral process disengages from the process for fear of being maimed and killed by political thugs. This results in voter apathy and loss of legitimacy by the electoral process. The regime brought to power by fraudulent means faces the crisis of legitimacy, as it finds it difficult to command the confidence of the people and that of the international community as a result of its illegitimacy. The moment this happens, there is also the possibility that the international community may impose sanctions on the regime. There may be street protests and civil disobedience that may bring political and economic activities to a standstill. This may also lead to the ascendance of antidemocratic force in the country.

### **Electoral Offences and Sanctions Regime.**

Although the law prescribes the processes and procedures for the legitimacy of elections, the same law also recognizes that things may not always go as prescribed. In which case, candidates and political parties that participated in an election may question the legitimacy and legality of such elections before the election tribunals set up for that

purpose. The law also recognizes the fact that some attempt to come to power through illegal means. It is on the basis of this that the law has created electoral offences and prescribed punishment for those that breach the provisions of the law.

People expect that elections will be credible and conducted in accordance with the law and the constitution. However, when the electoral framework are manipulated to achieve pre-determined outcomes, the credibility of the process and its outcome are put in doubt. When elections are rigged or manipulated, those who lose such elections are most likely to reject the results. However, they are more likely to accept the results of an election conducted in accordance with the law and the constitution.

The issue of effective sanctions for breaches of election laws, rules and procedures poses an important challenge to the credibility of elections in Nigeria. The debate in Nigeria with respect to the administration of electoral justice relates not only to the inadequacy of existing provisions on electoral offences, but also the seeming inability to prosecute and secure convictions of electoral offenders<sup>54</sup>.

Even when such culprits are apprehended on Election Day they are quickly released when their “masters-the politicians-step in” to secure their release.

According to *BLACK LAW DICTIONARY*<sup>55</sup> election can be defined as “the process of selecting a person to occupy a public office or the exercise of a choice; the act of choosing from several possible rights or remedies in a way that precludes the use of other rights or remedies”.

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<sup>54</sup> Report of the Electoral Reform Committee, Volume 1, Main Report, December 2008, P.134-145.

<sup>55</sup> Seventh Edition P. 536

This is the usual mechanism by which modern representative democracy fills offices in the legislature, sometimes in the executive and judiciary, and for regional and local government. This process is also used in many other private and business organizations, from clubs to voluntary associations and corporations. Moreover, *BLACK LAW DICTIONARY* defined<sup>56</sup> malpractice “as an instance of negligence or incompetence on the part of a professional”.

We have noted that most of the act constituting electoral malpractices is criminal offences under the Electoral Act. The position of the law is that if the commission of a crime by a party is directly in issue in any proceedings, civil or criminal, it must be proved beyond reasonable doubt. Section 138(1) of the Evidence Act,<sup>57</sup> provides that “if the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt”. On the burden and standard of proof allegation of corrupt practices in an election petition, the court of Appeal in the case of *ONI v ODEYINKA*<sup>58</sup> held that:

*An allegation of corrupt practices during an election amounts to an allegation of a criminal act; and the petitioner who makes such allegation has the onus to prove the allegation beyond all reasonable doubts as provided by section 138 of the Evidence Act. In the instant case, the petitioner testified that he witnessed the stuffing of the ballot boxes with irregular thumb printed ballot papers but did not report the criminal act to the police at their station which was adjacent to the polling station. Furthermore, the petitioner’s agent signed Exhibit A as a correct statement of the election result at the polling station. The petitioner therefore*

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<sup>56</sup> Seventh Edition P. 971

<sup>57</sup> Cap E14 Laws of the Federation, 2004

<sup>58</sup> (1999) 8NWLR(pt562) 425, at 430-431 paras G-H

*failed to discharge the burden of proof on him as required by law.*

In the case of *ALHAJI ADAMU BATARI DEBA v. DAUDA ALLZAGI*<sup>59</sup>, it was stated that Electoral offences are criminal in nature and the onus is therefore on the appellant to prove them beyond reasonable doubt. In the instant case, the appellant did not discharge that onus and the Election Tribunal correctly evaluated the evidence before it when it concluded that the evidence as adduced by the appellant was manifestly inconsistent.

This was an appeal against the decision of the election Tribunal dismissing the appellant's petition. The court of appeal, in a unanimous decision, dismissed the appeal and affirmed the decision of the Tribunal. There are different types of electoral offences or malpractices, they are as followings;

## **2.6 RIGGING AND OVER-VOTING**

This is the most notorious form of electoral malpractices in Nigeria and is also the most common type of malpractice or electoral offences that have been committed in Nigeria's elections. Rigging could take the form of falsification of election results. In the case of *SERIKI v. ARE*<sup>60</sup>, it was held that "the trial court found that the election was replete with irregularities and malpractices on both sides and consequently the election was declared void". The above decision was based on the equitable proposition that a man will not be allowed to take advantage of his own wrong doing, in which the above statement of the law it is clear that where a petitioner who himself has participated in

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<sup>59</sup> (1999) 5 NWLR P.117

<sup>60</sup> (1999) 3 NWLR (pt 595) P. 469 at 480 - 481

electoral malpractices, is asking for a declaration that he won the election, the court will deny him such a remedy. The effects of illegality like rigging or over voting are to render the election void and of no legal effect. On the nature of victory achieved through election malpractices the court of Appeal in the case of *NGWN v. MBA*<sup>61</sup>, stated that, “A victory achieved through the instrumentality of election rigging is a farce and a pyrrhic one. Such a victory is often created as in the instant case by electoral officers who should not be trusted with serious assignment relating to electoral process”.

However, once irregularity or malpractice is proved for instance, where it is established that the malpractice which was perpetrated by the agents of the party who won the election and condoned by the presiding officer caused some detriment to the other party, the election will be nullified.

In the case of *DR KAYODE FAYEMI v. MR OLUSEGUN ONI*<sup>62</sup>, the court of appeal stated that ‘the election in the ten local governments in Ekiti state over the gubernatorial election in 2007 is nullified on the ground that there is over-voting and rigging, in which the court ordered a fresh re-run election within 90days in the ten local governments.

*VOICE OF AMERICA (V.O.A)*<sup>63</sup> in its website stated that “Former Secretary of State Madeleine Albright who was one of the observers in election expressed her disappointment when she stated that, “In many places and in a number of ways the electoral process failed the Nigerian people.

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<sup>61</sup> (1999) 3 NWLR (pt 595) 400 at 409 paras D-F

<sup>62</sup> (1999) 8 NWLR (pt 62) 425 at 430-431 paras G-B

<sup>63</sup> [www.voiceofamerica.com](http://www.voiceofamerica.com) accessed on 05/3/2015

The head of the European Union observer mission, Max Van Den Berg, also offered scathing comments when he stated that, “The 2007 State and Federal Elections have fallen far short of basic international and regional standards for democratic elections and the process cannot be considered to be credible” Asked if there was orchestrated rigging, the top E.U. Observer had this to say. “In several places, yes, and in others, very magic results,” he said.

## 2.7 UNDUE INFLUENCE

According to *BLACK LAW DICTIONARY*<sup>64</sup>, undue influence can be defined as improper use of power or trust in a way that deprives a person of free will and substitutes another’s objective”. Undue influence is also an offence under the Electoral Act. This could involve the threatened use of force directly or indirectly on opposing candidates or voters, abduction of the opposing party pooling agents, prevention of access to the media or anything that prevents the free use by a voter. Section 131<sup>65</sup> provides that;

*Any person who directly or indirectly, by himself or by another person on his behalf, makes use of threat or makes use of any force, violence, or inflicts any minor or serious injury, damage, harm or loss on or against another person in order to induce or compel that person to vote or refrain from voting, or a fraudulent device, commits the offence of undue*

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<sup>64</sup> Eighth Edition P. 1537

<sup>65</sup> Electoral Act 2010 (as amend)

*influence and is liable in conviction to a fine of ₦100, 000 or imprisonment for 3 years.*

To vitiate an election, the undue influence complained of must have been perpetrated against individual voters. Once it is established that there is a threat, it is immaterial that the person using it has no power to carry it out. To constitute undue influence, a threat must be serious and intended to influence the voter. However, what is important in determining whether a threat is serious or not is the effect on the petitioner threatened. If an employer dismisses an employee for political reason, or a complainant is influenced to vote for a particular candidate due to a threat of eviction, such act would constitute undue influence.

According to *COMPASS MAIL NEWSPAPER*<sup>66</sup> which reported that in Ondo State gubernatorial election in 2007, a former secretary to the State Government Isaac Kekemeke was reported to be carrying gun and shooting to threaten the voters to refrain from voting for a particular candidate.

## **2.8 BRIBERY**

Bribery could take the form of patronage, cash payment, and gift of valuable items such as motor cars, food items, promises or offer of loan e.t.c. Bribery is an offence under the electoral Act.

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<sup>66</sup> [www.compassnewspaper.com.ng](http://www.compassnewspaper.com.ng) accessed on 14/2/2015



According to Black Law Dictionary<sup>67</sup>, bribery means “the corrupt payment, receipt, or felicitation of a private favour for official action. Bribery is a felony in most jurisdictions”. According to Section 124<sup>68</sup> of the Electoral Act, bribery means:

*Any person who directly or indirectly by himself gives, lends or agrees to give or lend, or offers, promises, to Endeavour to procure any money or valuable consideration to or for any voter, for any person on behalf of any voter in order to induce any voter to vote, to refrain from voting at any election, Upon or in consequence of any gift, loan, offer, promise, procurement of the return of any person as a member of a legislative House or to an elective office, commits an offence and is liable on conviction to a maximum fine of ₦100, 000 or 12 months imprisonment or both.*

From the foregoing it is clear that the bribe need not to be money, it may be other valuable consideration. According to the *LEARNED EDITORS OF HALSBURY’S LAWS OF ENGLAND*<sup>69</sup>, the following acts could amount to bribery; that is: (a) excessive payment (b) gift or promise of refreshment (c) payment to a voter of his travelling expenses on the condition that he would vote for a particular candidate (d) employment of any person to render valueless service. It must be noted however, that unconditional payment or promise of payment to voter of his travelling expenses does not amount to bribery.

## **2.9 TREATING**

Treating involves provision of any food, drink, entertainments e.t.c. to any person for the purpose of corruptly influencing that person to vote for a particular candidate or

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<sup>67</sup> Eighth Edition P. 186

<sup>68</sup> Electoral Act 2010 (as amended)

<sup>69</sup> Encyclopedia accessed on 10/3/15

refrain from voting. It must be noted that treating would not apply to mutual provision between equals or treating in connection with business matters. To vitiate an election it must be established that the treating was corrupt. It will not amount to treating to provide refreshment at a political meeting but where the meeting is called solely to provide food or refreshments and thereby influence their votes, then it will constitute treating. Under the Electoral Act for treating to vitiate an election or return, it must have been done in reference to an election and it must be for the purpose of influencing the voters to vote one way or the other. According to Section 130 (a) (b)<sup>70</sup> of the Electoral Act, provides that

*Any person corruptly by himself or by any other person at any time after the date of an election has been announced, directly or indirectly gives or provides or pays money to or for any person for the purpose of corruptly influencing that person or any other person to vote or refrain from voting at such election, or on account of such person or any other person having voted or being a voter, corruptly accepts or takes money or any other inducement during any of the period stated in this section commits an offence and is liable on conviction to a fine of ₦100,000 or 12 months imprisonment or both.*

## **2.10 SNATCHING OF ELECTION RESULTS**

It is not uncommon for a losing party to attempt to pull a quick one against the successful party by using thugs to snatch the election results, with the unwholesome intention of rendering the election inconclusive. In some cases this nefarious act is perpetrated through the active connivance or concurrence of the losing party agents. The question that arises is: will snatching of election results warrant exclusion of lawful

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<sup>70</sup> Electoral Act 2010 (as amended)

votes cast at the election? The question was answered in the negative in the case of NJOKU v. OSIMIRI<sup>71</sup> where AKAAS, JCA declared;

*since all the parties have agreed that the election was free and fair, I do not see any justifiable reason why PW1 (Eve Osuagwu) should decide to cancel the result of Umouzu pooling booth simply because the petitioner had snatched the form (Exhibit p16) when she returned the said form to the presiding officer to correct the mistake he had made. The act of snatching an election result does not warrant excluding any lawful votes cast at an election. PW3 gave evidence stating that on 5/12/98 he was at the returning centre when the results of Eziudo ward 6 were announced. He said that the result from Umuzu showed that PDP had 229 votes and APP had nothing. It is a copy of EC8A (1) in respect of Umuzu booth that was admitted in evidence as exhibit p16. Exhibit p16 was signed by the agent of APP and PDP. Once the votes in Umuzu booth were added to the other votes scored by the petitioner, it was clear that he was the winner of the election once it is shown that the petitioner had 299 votes which were valid votes but were not added to his scores, the inevitable conclusion which any reasonable tribunal ought to make is to add those votes which were excluded. When this is done, the petitioner clearly had a majority of votes and ought to have been returned as the winner of the election.*

It was reported by the compass *MAIL NEWSPAPER*<sup>72</sup> that the then Deputy Governor of Ondo State, Otunba Oluwateru turned INEC Ballot box into his staff of office by snatching it in broad day light in Akure the State Capital, Oluwateru was caught red handed on the gubernatorial Election day, April 14, 2007. His trial commenced thereafter but nothing was reported again about his conviction or how the trial was concluded.

## **2.11. IMPERSONATION AND VOTING WHEN NOT QUALIFIED.**

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<sup>71</sup> (1999) 5 NWLR (pt 601) at 120

<sup>72</sup> [www.compassnews.paper.com.ng](http://www.compassnews.paper.com.ng) accessed on 02/04/15

This type of election malpractice is very common in the Nigeria election, looking at the last general election; this practice was committed in most polling stations in Nigeria. Unlawful voting by a person not qualified to do so; bringing into polling station a ballot paper issued to another person; voting in the name of some other person, whether such name is that of a person living or dead or of a fictitious person and other forms of impersonation. According to Black Law Dictionary<sup>73</sup> impersonation means “the act of impersonating someone. Also termed personation.

False impersonation means the crime of falsely representing oneself as another person”.

According to Section 122 (1)<sup>74</sup> of Electoral Act:

*Any person who Applies under this Act to be included in any list of voters in the name of some other person, whether such name is that of a person living or dead or of a fictitious person, Having once to his knowledge been properly included in a list of voters under this Act as a voter entitled to vote at any election applies, except as authorized by this Act, to be included in any other list of voters, prepared for any constituency as a voter at an election, Applies for a ballot paper in the name of some other person, whether such name is that of a person living or dead or a fictitious person.*

Having voted once at an election applies at the same election for another ballot paper, Votes or attempts to vote at an election knowing that he is not qualified to vote at the election, or Induces or procures any other person to vote at an election knowing that such other person is not qualified to vote at the election. Commits an offence and is liable on conviction to a maximum fine of N 100,000 or 12months imprisonment or both”.

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<sup>73</sup> Seventh Edition P. 757

<sup>74</sup> Electoral Act 2010 (as amended)

## 2.12. VOTING BY UNREGISTERED PERSON

This type of election malpractice is very common in the Nigeria election. Considering the last general election; this practice was committed in most polling stations in Nigeria. Electoral malpractice can occur in a situation where the votes scored by the parties exceed the number of accredited voters. It follows from the definition that where it can be shown that there were discrepancies in the figure between accredited voters on the queue to vote and the total scores of both parties in the said polling stations or where the results in various polling stations within a constituency are characterized by irregularities due to discrepancy in the number of registered voters and total scores of the two contestants, the court will have no difficulty in declaring that there is electoral malpractice.

In the case of *TERAB v. LAWAN Aikawa*, *JCA*<sup>75</sup> laid down the test for determining whether or not there is a malpractice in an election as follows:

*A situation where the votes scored by both parties at the election exceeded the number of the accredited voters on the queue is as much an electoral malpractice as the case of the total votes cast to both parties exceeding the number of accredited voters for the accreditation of voters and the actual voting are only the extreme signposts for determining whether malpractice has occurred. In between these two extreme signposts is the situation where votes cast exceed the number of accredited voters on the queue.*

Applying the above test, once it can be shown that there exist absences or correlation between the number of accredited voters and those who actually voted or the number of

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<sup>75</sup> (1992) 3 NWLR (pt231)587-588. paras .G.H

votes cast outweighs the number of accredited voters, then there is an electoral malpractice. Section 127(1) and (2)<sup>76</sup> of the Electoral Act provides that:

*Any person who knowingly votes or attempts to vote in a constituency in respect of which his name is not on the register of voters commits an offence and is liable on conviction to a maximum fine of ₦100,000 or to imprisonment for a term of 6 months or both, or any person who knowingly brings into a polling unit during an election a voters card issued to another person commits an offence and is liable on conviction to a fine of ₦100, 000 or imprisonment for 6 months or both*

### **2.13. INTIMIDATION OF VOTERS.**

According to *BLACK LAW DICTIONARY*,<sup>77</sup> intimidations mean “unlawful coercion; extortion”. Intimidation of voters includes the possession of an offensive weapon or the wearing of an intimidating dress or decoration in polling station or within 300 meters of it, and it also include using of thugs in order to intimidate the voters not to vote for their own choices in polling station. Nevertheless this type of criminal electoral act is highly prohibited in any election.

A Voter is the person who engages in the act of voting, or the person who has the qualifications necessary for voting. In the 2007 and 2011 generally Elections, the case was different because thugs and some politicians turn themselves to voters after they had casted their own votes. Voters were intimidated to an extent that thugs were used to

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<sup>76</sup> Electoral Act 2010 (as amended)

<sup>77</sup> Seventh Edition P. 827

beat them and create fear in the minds of the voters in order to drive them from casting their votes. This illegal act made the 2007 and 2011 elections not to be 'free and fair' elections because, in some cases voters were not able to vote in some polling stations, and apart from that, those who casted their votes believed that their vote no longer counts. *THE DAILY TRIUMPH NEWSPAPER*<sup>78</sup> in a report titled, "Restoring confidence in Nigeria's electoral system" stated that a man called Mr. Sunday Ade, a 35-year-old businessman, and his friends were playing football on the Agege Motor Road on April 14, 2007, the day Nigeria held its 2007 general elections. That they were asked why they were playing football instead of going out to vote. That Ade simply replied that going to vote was a waste of time. "Why should I suffer to vote when I know that my vote will not count?" he asked. Such apathy, typified by registered voters doing "something more serious" on election days, appears to be the norm in many parts of Lagos and other States during elections. Investigations have shown that many Lagos residents, especially the Youth, usually turn the streets into mini football stadium on election days. *Chief Joseph Akinlotan*, a social affairs commentator, says it is "tragic" that the youth, who are the nation's future leaders, should demonstrate such apathy towards the nation's political system and that "Nigeria must do everything possible to arrest the interest of not only the youth, but also every other adult if we are serious about having a stable democracy".

Malam Yunusa Abdu, a youth activist in Bauchi, fears that such apathy is likely to continue. "Many Nigerians see democracy as a government of politicians, by politicians and for politicians. "Unless we can change such impression, it will be difficult to

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<sup>78</sup> [www.nigeriandailynewspaper.com](http://www.nigeriandailynewspaper.com) accessed on 14/4/15

change the general apathy that sees Nigerians boycotting elections.” For many political analysts, such apathy is “dangerous” for democracy which is a system of government that thrives on participatory and representative governance. “Election remains an essential part of democracy, and that system of governance is headed for imminent collapse if public interest ebbs,” says Dr Muhammad Usman of the Political Science Department, University of Abuja.<sup>79</sup> Worried by the trend. Leading politicians recently organized a consultative meeting to find the way out. Alhaji Balarabe Musa, Leader of the Conference of Nigeria Political Party (CNPP) who spoke at the meeting, expressed regret that the country had failed to build an enduring democratic culture.<sup>80</sup> He said the right institutions that would ensure political responsibility and accountability as well as a stable and sustainable political party system were still lacking.

In spite of early positive promises, a vibrant and democratically run political party system rooted in grassroots participation and the popular aspirations of the people has failed to takeoff. “Elections in Nigeria have been a travesty and a complete sham, lacking in openness, fairness and credibility. Dr Sola Mudasiru, of the Department of Political Science, University of Lagos,<sup>81</sup> said that the 2007 polls provided a good opportunity to break with the past and rekindle public confidence in the electoral and democratic process. Unfortunately, this was not to be. The elections, like many others in Nigeria since independence, were unpalatable and characterized by violence and political conflicts. He alleged that the 2007 elections were a betrayal of the Nigerian

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<sup>79</sup> [www.Nigeiadailynewspaper.com](http://www.Nigeiadailynewspaper.com). accessed on 04/04/15

<sup>80</sup> [www.Tribuneonlineng.com](http://www.Tribuneonlineng.com). accessed on 02/05/15

<sup>81</sup> [www.Tribuneonlineng.com](http://www.Tribuneonlineng.com). accessed on 02/05/15



people as the results did not reflect the wishes and aspirations of the people. *Prof. Ben Nwabueze*,<sup>82</sup> who spoke on behalf of the PATRIOTS on national political issues, noted that Nigeria had continued to be governed under a non-democratic constitution put together by the military. According to him, it was the quest for genuine democracy that gave birth to the National Conference and Referendum Bill prepared by the PATRIOTS in 2001. The bill proposes two democratic processes for the review of the Constitution via a national conference that is democratically constituted in the fashion of a Constituent Assembly to prepare a draft constitution. According to him the democratic character of the national conference, is shown by the fact that its members would be appointed not by the government, but by the ethnic nationalities in the six geo-political zones of the country. Reinforcing the belief that constitution review remained the gateway to political reform in Nigeria,<sup>83</sup> *Mr. Olasupo Ojo*, President of the Committee for the Defense of Human Rights, said that Nigerians were capable of evolving a people's constitution.

He argued that true federalism and genuine democracy must be built on the foundation of legitimate constitution, and that failure to do so would spell doom for the Fourth Republic. Speaking on Nigeria's democracy,<sup>84</sup> *Dr Tunji Braithwaite*, the National Chairman, Nigerians united for Democracy (NUD), said that what was being practiced today was not democracy at a "wholesale fraud" "It is wrong for those who did not win elections to be allowed to continue in office and revel in the spending of public funds and even enjoy privileges of public office" he said.

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<sup>82</sup> [www.premiumtimesng.com](http://www.premiumtimesng.com). accessed on 12/01/16

<sup>83</sup> [www.thenigerianvoice.com](http://www.thenigerianvoice.com). accessed on 07/02/16

<sup>84</sup> [www.thisdaylive.com.accessed.com](http://www.thisdaylive.com.accessed.com) accessed on 07/02/16

According to him, the NUD has always maintained that election disputes should be resolved before any party to such dispute is sworn into office. He argued that “electoral evil” could never be validated by time lapse, saying that the people had shown their disdain for the total processes by boycotting the by-elections and re-runs for some of the nullified Governorship elections. “Without genuine elections, it will be difficult to see democracy in Nigeria as government of the people by the people and for the people.” This definition shows that people choose their representatives as they cannot participate directly in governance at the same time.” But with many people already disenchanted, political analysts wonder how public interest and confidence in the electoral process can be re-built. To make that possible, *Alhaji Rauf Aregbesola*<sup>85</sup>, the AC gubernatorial candidate in Osun in the 2007 elections, suggested that regulatory bodies must work towards that. He listed such bodies to include the EFCC, ICPC, the National Judicial Council, Body of Benchers, the Nigerian Bar Association and the Code of Conduct Bureau.

Others are the Legal Practitioners Disciplinary Committee and non-governmental organizations. “Such groups must stand firm in the defence of the people’s mandate and prevent the orchestrated travesty of justice and democracy in the country,” he said. According to Aregbesola, that the only way to forestall Nigeria’s imminent march towards a “ruinous path taken by Kenya and Zimbabwe”. But while government and interest groups seeking ways to win back the Nigerian voters. Political analysts<sup>86</sup> say that much will not be achieved if controversies continue to trail every election. They

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<sup>85</sup> [www.informationng.com](http://www.informationng.com). accessed on 18/02/16

<sup>86</sup> [www.nationalmirroronlinenet.com](http://www.nationalmirroronlinenet.com). accessed on 18/02/16

also say that Nigeria's democracy will continue to remain weak unless perpetrators of electoral fraud are prevented from enjoying the fruits of their misdeed.

## **CHAPTER THREE**

### **3.0 ELECTORAL LAWS IN NIGERIA**

The Electoral Process in Nigeria is a product of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act, 2010 (as amended) as well as rules, regulations and guidelines made by the Independent National Electoral Commission pursuant to the powers conferred on it by the Constitution of the Federal Republic of Nigeria 1999 as amended and the Electoral Act, 2010 (as amended).

The Constitution of the Federal Republic of Nigeria, 1999 being the fundamental law of the land sets the parameters and regulates and limits the powers of various tiers of government and its organs. The said Constitution creates the Independent National Electoral Commission and sets out its powers, its mandate and the parameters for carrying out its functions and conducting elections in Nigeria. The Electoral Act, 2010

(as amended) also sets out the procedures and processes for giving effect to the functions ascribed to the Commission by the constitution.

Both the Constitution and the law envisage that elections in Nigeria must be credible and that legitimate votes must produce legitimate results. They presume that the processes and procedures through which various categories of office holders come to power are constitutional and in accordance with the rule of law and due process. It is therefore not permitted for the electoral management body, the government in power, political parties and their candidates to breach the provisions of the Constitution and the law in pre and post-election procedures and come to power through means and procedures not recognized by the Constitution and the law. For elections to be credible, the various stakeholders must play by the rules of the game and must have some level of fidelity to the law.

In other words, the laws regulating the conduct of elections and the conduct of all the political actors must be clear and not subject to arbitrary ambiguity and self-contrived lacuna. The Electoral Commission and its officials must also have both financial and administrative independence to function effectively. There is therefore a rebuttable presumption that in the conduct of elections, the electoral management body, the candidates, political parties and all the major stakeholders complied with the law and the Constitution.

### **3.1 THE ROLE OF ORGANS OF GOVERNMENT AND OTHER BODIES IN THE ELECTORAL PROCESS**

In any election in the world, the role of government and other bodies are very important in any election and democracy because, without the participation of the government's organs and other bodies in an election or democracy, such an election or democracy is invalid, unacceptable and unrecognized election. Therefore, both the government's organs and other bodies always play a vital role in an election or democracy in society. The government's organs and other bodies are: the press, party agents, police forces, independent national electoral commission, election observers, legislature and judiciary.

### **3.2 THE PRESS**

According to Black Law Dictionary<sup>87</sup> press can be defined as “the news media; print and broadcast news organizations collectively or could refer to one or more subsets of media defined either by function or form”. Media in this context includes the print media, electronic media and the internet information super highway.

According to Comparative Media Laws in the United Kingdom and United States by Idugboe J.E,<sup>88</sup> the press has freedom of expression which is defined as:

*The right to publish and distribute opinions without obtaining permission, without threat of punishment, intimidation or molestation, but modified only by laws that protect the fundamental rights of fellow members of the society and enhance public order, public safety, public decency and the security of the state.*

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<sup>87</sup> Seventh Edition P. 1203

<sup>88</sup> Idugboe J. E. Ethics and critical thinking Journal; 2013, vol. 2013 issue 4. P. 40

Publication as used here is not restricted to the print media; it extends to the electronic media such as radio, television and the internet. A free press is one of the pillars of freedom in any democratic society<sup>89</sup>.

However, press freedom has to do with the gentlemen of the press. Therefore, freedom of expression can be described as a genus. While press freedom can be regarded as the species. Freedom of expression and the press is not absolute but is subject to limitations<sup>90</sup>. It is subject to laws, which are reasonably justifiable in a democratic society<sup>91</sup>. Restrictions on freedom of expression and the press take the form of constitutional, statutory and common law limitations. However in Nigeria, the press or journalist has the code of ethics for Nigerian journalists, in which without it, no Nigeria journalist or press can carry out their jobs. Journalism entails a high degree of public trust<sup>92</sup>.

To earn and maintain this trust, it is normally imperative for every journalist and each news medium to observe the highest professional and ethical standards in the exercise of these duties, a journalist should always have a healthy regard for the public interest. Truth is the cornerstone of journalism and every journalist should strive diligently to ascertain the truth of every event. Conscious of the responsibilities and duties of a journalists as purveyors of information. It is the duty of every journalist to observe provisions. Decisions concerning the content of news should be the responsibility of a professional journalist. A journalist should strive at all times to enhance press freedom

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<sup>89</sup> w.w.w.Informatiuonng.com. accessed on 14/03/16

<sup>90</sup> w.w.w.nationalmirroronlinenet accessed on 14/03/16

<sup>91</sup> w.w.w.premiumtimesng.com. accessed on 14/03/16

<sup>92</sup> w.w.w.premiumtimesng.com. accessed on 14/03/16

and responsibility. The idea of the media as watchdog of the public interest is crucial to democratic theory, whether of the liberal, social, or socialist variety. The Nigerian media are imbued with a self-conscious tradition of outspokenness, which at the limits sometimes teeters on anarchy. The crusading names of such titles as the Vanguard, the Punch, the Guardian, and the Champion testify to a militant press ideology dating back to the nineteenth century. As one senior Nigerian journalist Prof. Jerry Gana put it, “The media are charged with the role of holding governments accountable and guarding against the abuse of power, hence the need to raise countervailing structures of surveillances to monitor government’s activities and stem an inherent disposition towards excess, but in most cases, the press or journalist are not encouraged to play their very role as a watchdog of the public interest, because their safety is not guaranteed. According to him, to Protect Journalist, it was stated that “Nigerian broadcaster are attacked amid election dispute”

It was reported that a journalist and a dozen staffers of a public broadcaster in southwestern Oyo State were injured on Wednesday when armed supporters of a faction of the PDP party ransacked the station, according to local journalists and news reports. The attack was apparently prompted by the station’s announcement that local elections would take place on Thursday, local journalists said.

A split within the PDP over the timing of the election resulted in violent unrest in the state for weeks. According to local sources, at least five people were killed during that polls. The Broadcasting Corporation of Oyo State (BCOS) was forced off the air on the Wednesday after the broadcast, a dozen minibuses carrying vandals armed with axes,

machetes and firearms pulled in front of the station fired in the air, smashed equipment, and assaulted staffers, according to Senior Editor Ninyo Adediji, who was among the victims. Television presenter Josephine Adekola was forced to end a live news bulletin, but escaped unhurt. The mob carried away keys, parts of the station's radio and television transmitters were destroyed, the car of Chief Editor Tunji Alavaye was vandalised. "Most of the staffers were treated for light injuries and discharged, but two remained in intensive care for some time. According to Oyewole. The station remained off the air for some days as police posted officers to guard the station. The violent attack on the Broadcasting Corporation of Oyo State is highly condemned" CPJ Executive Director Joel Simon said and calls on the authorities to conduct a full and transparent investigation of this attack and bring all responsible parties to justice."

The attack on BCOS, located in Ibadan, 244 miles (393 km) southwest of the capital, Abuja, came in the context of a political row between the then embattled outgoing Governor Rashidi Ladoja and his successor, Deputy Governor Christopher Alao-Akala, according to Wale Ojo Lanre, chairman of the Nigeria Union of Journalists in Oyo State. Akala, backed by a powerful local politician, had sought to hold the local elections after he took office. Thirty-three district representative seats were up for grabs. This local dispute was a reflective of a larger national split within the PDP, putting former president Olusegun Obasanjo against the then outgoing Vice President Atiku Abubakar. This whole play down in Oyo State buttresses the fact that journalist should be non partisan, but seek to serve the general public with correct information.



It was gathered that the then Vice President and several Governors, including Adoja, had opposed efforts to amend the Constitution to allow Obasanjo to seek an additional term and was the reason the broadcast house was harassed for its coverage. It was also reported that intelligence agents raided the studios of private African Independent Television Abuja in connection with a paid political program. Media houses should guard against being partisan.

### **3.3 THE INDEPENDENT NATIONAL ELECTORAL COMMISSION**

Section 1 of the Electoral Act<sup>93</sup> provides that “the Independent National Electoral Commission as established by Section 153 of the 1999 Constitution of the Federal Republic of Nigeria shall be a body corporate with perpetual succession and may sue and be sued in its co-operate name.” The role of the Electoral commission in preparing for elections is as Stipulated in the statute. One of such major functions is to conduct election. For instance section 4(1) (a) of the Independent National Electoral Commission Decree<sup>94</sup> provides that “the functions of the commission shall be to organize, conduct, and supervise all the elections and matters pertaining to election into all the elective offices provided in the Constitution of the Federal Republic of Nigeria...”

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<sup>93</sup> Electoral Act 2010 (as amended)

<sup>94</sup> Independent National Electoral Commission Decree 1998

In the case of *OTUNBA FATAL SOWEMIMO v. OTUNBA DAYO AWOBANJO*<sup>95</sup> the power of the Independent National Electoral Commission to conduct elections was in issue. It was held by the Court of Appeal that by virtue of section 94(1) and 148(1) of the State Government (Basic Constitutional and Transitional Provisions)<sup>96</sup>, the Independent National Electoral Commission (INEC) shall be responsible for the organization and supervision of the elections under the Decree, notwithstanding any provision to the contrary in any other enactment or law. The election must however be conducted in accordance with the Decree or any other enactment or law, regulations, guidelines, rules or materials issued or made by the Commission. The court also held that by virtue of section 142(2) of the State Government (Basic Constitutional and Transitional Provisions)<sup>97</sup> where an election has started on the appointed date but is before conclusion substantially disturbed by any intervening cause, the election may be cancelled and the independent Nation Electoral Commission (INEC) shall appoint a new date for a fresh election. This provision gives wide powers to the Election Commission on the conduct of elections. It can cancel an election, decide the date of election and decide on when to re-arrange an election. The Electoral Commission acting under its powers under the Decree can conduct a fresh Election where an election tribunal nullifies an election. In the case of *INEC v. PDP*<sup>98</sup> the Court of Appeal held that by virtue of Section 1379(1) of the State Government (Basic Constitutional and Transitional Provisions) INEC can hold a fresh election where an Election Tribunal nullifies an election. By virtue of S.2 (a) of the Independent National Electoral

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<sup>95</sup> (1999) 7 NWLR P. 610 at 532 paras F.H;

<sup>96</sup> Decree No 3 1999

<sup>97</sup> Decree No 3 1999

<sup>98</sup> (1999) 11 NWLR (pt. 626) 194 (para C) (Case No 30)

Commission Establishment Act<sup>99</sup>, INEC has the power to Organize, conduct and supervise election into the office of the Governor and Deputy Governor of a State.

In *BAWA v. BALARABE*<sup>100</sup>, the court also held that by virtue of Section 94(1) of Decree 3 of 1999, the conduct of elections into the office of Governor of a State shall be done in accordance with the provisions of the Decree and any other enactment or law, regulations, guidelines, rules or manuals issued or made by the Commission. Here, the only limitation to the power of the Commission in the conduct of election is that it must be in accordance with the provisions of the Decree and any other enactments. It seems clear that the complaint that is available to an aggrieved person is that the conduct of an election by the Commission was not in accordance with the provisions of the Decree or any other enactment and not that the Commission has no power to conduct election. After the constitution of Electoral Commission and the appointment of electoral officials or officers, the Commission must ensure that all the provisions, regulations and guidelines are strictly complied with. Electoral officers are saddled with the primary duties of performing the functions provided for under the enabling law. The exercise of these functions is not vitiated by any defect in title or want of title. In the case of *ONMEJE v. OTOKP*<sup>101</sup>, it was held that by virtue of section 85(2) of Decree No 36 of 1998<sup>102</sup> an election shall not be questioned by reason of a defect in title or want of title of the person conducting the election or acting in the office given the right to conduct the election. It is usual to preclude members of an Electoral Commission from holding elective posts for a certain period after they might have served in the commission,

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<sup>99</sup> Decree No 3, 1999

<sup>100</sup> (1999) 6 NWLR (pt. 605) 61 at 69

<sup>101</sup> (1999) 4 NWLR (pt. 600) 1518 at 526-527 (paras H.A)(Case No 32

<sup>102</sup> State Government (Basic Constitutional and Transitional Provisions) Decree No 3 1999

which disqualified members of the commission from holding elective offices for a period of 5 years immediately on ceasing to be a member of the Commission. Upon the setting up of the Commission and assignment of functions to it by the Decree that sets it up, the Commission is statutorily saddled with duties preparatory to the holding of an election. It is these duties that shall be discussed hereunder.

### **3.4. THE PARTY AGENTS**

According to Black's Law Dictionary<sup>103</sup>, the word agent is defined "as one who is authorized to act for in place of another, a representative". In election petition parlance, agency relationship is much more the same as in the normal legal parlance. It is the law that an agency relationship involves the consent of the agent and the principal that one should act for the other. Thus agency arises from a contract or agreement between the parties, expressed or implied. Political parties are in the best position to assess the political environment, and to identify the obstacles to free campaigning as well as the implications of the choice of electoral system. This is especially true of parties that can establish a presence at all polling stations on Election Day. Political party monitors are therefore an essential component in maintaining election integrity. Political party monitors are agents of the political parties competing in an election<sup>104</sup>.

In most systems they are given the authority not only to monitor the electoral process but to intervene if they believe that legal requirements are not being respected. They can also contribute directly to the administrative process by signing ballots and tally

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<sup>103</sup> Seventh Edition P 64

<sup>104</sup> [www.nepalelectionportal.org](http://www.nepalelectionportal.org) accessed on 03/14/16

sheets to validate them, and by participating in voting administration and vote counting. This is a voluntary role in most systems, and voting and the count go ahead even if no political party monitor is present. The roles played by monitors and candidates differ from the Candidates' campaign working to convince voters to support them. Monitors are observers and should not attempt to influence those they are observing. Monitoring must be performed in an impartial and professional manner.

The very presence of candidates may create a danger of tension and conflict. Even if candidates do not behave in a threatening manner, voters may feel intimidated by their presence and lack confidence in the secrecy of their vote, particularly in areas characterized by inter-party conflict and violence. For this reason, election regulations could prohibit the presence of candidates within polling stations, in keeping with international practice. Party agents who are well trained in the various aspects of the election law and regulations will be best able to monitor the proceedings and protect the interests of their party. However, their role will be constructive only if they understand exactly what is expected of them, what their rights and responsibilities are, and what they are not permitted to do. Political parties must ensure that each of their agents is properly trained, and prepared to abide by the electoral code of conduct and all other applicable regulations. In the case of *AYUA v. ADASU*<sup>105</sup>, the 1<sup>st</sup> Respondent contested and won the Governorship election conducted in Benue State on 14/12/1991 on the platform of the Social Democratic Party (SDP). The appellant, on the other hand, contested the same election on the platform of the National Republican Convention (NRC). The 1<sup>st</sup> Respondent was declared the winner. The appellant being aggrieved

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<sup>105</sup> (1992)3 NWLR (pt 231)598,611

with the outcome of the election filed a petition through his Counsel *Chief Afe Babalola*, SAN before the Election Tribunal alleging, in the main, a violation of the Electoral Laws in the sense that the 1<sup>st</sup> Respondent's agent in the election engaged in tribal, sectional and religious campaigns in various modes and manner through newspapers, leaflets, tapes, posters and use of collars in breach of the Electoral Law.

The petition was dismissed hence the appeal to the Court of Appeal. One of the crucial issues that arose for determination was whether Mr. Lorne was agent of the 1<sup>st</sup> Respondent and if he authorized the publication being complained of and whether he did so as the agent of the Respondent or with his special or general authorization or that of his party. The Court of Appeal in deciding proof of agency relationship in election cases held, amongst others, that in order to prove agency, it is not necessary to show that the person was actually appointed by the candidate or that he was paid. The crucial test, according to their Lordships, is whether there has been employment or authorization of the agent by the candidate to do some election work or the adoption of his work when done. The candidate, however, is liable not only for the acts of agent whom he has himself appointed or authorized, but also for the acts of agents employed by his election agent or by any other agent having authority to employ others. He may be liable even though his election agent refused to employ the agent. It was further held that in the absence of authorization or ratification, the candidate must be proved either by himself or his acknowledged agents to have employed the agent to act on his behalf, or have, to some extent, put himself in the hands, or to have made common measure with him for the purpose of promoting the candidate's election; that the candidate must

have entrusted the alleged agent with some material part of the business of the election. On the same issue, their Lordship further held that a candidate cannot be held responsible for what other people did in the form of “unsolicited aid” of which he or his election agent was ignorant. Thus, the 1<sup>st</sup> respondent was exculpated from the allegations. The full Panel of the Court of Appeal had opportunity to restate this principle in the 1999 Presidential Election petition in the case of *FALAE v. OBASANJO*<sup>106</sup>, where it was held that apart from the fact that in absence of authorization or ratification, the candidate must be proved either by himself or his acknowledged agents to have employed the agent to act on his behalf before he would be held liable. That in addition, mere non interference on the candidate’s part with a person who is feeling interested in the candidate’s success, act in support of his course is not sufficient to saddle the candidate with any unlawful acts of theirs.

### **3.5. THE ELECTION OBSERVERS**

The observers can observe the election with respect to any voting procedures, the counting of votes, and determination and declaration of results. All observers must be accredited with the INEC and they must carry out their roles in neutral manner. They must wear prescribed identification apparel that carry the words “election observers” as well as mark or symbol of an accredited organization on the front and back. Any communication at a voting station must occur through the presiding officer. Observers must comply with any order given by the presiding officer or member of security

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<sup>106</sup> (1999) 4 NWLR (pt 599) 476

services acting on the instruction of that officer. According to Black Law Dictionary<sup>107</sup> observer can be defined as “a representative of a country or international organization who attends meetings of an international body to which the observer’s country does not belong. Observers do not vote or sign documents, but they are sometimes allowed to participate in discussions”. Observers observe all the steps of the counting process, be present to view the opening of the seals of ballot boxes and all the containers before counting, take notes and write reports on all aspects of the counting process, and raise any possible concerns with the Counting Officer.

Looking at the 2011 General Election, the International Observers played a very vital role in which, they blast Nigeria’s elections; they called for urgent action. As reported by the Voice of America, the International observers condemned Nigeria’s 2011 election, that was dominated by the ruling party-dominated State, legislative and presidential elections, saying authorities failed the Nigerian people. Meanwhile, national observers and human rights activists are calling for a re-vote, and for the national assembly to take over the process. It was reported by VOA’s Nico Colombant from Abuja<sup>108</sup>. Former Secretary of State Madeleine Albright was one of the observers expressing her disappointment. “In many places and in a number of ways the electoral process failed the Nigerian people,” she said. A monitor and Human Rights Activist, Festus Okoye<sup>109</sup>, says the problems are so serious, they should be handled directly by the National Assembly, rather than going through the courts.”In several States, elections did not take place,” he said. “So if elections did not take place in several

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<sup>107</sup> Seventh Edition P. 1104

<sup>108</sup> [www.voa.com](http://www.voa.com) Accessed on 1/4/16

<sup>109</sup> [www.postnigeria.com](http://www.postnigeria.com). Accessed on 16/3/16



states, what questions are you taking to the judiciary for them to handle? He further stated that International observers said it is up to Nigerians to decide on what to do in the next few weeks, after the election before all the current mandates expire, but agreed that urgent action is needed and that every possible peaceful avenue should be pursued. Election results from 2011 poll gave an overwhelming victory to the then ruling party of President Goodluck Ebele Jonathan and similar results are expected for the legislative poll, Goodluck Ebele Jonathan was declared the winner of the Presidential poll, with more than 24 million votes. These results were announced even though no voting took place in most places, because of violence, fraud, and disorganization in many parts of Nigeria.

Authorities said they did the best they could given to the complexities of Nigeria, Africa's most populous nation. The Institute of Human Rights and Humanitarian Law (IHRHL) working in partnership with the National Democratic Institute for International Affairs<sup>110</sup> (NDI), with offices in Washington, DC, United States of America (USA) and Abuja, Nigeria, have made public their report on the 2011 polls in Nigeria. Executive Director of the IHRHL, *Anyakwee Nsirimovu*<sup>111</sup>, said there were two elections which took place in Nigeria during this period: the Presidential and National Assembly elections-comprising of the senate and House of Representatives. According to him their reports covered the process in Rivers State, Bayelsa and Akwa-Ibom states where they deployed the following numbers of observers, strategically spread within the local governments areas of the aforementioned states: Rivers - 750; Bayelsa, 200

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<sup>110</sup> [www.scoop.co.nz](http://www.scoop.co.nz). accessed on 1/24/16

<sup>111</sup> Ibid

and Akwa Ibom, 400. The IHRJ-IL also coordinated the deployment of additional 350 election observers in Rivers State on behalf of the Transition Monitoring Group (TMG) in Rivers State. Civil society organizations in the country faced immense hostility from the Federal government and the Independent National Electoral Commission (INEC) headed by Professor Attahiru Jega. Their grouse mainly is the fact that domestic and international election observation would bring to the municipal and international glare their sheer incompetence in the management of the elections. It was reported that tension was deliberately raised in the Niger Delta Region just before the election commenced to discourage both international and local observers to visit the region to observe the elections.

This meant that international observers failed to appear by reason of human insecurity, which no doubt was good news to the authorities.

For the authorities at this point, it was their dreary designs and details against the few local civil society voices. He further stated that they still went ahead to participate in the observation in spite of the hurdles that INEC deliberately presented.

Voter registration and civic education are keys to any effective representative elections. The preparation for these elections was fraught with high level incompetence openly displayed by INEC. In spite of huge amount of resources available to INEC both from its Federal budgetary allocation and International donors, it failed to take voter education, networking and partnership with civil society seriously. The voter registration exercise witnessed a fire brigade approach, which manifested in so many Nigerians losing their right to participate in the elections. The failure by INEC to

publicly display the Voter Register in accordance with the Electoral Law made it impossible for remedial action by eligible voters, who could have made necessary corrections or raised legitimate objections therein. The electronic data capturing machine introduced by INEC, purportedly to checkmate election rigging proved not only to be a fraud that must be duly investigated, but a monumental deception and failure<sup>112</sup>.

It was reported by *Anyankwee Nsirimovu* in the guardian news paper that in most of the communities of the LGAs, polling units were reduced into private residences of Party Chiefs who decided who voted or not. Intimidation was rife and right to vote so seriously violated. He stated that reports from his team of observers across the states monitored indicated that the elections were seriously marred by fundamental system failures to the extent of compromising the integrity of the ballot. Some of these irregularities and malpractices; include hoarding of result sheets by INEC, lack of secrecy in balloting, massive thumb printing, no serial numbers on presidential ballots, non inclusion of names of candidates on the ballot paper, partisanship of INEC officials with those snatching ballot boxes and papers also intimidation of voters. Across the state monitored the result from INEC is not a representative of what observers witnessed at the various polling units in the states. The elections have been blatantly rigged in favor of the PDP. According to all credible reports from the observers, turnout in these states of registered voters was extremely low, but official returns being announced by INEC is pegging voter turnout at roughly 90 percent across the states. Observers witnessed near empty ballot boxes to collation centers across the states, but

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<sup>112</sup> [www.guardian.ng](http://www.guardian.ng), accessed on 03/12/15

electoral officials are reporting voter turnout in those same areas at more than 95 percent. Elections in the three states that are monitored, were fraught with fundamental irregularities, and failed to meet the minimum civilized standard of the conduct of free and fair elections, it therefore must be voided. His position is that no credible elections took place in Rivers, Akwa Ibom and Bayelsa States. We accordingly reject the elections so blatantly announced in the same states. He further stated that it is an unprecedented insult to the peoples of these states, who have been deliberately disenfranchised to call what just happened in those state as short comings or mere irregularities. What happened in these state is a complete failure of the system. So long as there exists any government or authority in this country, they can not be proud of what has taken place it will remain hard to imagine the end of conflicts and violence, and indeed the possibility of genuine democracy and good governance in the already dehumanized Niger Delta region. This charade motivates those who have taken to violence and criminality as a means. The citizens of these states and civil society groups should rise up to maintain the statute of freedom that they have volunteered to struggle for.

### **3.6. THE POLICE FORCES**

In many election police forces play a very vital role in order to maintain peace and order during the election period. According to Black Law Dictionary<sup>113</sup>, police forces can be defined as “the governmental department charged with the preservation of public order, the promotion of public safety, and the prevention and detection of crime.

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<sup>113</sup> Seventh Edition P. 1178

According to political analyst *Jide Ogunsanwo*<sup>114</sup>, Cultivating a secure and peaceful environment before and on election day is an issue that requires fresh thinking, even though it is an issue for reform it can not exactly be ignored.

He stated further that in the past elections in this country 1999, 2003, 2007, 2011 and 2015 respectively it became clear that there were nowhere near enough police to maintain a sufficient presence throughout the nation. A solution to this was to wire private security groups and vigilante organization of serve as security at pooling stations. Most attention was focused on the police, who had received guidelines from the Police Service Commission and were informed that they operated under the direction of the presiding officer at each polling station (Transition Monitoring Group 2003). The 2010 Electoral Act did not appear to anticipate the substantial and visible role that informal security organizations ended up playing. Section 94 of the Electoral Act<sup>115</sup> prohibits any offensive weapons at political rallies or polling centers unless that person is a lawfully authorized member of a security agency to carry arms. Since private security organizations play an important role in election now, it is critical to clarify their chain of command in the polling area. They should be clearly informed of who they answer to through materials and orientation training.

The use of thugs by political candidates was also widespread in all elections. Section 95(6) of the Electoral Act<sup>116</sup> prohibits persons, candidates and parties from using private security for purposes other than personal protection. Yet some candidates are

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<sup>114</sup> [www.thenigeria.voice.com](http://www.thenigeria.voice.com), accessed on 03/02/16

<sup>115</sup> Electoral Act 2010 (as amended)

<sup>116</sup> Electoral Act 2010 (as amended)

quite open about this. One gubernatorial candidate from one of the major parties explained to me that every politician has his thugs because it is the only way to get the other parties to play by the rules. In 2011 many of these thugs were simply dismissed as “area boys.” But once the elections were over it appears the gangs in some areas failed to simply dissipate, particularly in the South. It is significant that paramilitaries that once limited their activities to economic sabotage and occasional hostage taking now openly discuss forming coalitions with each other around issues such as increasing the derivation formula or amending the constitution.

### **3.7. THE JUDICIARY**

According to *Black Law Dictionary*<sup>117</sup> judiciary mean “the branch of government responsible for interpreting the laws and administering justice”. An independent judiciary is universally acknowledged as one of the most defining and definitive features of a functional democracy<sup>118</sup>. Many, in fact, see it as an essential bulwark against abuse of power, authoritarianism and arbitrariness. How it functions as well as how the various stakeholders in a democratic experiment appropriate its interventions and role in the polity are critical indicators of the health or otherwise of a democracy. There seems to be nowhere in the world presently where this reality is more apt as it is in Nigeria, one of the world’s largest democracies with a population of over 140 million people.

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<sup>117</sup> Seventh Edition P. 852

<sup>118</sup> Joel N. “Redemptive Role in Nigeria’s Democracy” (2007) vol. 7 P. 64

A big thanks to the judiciary, the last hope of the common man. Democracy in Nigeria is taking a strong foothold. For effective administration of justice in a democracy, courts have definite and decisive roles to play. Courts are Government institutions that settle legal disputes and administer justice. The judicial arm of government, resolves conflicts involving individuals, organizations, government and political parties. It also has the power to review the actions of both the executives and the legislature. Although, lack of judicial independence affects the performance of the judges in Nigeria, when it comes to judicial review and delivering justice. Nevertheless, with numerous constraints facing the institution, it manages to provide fair justice to the poor people and powerless individuals. The judicial arm of government now remains the faith of Nigeria's in bringing justice to reign in Nigeria, due to its numerous landmark achievements recorded so far. Among the landmark judgment of the judiciary was the removal of lawmakers and Governors who occupy positions illegally and undemocratically. The judiciary has been playing pivotal roles in the dispensation of justice, and the public thus expect much from them. A situation whereby a common man will be sentence to life imprisonment or several years in prison for stealing a goat or a little sum of amount, while those carting away or embezzling public funds were given bail with the payment of some amount of money seem unjust. Justice is expected to be dispensed in accordance to the constitution and lay down rules and regulations. Judges are expected not to compromise justice or attach themselves to their Judgments. Now that Nigerians belief in judiciary as their last resort, they should strive to bring justice, tears of diligent relief, to Nigerians and protect the rights of the common people. Moreover, the judiciary should also strive hard to meet the challenges facing the

institution and facilitate good governance in the workings of government and sustaining democracy in Nigeria.

The Federal Government, however, should provide reasonable salary that would make Judges abstain from bribery and corruption and work towards ensuring the wellbeing of Nigerians. Nigerian Journalists should be given the free hands to operate, unravel what is being covered up and assist in unraveling bad and corrupt leaders in Nigeria to be sanitized and free from corrupt leaders. The Nigeria Police force and other law enforcement agencies should always protect the lives of judges from anything that could stop them from bringing justice to reign. With the fact that Nigerians are looking on to the judiciary as their last hope, it is advisable for the judiciary not to fail Nigerians and make sure that those elected illegally and undemocratic in Nigeria are brought to book and put to where they belong. The Nigeria Bar Association<sup>119</sup> should also work hard by ensuring that their members are free of corruption and stop influencing justices through monetary means. Lawyers should be among the purveyors of good governance. They should work for the progress of Nigeria, strengthen the Fundamental Human Rights and embark on heavy crusade against corruption which is the mother of all crimes in Nigeria.

The Judiciary recorded a major triumph when the Supreme Court gave a momentous judgment where it confirmed that the gubernatorial candidate voted for by the electorates in the oil rich Rivers state in the Niger Delta region during the 2007 general elections was Hon. Rotimi Amaechi, a former Speaker of the State House of Assembly

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<sup>119</sup> Report of the Electoral Reform Committee, volume2, main Report, December 2008, P.134-145 accessed from [www.informationng.com](http://www.informationng.com).



and not Sir Celestine Omehia. It further declared that Amacehi “be sworn in immediately”. After many decades of ruinous, and by accounts the most rapacious military rule in modern history, Nigeria witnessed acquisition to civil rule in 1999, which many, though, argued was well stage managed to the overbearing interests of the retreating military establishment given that it resulted to the emergence of Chief Olusegun Obasanjo. Himself a former military dictator, as the then president via an electoral process that had all the trappings of a high level military suverings. Thus began in earnest Nigeria’s third attempt in full blown constitutional **practice** experiment following the botched experiences of 1966 and 1983. However, with a combination of an agitated local populace that has also become largely disenchanted and disillusioned with military rule. Among the three Arms of Government in post Military rule in Nigeria, the one that looked instutionalized to carry the tottering weight of the other two, almost made incapable by years of military rule, is the Judiciary. Though it had been a victim of the systemic and systematic abuse orchestrated by the military in the Nigerian polity. This however did not vitiate the fact that as at 1999, the judiciary, as weakened and disenabled as it was, had more capacity to function in the emerging democratic Nigeria. Though many commentators and analysts on Nigeria since 1999 have had to express an almost unanimous view that the actions, of many Nigerian political office holders have been everything but democratic, there was also an overwhelming optimism in some quarters that democracy being a process and journey and not necessarily a destination, its continued experimentation would likely result to some semblance of perfection and orderliness. But, as optimistic as they have been, Nigerian politicians seem more distinct for their peculiar enthusiasm to convert known

democratic principles and values. The greatest evidence of such reality were events that was witnessed at the 2007 General Election. The General Elections was remarkable in more ways than one for the country: One, it mark the first civilian to civilian transition in Nigeria's chequered political history two, there were widespread fears that the country could implode if the elections is inconclusive and deadlocked leading to threat to peace and security not just in the West African sub region but the African continent in general given that one out of every five Nigerian is a Politician. As events, however, turned out, the elections were widely reported by local and foreign observers as the most fraudulent and flawed in Nigeria's electoral history, consequence of which was the demand by the opposition and civil society for its cancellation. The tell-tale signs for such fraud were all too evident. Being tied to the apron strings of a vicious executive arm and the ruling party; a corrupt political class that was as desperate for raw power and its associated perks than anything else. It was disingenuous in perverting electoral rules; political party structures that did not proffer fairness and justice equally to its members just as they lacked inbuilt capacity to manage intra party conflicting interests, and a compromised electoral system that favored the rich as against the poor and weak with impunity. All these resulted eventually in such acts as illegal and unconstitutional substitution of candidates at will by the powers that be at all level of governance across, flagrant disregards of rules as well as brazen acts of illegalities by government agencies such as the anti-graft agencies like the Economic and Financial Crimes Commission (EFCC), Independent Corrupt Practices Commission(ICPC). The Police was overtly sympathetic to the party in power at the centre, Peoples Democratic Party (PDP). These agencies brazenly determined which candidate to disqualify or

allow to contest elections even when they had crossed their various party hurdles. It was the expectations of many Nigerian that the only institution well primed and positioned to save the Nigerian political class from committing “*Hara-kiri*” that could endanger the democratic experiment was the judiciary. Expectedly, this is what the judiciary has been since after the 2007 General Elections. The first judicial intervention post 2007 elections was the judgment on Anambra State where the shambolic election of Andy Uba, a well known acolyte of the former president, Olusegun Obasanjo, was nullified on the ground that there was no need for an election *Abinitio* given that the election of Peter Obi, who was sworn in as governor in 2006 after a protracted legal battle to claim his mandate from Chris Ngige had not exhausted his four years tenure as at the time it was held. That judgment ended what many averred was the greatest rape on democracy in Nigeria where an individual was practically assured of electoral mandate even before vote was casted. The judiciary has variously played redemptive role in Nigeria’s democracy through declaration of landmark judgments that tended to put aright the many undoing’s and undemocratic actions of Nigerian politicians. This as well has gone a long way in re-assuring the citizens of the prospects and sustainability of democracy in the country. So far, beside the nullification of the election of Celestine Omehia in Rivers State by the apex court, election petition tribunals across the country have set aside the election of two governors in Kogi and Kebbi States on the premise that the electoral body, INEC unconstitutionally and illegally barred the opposing candidates from contesting the elections. In canceling the election in the two States, the judiciary displayed steely courage, wisdom and fair play. There are assertions that if the fore going is anything to go by, by the time the election petition tribunals wound up its

activities nationwide, many governors lost their illegally acquired seats. Against this backdrop, there is a spreading feeling of ecstasy by Nigerians, that the judiciary is assuming its position as the bastion of democracy in the country, the absence of which would have created a room for the continued reign of Tyranny of the Strong, Rich and Mighty. At no time in Nigeria's political history are citizen's optimism and belief in democracy so high as now because the judiciary seems awakened to its role to among others checkmate the arbitrariness of politicians, highhandedness of those in power and the illegalities and brazenness of a few privileged individuals.

### **3.8 THE LEGISLATURE**

According to Black Law Dictionary<sup>120</sup> legislature mean “the branch of government responsible for making statutory laws. The Legislature is an assemblage of the representatives of the people elected under a legal framework to make laws for the good health of the society. It is also defined in the Advance learner Dictionary<sup>121</sup> as “the institutional body responsible for making laws for a nation and one through which the collective will of the people or part of it is articulated, expressed and implemented”. The legislature controls through legislation all economic, social and political activities of the Nation. It also scrutinizes the policies of the Executive and provides the framework for the judiciary to operate. The Federal Government and most States have cameral legislature, consisting of a House of Representatives and a Senate”. The establishment of representative legislatures at the Federal and State levels of government by the Constitution of the Federal Republic of Nigeria 1999, after a long

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<sup>120</sup> Seven Edition P. 911

<sup>121</sup> Eight Edition P. 798

period of Military rule devoid of any representative or accountable governance, essentially customized a fresh attempt at constitutionalism in Nigeria. Since constitutionalism requires its efficiency, a differentiation of governmental functions and a separation of the agencies which exercise governmental powers, the 1999 Constitution<sup>122</sup> employed the principle of separation of powers, as a cardinal feature for the operation of Constitutional democracy in Nigeria. The burden of making authoritative rules, through legislations, for the Nigerian society has always been lodged essentially within the legislative jurisdiction. However, the executive's role in the formulation of bills that are passed into laws, and the articulation of governmental policies and objects often result into clash of constituencies between the legislature and the Executive. The power of the National Assembly consists of the power to make laws for the people and the good of the government of the Federation or any part thereof with respect to any law in the Exclusive Legislative List set out in Part 1 of the second schedule to the Constitution which deals with specific items which only the National Assembly has the sole prerogative to legislate upon, to the exclusion of the State and Local Government. The primary functions of law-making and policy formulation often overlaps the oversight functions of the Legislature. The experience of the National Assembly in law making especially the circumstances surrounding the passing of the Electoral Act 2010 (as amended), the Independent Corrupt Practices Commission(ICPC)Act 2000, touches upon the independence of the legislature from the

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<sup>122</sup> O.O. Aguada, understanding the Nigeria Constitution of 1999 (MIJ Publishers) 2000, p. 9–13.

executive in the performance of its oversight duties ,contained in section 82-89 of the Constitution<sup>123</sup>.

In the long term, the most important function of the legislature is the enactment of enlightened laws for the benefit of the populace and the general function of criticism, and scrutiny of executive policies and decisions. The openness of parliamentary proceedings, the transparency of all its processes, the availability of its records and debates to researchers and members of the public, all help to establish a healthy culture of democratic governance.

The greatest authority which a legislature wields in a democratic society is not its legal powers as contained in the Constitution, but its moral authority, as the conscience of the nation and protector of the sovereignty of the people. Thus members of the legislature must be men and women of high moral authority and integrity .Equipped with such authority; a mere resolution of an Assembly could be more effective than a binding law.

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<sup>123</sup> Constitution of the Federal Republic of Nigeria 1999(as amended)

## **CHAPTER FOUR**

### **4.0. EFFECT OF ELECTORAL OFFENCES ON THE ELECTORAL PROCESS IN NIGERIA.**

Electoral Offences and electoral frauds have been one of the major challenges to the growth and development of the country's democracy and these has grown steadily worse and more daring. However, some of the challenging issues of democratic development in relation to electoral malpractices/offences will be discussed as follows.

#### **4.1 SUBVERSION OF THE WILL OF THE PEOPLE**

According to *Black Law Dictionary*, Subversion means “the process of overthrowing, destroying, or corrupting” which in this context can mean overthrowing the will of the people or the decision-makers by the majority of citizens by means of rigging or snatching of ballot boxes. Looking at the 2007 Election, one will agree that the will of

the people was overthrown by means of rigging and snatching of ballot boxes. The 2007 election has come and gone, but the effects and the reactions are still reverberating in the polity. These elections were significant because they were to ensure seamless civilian to civilian transition; the first of its kind in Nigeria.<sup>124</sup> The 2007 election combined all elements of electoral fraud and rigging to achieve an unprecedented level of misconduct in the election history of Nigeria. Some of the frauds perpetrated are the elimination of strong contestant from the parties other than the ruling party by means of illegal disqualification, election materials like ballot papers and result sheets were hijacked by armed thugs and officials who carted away ballot boxes, and returned them later to collation centers, stuffed with illegal thumb printed ballot papers. Where this did not achieve the required level of predetermined votes, the independent Electoral Commission cooperated with the ruling party to allocate votes to the party on the result sheets. In some cases, the Electoral Commission's headquarters at Abuja, announced results on the state elections in favour of the ruling party when the votes were still being collated and counted.<sup>125</sup> As was stated by the network of Mobile Election.

According to the network of Mobile Election monitors (NMEM),<sup>126</sup> it was reported that "The 2007 state and federal elections have fallen far short of the basic international and regional standards for democratic elections. They were marred by poor organization, lack of essential transparency, widespread procedural irregularities, significant evidence of fraud, particularly during the result collation process, voter disenfranchisement at different stages of the process, lack of equal conditions for contestants and numerous

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<sup>124</sup> Remi Anifowose; Violence and Politics on Nigeria; NOK Publishers International(1982)p257-268.

<sup>125</sup> Electoral violence in Nigeria publishers Council on Foreign Relations Press (2010) [www.mobilemonitors.org](http://www.mobilemonitors.org). accessed on 11/10/15

<sup>126</sup> [www.spokanecity.org](http://www.spokanecity.org) accessed on 13/10/2015



incidents of violence. As a result, the elections have not lived up to the hopes and expectations of the Nigerian people and the process cannot be considered to have been credible. This is all the more regrettable since they were held in an improved atmosphere in which freedom of expression and assembly were broadly respected during campaigning, the judiciary played a generally positive and independent role and the people showed remarkable commitment to the electoral process and waiting patiently to vote in often very Difficult circumstances”. All the reports of observers and monitors both international and local came to the very same conclusion namely; that the so called elections were a charade marked by outright vote rigging, ballot box snatching, fraudulent allocation of votes and criminal thumb printing of illegally acquired ballot papers. According to the article titled *The Much Needed Call for Nigerians to Stand Up For Democracy and Against Kangaroo Election* by *Adewale Francis*<sup>127</sup> contained the fact that, in politics, nothing happens by accident. If it happens, you can bet it was planned that way. The article further stated that the People’s Democratic Party (PDP) is determined to end any hope of the Nigerian people for democracy in Nigeria. Their perfidy act has been in view ever since they contrived to impose *Obasanjo* in 1999. The very heart and soul of the People’s Democratic Party (PDP) is antithetical to democracy. He said that you don’t expect a party formed by corrupt and convicted governors and military to “mid-wife” democracy. The so-called

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<sup>127</sup> [www.tribuneonline.com](http://www.tribuneonline.com).

Africa's biggest party is a gargantuan fraud, a criminal enterprise set up to perpetuate the subjugation of the will of the people of Nigeria.<sup>128</sup>

He further stated that democracy is no longer on life support in Nigeria, it is dead! to all lovers of democracy and believers in free, fair and violence-free elections, the Nigeria people have a long hard way to travel before warding off the anarchic vote-rigging and vote-manipulating cabal.<sup>129</sup> Like South African cleric Desmond Tutu said in the article titled; Desmond Tutu's long crusade,<sup>130</sup> no one could have convinced him apartheid will end in his country in his lifetime, but it did. So no doubt elections in Africa and Nigeria at large can get better. Africa has celebrated Ghana, following the successful conclusion of the country's presidential election where the opposition won the presidential election. This is understandable, by African standard, the victory of an opposition political party, against an incumbent ruling political party is a feat. This is so because the outcome of elections in Africa, tends to be determined by the government in power, instead of the votes of the people. In the African continent, sitting governments do not pretend to want to remain in power even when the people's votes says otherwise. In Ghana, the opposition, National Congress Party (NCP), broke a record by defeating the New Patriotic Party (NPP), which was in office.<sup>131</sup>

In Nigeria, election has become so predictable that the exercise is no longer worth the trouble. In the country, politicians see elections as a "do and die" affair and do everything, especially using the foul means to win, In the Nigeria, the ruling political

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<sup>128</sup> [www.tribuneonline.com](http://www.tribuneonline.com)

<sup>129</sup> [www.premiumtimesng.com](http://www.premiumtimesng.com)

<sup>130</sup> [www.sahistory.org.za](http://www.sahistory.org.za)

<sup>131</sup> Electoral Violence in Nigeria, Publisher Council on Foreign Relations Press. [www.allafrican.com](http://www.allafrican.com). Accessed on 05/01/16.

party uses the instrumentality of office to win elections. In the Nigeria, opposition political parties play to the gallery, whipping up sentiment only, instead of taking actions that would put them ahead of a non- performing ruling political party in the hearts of the voters. In the Nigeria, electoral officers get cowed and compromised in organizing elections.

Nigerians should learn to be selfless in the exercise of whatever duty assigned to them. Electoral Officers should know that they owe the country, not any political party or president an obligation, politicians should play by the rule. Always trying to use the shortcut to victory would not help the country's democracy to grow. Nigerians should resolve and actually ensure that their votes count in any election, if the Nigerian electorates brace up to the task and make up their mind that **enough is enough** then the **Nigerian politicians** would know when to accept or concede defeat.<sup>132</sup>

If the Nigerians electorates resolve to say enough is enough as well as mean it, the journey to the emancipation of the people from the clutches of political monopoly would begin. This can be achievable, as this was evident in the just concluded election, where the People Democratic Party (PDP) lost the Presidential Election to the opposition party All Peoples Congress (APC) which happens to be the first time such thing has happened in the history of Nigeria. Never the less, this is not to say that the elections were without itches here and there but with such enthusiasm and effort by the Nigerian people the electoral process will become stable and this will enhance free and fair elections.

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<sup>132</sup> [www.nationalmirroronline.net](http://www.nationalmirroronline.net). Accessed on 10/01/16

## 4.2 THE BURDEN OF DECIDING THE WINNER OF AN ELECTION

It is clear that the judiciary is saddled with the onerous task and eminent role in the determination of election conflict or disputes. The peculiarity of Nigeria's electoral disputes stem from the pandemic and economic social malaise ranging from corruption, ethnism and thuggery. Election petitions are therefore meant to impartially deal with the complaints arising from the election. Election matters involve fundamental and weighty issues of law and facts. It therefore requires a specialized court or tribunal to adjudicate over election petitions as a panel. This is largely because of the need to have balanced and fair ideas and views to arrive at equitable and just decisions that will foreclose violence and unrest. In accordance to this, Section 140 of the Electoral Act<sup>133</sup> establishes the avenue for the determination of election petitions arising from elections through Election petition Tribunal. Section 133(1)<sup>134</sup> states; that:

*No election and return at an election under this bill shall be questioned in any manner other than by a petition complaining of an undue election or undue return (in this bill referred to as an "election petition") presented to the competent tribunal or court in accordance with the provisions of the constitution or of this Act, and in which the person elected or returned is joined as a part.*

Section 285(1) and (2) of the Constitution of the Federal Republic of Nigeria 1999, also establishes Election Tribunal as an avenue for the determination of disputes arising from election. However this section goes further to spell out three types of tribunals and a court that are vested with jurisdiction over certain categories of election petitions. These Tribunals and court are: (i) The Local government Election Petition Tribunal; (ii)

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<sup>133</sup> Electoral Act 2010 (as amended)

<sup>134</sup> Electoral Act 2010 (as amended)

The National Assembly Election Tribunal; (iii) The Governorship and Legislative Houses Election Tribunal; and (iv) The Court of Appeal.

The Local Government Election Petition Tribunal as the name implies, has exclusive original jurisdiction to determine whether any person has been validly elected into the positions of a councilor, a vice-chairman and a chairman of any local government within a state and the establishment of such tribunal is within the legislative competence of each State House of Assembly. Section 285(1) of the 1999 Constitution<sup>135</sup> makes provisions for the establishment of the National Assembly Election Petition Tribunal vested with exclusive original jurisdiction to, among other things, hear and determine petitions as to whether any person has been validly elected as a member of the National Assembly. Section 285(2)<sup>136</sup>, makes provision for the establishment in each state of the federation one or more election tribunals to be known as the Governorship and Legislative Houses Election Tribunals which shall exercise exclusive original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as a member of any Legislative House<sup>137</sup>. In the case *Buhari v. Yusuf*<sup>138</sup>, the Supreme Court held that an election petition is heard and determined by an appropriate election tribunal as usually provided by the 1999 Constitution, such provision is made under section 285 and the sixth schedule to the Constitution.

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<sup>135</sup> Part III, Constitution of Federal Republic of Nigeria 1999

<sup>136</sup> Part III, Constitution of Federal Republic of Nigeria 1999

<sup>137</sup> *UBA V. ETIABA* (2008) 6 NWLR P. 1160 at 162

<sup>138</sup> (2003) 14 NWLR (Pt 84) 446

In the case of *PETER OBI v. INEC*<sup>139</sup> it was held that election petition tribunal is not an all purpose court that can entertain all sorts of claims or relief. It is created for election matters alone. It was further held that the only adjudicating body that has exclusive jurisdiction to hear and determine election petitions is the Election Tribunal.

The fundamental role of the Election Petition Tribunals in Nigeria is to expose and undo the rape on democracy committed in various elections. The various election petition tribunals across the country have rekindled the hope of Nigerians once more in the polity. If not for the tribunal judgments, the year 2011 elections would have been a disaster for the country. It would have been a battle of guns. The brazen manner the 2011 election was rigged by politicians would have caused an unprecedented disaster for the country, had the election petition tribunals not done justice by nullifying such elections.

In election petition cases, as gleaned from the previous chapter, instances abound when the tribunal or court would not hesitate to nullify an election and order fresh elections or as the tribunal deems fit, or make an order that the petitioner is duly elected. This could only occur in cases where fraud, malpractice and non compliance with the provisions of the Electoral Act are alleged and it is proved to be substantial. The vanguard news paper made a report on how the judiciary meandered through political cases in 2008. It reported that if not for the exemplary performances of few courageous judges serving on the nation's bench, it would not be unfair to say that the judiciary disappointed in the performances of its sacred roles in the time past, this is so because of several

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<sup>139</sup> (2007) 11 NWLR (pt 1046) 565

controversial and conflicting verdicts that emanated from the hallowed temple of Justice in several political causes that came before it between 2003 to 2011, from the magistracy level to the Supreme Court bench verdicts suggesting that the judiciary under performance abound.

The aggrieved parties in some of the cases with controversial verdicts did not fold their arms as they filed petitions to the National Judicial Council (NJC) which has the statutory powers to dismiss erring judicial officers. Regrettably, in spite of several weighty petitions against some serving judges over their alleged questionable handling of some public interest litigations submitted to them, the National Judicial Council (NJC) has not been as proactive as expected. The happenings in the era of Justice Muhammad Lawal Uwais and Justice Salihu Modibo Belgore are yardstick to this conclusion.<sup>140</sup>

The implication of this is that many Nigerians are losing hope in the judiciary, a quick rundown of several political cases that came before different tiers of courts in the country towards the tail end of President Olusegun Obasanjo's administration in 2007, which dragged till 2008 and several others filed as soon as the baton of leadership changed hands on May 29, 2007, underscored the point being made. For instance, before Obasanjo handed over powers in 2007, several political disputes went to court. Few of such include the one filed by Hon. Rotimi Amaechi challenging his substitution by the People's Democratic Party (PDP), the one filed by Chief John Oluwole Fashogbon against Chief Albert Ahiodun Adeogun, another by Chief Ime Akpan

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<sup>140</sup> [www.vanguardnewspaper.com](http://www.vanguardnewspaper.com) accessed 03/18/16

against Senator Effiong Bob, these cases were all pre-election matters. Others are the election petitions filed by Major General Muhammad Buhari, Alhaji Atiku Abubakar, and Olapade Agoro and four others challenging the electoral victory of President Umaru Musa Yar'Adua. Several petitions filed by candidates in various states of the Federation including the one filed by Engineer Rauf Aregbesola of Osun State against Governor Olagunsoye Oyinlola. These set of case were all post election cases<sup>141</sup>. For the pre-election cases. Vanguard authoritatively reports that most of the cases were not determined by the regular court on time several years after the election which they sought court's intervention to participate in. Some of such cases are presently even hanging in that they have not been heard at all and it is even quite impossible to say whether there would be judgments on them. Worse still, even the pre election cases that were decided by the High Courts and the Court of Appeal provoked so much controversy that the apex court had to intervene. A good example that came to mind here is the one filed by Hon Rotimi Amaechi challenging the decision by the People's Democratic Party (PDP) to substitute his name with Sir. Celestine Omehia for the Rivers State gubernatorial election.

The fact of that case was that Hon. Amaechi contested the primary election conducted by the PDP for the Rivers' State gubernatorial seat and won with his name forwarded to INEC as the ruling party's gubernatorial flag-bearer. But before the election was held, the party, for no known reason, wrote INEC a letter substituting Amaechi's name with Sir Celestine Omehia. The former Rivers Speaker was aggrieved by the decision and challenged it in court. The case traveled from the high court to the Supreme Court twice

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<sup>141</sup> [www.vanguardng.com](http://www.vanguardng.com) accessed on 18/02/16



without the real issues raised therein addressed or pronounced upon with finality. Specifically, the Abuja trial High Court entered judgment against Amaechi but the Court of Appeal where the verdict of the trial court is being contested refused to hear his appeal on the grounds that Amaechi had been expelled from PDP and had been robbed of the *locus* to sustain the case. Amaechi disagreed with the Court of Appeal and went before the Supreme Court which held that the intermediate court was wrong to have declined jurisdiction. The Supreme Court, in a unanimous judgment, sent the case file back to the Court of Appeal and ordered it to give the matter an expedited hearing. But when the appeal came up for hearing before the appeal court, *Justice Rabi'u Danlami Muhammad* who presided over the panel of five justices that sat on the case refused to hear notwithstanding the express instruction by the Supreme Court and referred the case back to the apex court. The Chief Justice of Nigeria (CJN), *Justice Idris Kutigi* could not believe what happened. In fact, he first gave an administrative order that the case file must be returned to the Court of Appeal panel and that the matter must be given an expedited hearing. But when the Court of Appeal refused to heed to the CJN's instruction and when the matter eventually came up before his panel, he chided the five justices of the Court of Appeal for refusing to consider the merits in the appeal. He said their refusal to hear the case not only amounted to insubordination but was also alien to the tradition of the bench. He had to formally order the lower court to take the appeal.<sup>142</sup>

When the Court of Appeal eventually took the case of Amaechi, it was not surprising that the panel hid its face from the facts of the matter and entered judgment against him,

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<sup>142</sup> [www.vanguardnewspaper.com](http://www.vanguardnewspaper.com) accessed on 3/18/2011

Of course, at that time; supporters of Amaechi were already losing hopes. Amaechi had to come to the Supreme Court where a full panel of the Supreme Court endorsed him as the lawful candidate of PDP in the April 21, 2007 Election and ordered Sir Celestine Omehia, to vacate his seat with immediate effect. The apex court premised the order on its finding to the effect that Omehia was not the candidate of the then ruling People's Democratic Party (PDP) which won the gubernatorial election held in the state on April 14, 2007. The court specifically said that he held the office in error and illegally. The court however ordered the immediate swearing in of Amaechi in his (Omehia) place even though he never participated in the election<sup>143</sup>. The apex court said that since it had found that Amaechi was the lawful candidate of the then ruling party (PDP) that won the election in the state, it said that he was the winner of the gubernatorial poll, in law. The verdict which was unanimous touched on the correct interpretation and intendment of section 34 (2) of the Electoral Act 2006 which is now amended. Although the judgment of the Supreme Court corrected the injustice done to Amaechi by the PDP, the judgment of the Abuja Federal High Court and the Court of Appeal, Abuja division, was however, radical and controversial. For the post-election cases that came before the court, only few had been finally decided.

Another major post election case was that of Comrade Adams Oshiomole against Professor Osunbor of Edo state.

Oshiomole who was eventually declared winner in November 2008 by the Court of Appeal in Benin, he had to wait for eighteen months before he claimed his mandate. It was a landmark judgment that earned the judiciary a lot of commendations across the

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<sup>143</sup> [www.vanguardnewspaper.com](http://www.vanguardnewspaper.com) accessed on 3/18/2011

country, and of the few cases decided, majority of Nigerians felt that justice was not dispensed by both the trial and the final courts on the matters. A good example is the chain of petitions filed against the electoral victory of President Umaru Musa Yar'Adua. The fact of that case was that the Chairman of the Independent National Electoral Commission (INEC), Prof Maurice Iwu had declared the winner of the April 21, 2007 presidential election with 24.6 million votes. According to the results announced by INEC, he beat 24 other contenders, in a landslide. His closest rival, the former Head of State Major General, Buhari, was said to have polled 6.6 million while the presidential candidate for the opposition Action Congress (AC). Alhaji Atiku Ahubakar, with the third highest vote, was said to have polled 2.6million. Iwu said that Yar'Adua won the poll by about 70 per cent of the votes cast. The European Union invited by INEC to monitor the election, dismissed the poll as a charade and lacking in legitimacy. The then opposition spokesman, All Nigeria Peoples Party (ANPP). Chief Tom Ikimi, also dismissed the election as a sham. That was the situation when seven aggrieved presidential candidates in the controversial poll together with their political parties filed their petitions at the registry of the Court of Appeal sitting at the Presidential Election Petition Tribunal in Abuja to challenge the poll results. Among them were Dr Olapade Agoro of the Progressive Action Congress (PAC); Buhari, his political party, the All Nigeria Peoples Party (ANPP) and former Vice President Alhaji Atiku Abubakar of the Action Congress (AC). Others who went to court to challenge the election results were the presidential candidate of the All Progressive Grand Alliance Party (APGA), Chief Odumegwu Ojukwu; the presidential candidate of the Peoples Mandate Party (PMP), Dr Arthur Agwuncha Okonkwo; the presidential

candidate of African Liberation Party (ALP), Chief Emmanuel Osita Okereke and the presidential candidate of Hope Democratic Party (HDP), Ambrose Owuru. All of them sought to invalidate Yar'Adua election for sundry reasons including that the ballot papers used for the election were neither serialized nor bound in booklet contrary to the mandatory provisions of section 45 (2) of the Electoral Act 2006, now amended<sup>144</sup>.

The section reads: "ballot papers shall be bound in booklets and numbered serially with differentiating colours for each office being contested." Five of the eight petitions were struck out by the Presidential Election Petition Tribunal upon request by separate legal teams of President Yar'Adua and INEC. The petitions were each struck out on technical grounds while another maintained by ANPP was struck out upon the request by the party to withdraw it. Although some of the petitioners went on appeal before the Supreme Court, up till now, none of the appeals challenging the decision of the Court of Appeal striking out their petitions on technical ground was heard by the apex court.

The only two petitions that survived the technical traps set by Yar'Adua and INEC were those maintained by Buhari and Atiku. The two petitions were heard on their merits by both the tribunal and the Supreme Court. The Presidential Election Petition Tribunal ruled in favour of Yar'Adua on the account that all the allegations contained in their petitions were not proved so also the Supreme Court vide its majority judgment. In Buhari's case, four of the seven justices upheld the findings of the lower court while three annulled Yar'Adua election and ordered a fresh presidential poll within 90 days.

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<sup>144</sup> Electoral Act 2006 (as amended)

Generally, Justice Niki Tobi, in his leading judgment, said the evidence adduced by Buhari to prove his case was insufficient but he was quiet on the findings of the Court of Appeal that the election was conducted in breach of the provisions of the Electoral Act, particularly section 45(2). He said at the time the legal battle started, Chief M. I. Ahamba, SAN for Buhari indicated that he would call 150 witnesses but he finally ended up with 19 witnesses. Although cases are not won by a village or community of witnesses, where are the remaining 131 depositions of witnesses'? Should the appellant be taken as making a great play in this important matter of calling evidence and if so, can he say in reality that he proved his case, "Justice Niki Tobi asked.<sup>145</sup> He further said that in an election petition challenging the conduct of the election throughout the length and breadth of a vast country like Nigeria, "are 19 witnesses adequate to prove the case of the appellant. He said out of the 19 witness depositions, 18 were rejected by the Court of Appeal. "Were the 18 rejected not designed to prove the case of the appellant, and if so, can the appellant say in reality that he proved his case?" he further asked. He further reasoned: "a petitioner who contests the legality or lawfulness of votes cast in an election and the subsequent result must tender in evidence all the necessary documents by way of forms and other documents used at the election, He should not stop there." he added. But as soon as it was the turn of Justice George Adesola Oguntade to deliver the leading dissenting judgment, the petitioners' supporters re-adjusted themselves. Immediately Oguntade J. said that it was unfortunate that he was dissenting with the majority judgment, there was an unusual quietness amongst the justices of Supreme Court.

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<sup>145</sup> General Muhammadu Buhari v. Umaru Musa Yaradua (2008) SC 51

The then CJN who is known for smiling broadly even when he is saying something serious comported himself. He did not smile for once all through the time the dissenting judgment lasted. Justice Niki Tobi, who, most times, was re-adjusting himself on his chair, could not look at Justice Oguntade casting occasional glance at him. The majority judgment upholding Yar'Adua election, no doubt divided the polity. Some hailed the judgment as the best in the circumstance while others said it was a letdown. Those who believed the majority judgment was okay argued that if the apex court had upturned Yar'Adua election, there could be a monumental problem that might explode. Besides, they maintained that the judgment was an improvement upon what the apex court decided in the 2003 presidential poll which produced Chief Olusegun Obasanjo as president. They said that though the verdict did not reflect the justice of the case before the court but that one day, we would get there. But for others in the opposing camp they said the majority judgment of the court was shocking. They said given the facts of the case, one would have expected that the apex court would annul the election. It was the contention of many that Justice Niki Tobi and Justice Oguntade would take the lead in annulling the election, given the facts of the case and their glowing records.<sup>146</sup> Therefore, it is appropriate in this chapter to critically examine some of the cases in which the Election Petition Tribunals upturned some of the victories of the candidates elected at the 2007 polls. The first governor to become a casualty was Ibrahim Idris of Kogi State, who on October 10th 2007 lost his seat by virtue of the election tribunal judgment. The justice Bako Maiketa led Tribunal granted the prayer of the All Nigeria People Party (ANPP) candidate and former governor of the state, Prince Abubakar

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<sup>146</sup> Ibid

Audu that the election should be annulled because he was wrongly excluded from taking part in the governorship election in the state by the Independent National Electoral Commission (INEC). The tribunal's verdict was upheld by the Court of Appeal sitting in Abuja, which on February 6<sup>th</sup>, 2008 also ordered fresh election within 90days. The Court stated that the reason for the judgment was that wrongful exclusion of the ANPP candidate affected the election substantially. Second to go was Kebbi State governor, Saidu Dakingari, whose election was nullified on October 20<sup>th</sup> 2007 over the impropriety of his nomination process. The tribunal cancelled the April 14<sup>th</sup> 2007 gubernatorial election in the state on the grounds that Dakingari was fielded in error by the People Democratic Party (PDP). It upheld the petition filed by the Democratic People Party (DPP) gubernatorial candidate in the poll based on his claim that Dakingari was not qualified to contest the election.<sup>147</sup> The next governor to be axed was Murtala Nyako, who was elected under the banner of the People Democratic Party in the April 14 2007 gubernatorial elections in Adamawa state. The election tribunal on November 15, 2007, annulled Nyako's election, upholding the argument of the Action Congress (AC) gubernatorial candidate in the same governorship election, Alhaji Ibrahim Bapetel, who contested the result at Adamawa Election Tribunal. The tribunal held that the disqualification of the AC candidate by INEC just before the election was contrary to the provisions of the Electoral Act. This was the major reason given by the tribunal for the annulment. Nyako, however, appealed to the Court of Appeal and it also upheld the judgment of the Adamawa State Governorship Election Tribunal and ordered Nyako to vacate his office as the governor. The Court of Appeal further ordered

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<sup>147</sup> [www.newswatch.com](http://www.newswatch.com) accessed on 03/04/16

that fresh election be conducted within 90 days and also directed that the Speaker of the House of Assembly be sworn in as acting governor.

The annulment moved to Enugu State Election Petitions Tribunal which on January 17, declared the election of Governor Sullivan Chime, also of the People Democratic Party, null and void. The tribunal held that the election was flawed as voting did not take place in most parts of the state and ordered fresh election within 90days.

In Bayelsa State, the Election Petition Tribunal<sup>148</sup> nullified the election of Timipre Sylva and his deputy on the evidence brought before it by the petitioners stating that the elections was not conducted in most parts of the state. The Court of Appeal upheld the decision of the tribunal and held that no governorship election took place on April 14, 2007 in the state. Their decision was borne out of the failure of the governor and other respondents to produce the form EC8A, which they said was the basic for every election. They further ordered that a re-run election be conducted within 90 days and ordered the Speaker, *Mr. Werenipre Seibarugu*, be sworn-in as the acting governor. In Edo State, the Election petition Tribunal nullified the election of the Governor Oserheimen Osunbor. The petitioner Adams Oshiomole challenged the election of Osunbor on the basis that the election was marred with corrupt practices, non-compliance with the Electoral Act 2006 (now amended) and none voting in some areas of the state. The tribunal found in favour of the petitioner representing the Action Congress and nullified the election of Governor Oserheimen Osunbor and further

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<sup>148</sup> [www.pmnews.com](http://www.pmnews.com) accessed on 03/04/16



declared that the petitioner be returned duly elected as the governor of the state. In the case of *RAHMAN OLUSEGUN MIMIKO v. OLUSEGUN AGAGU AND ORS.*<sup>149</sup>

The petitioner, Dr Rahman Mimiko and the first respondent Dr Olusegun Agagu were two out of a total of 13 candidates who contested for the office of Governor of Ondo State on the day of 14<sup>th</sup> April 2007. They were sponsored amongst others by their various political parties (Labour Party and People Democratic Party) respectively. The election was conducted by the third respondent (INEC) which had constitutional authority to do so. The election results were announced and the first respondent was declared winner of the said election. Being dissatisfied with the final outcome of the election, the petitioner filed this petition against the respondents jointly and severally seeking several reliefs including a declaration that the first respondent was not duly elected or returned by majority of the lawful votes cast at the election and that his election be nullified.

The petitioner also brought evidence in form of witnesses who claimed that during the governorship and House of Assembly Elections, the first respondent employed thugs, policemen and soldiers who hijacked the election materials and took them to the police station instead of the collation centers. These thugs and policemen also supervised the harassment and intimidation of the voters at the polling centers, that the voting at some polling centers were marred by violence and snatching of ballot boxes at gunpoint by the first respondent's thugs, that the election materials were carted away and were

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<sup>149</sup> Petition No. EPT/OND/GOV/01/2007

thumb printed and figures were allotted and recorded in the various forms for that purpose.

The Election Petition Tribunal weighed the totality of the evidence adduced by the parties and held accordingly as follows:

*...we are satisfied that all electoral irregularities and malpractices earlier highlighted have seriously and substantially affected the outcome of the election. The petitioner has therefore proved his case and is entitled to the favorable judgment of the tribunal. We hold that the first respondent was not duly elected and returned by the highest number of lawful votes cast at the Ondo State Governorship Election held 14th April 2007. We order that the purported election of the first respondent as the Governor at the Ondo State Governorship election of 14th April 2007 be and is hereby nullified. We also order that the petitioner having satisfied the requirement of Section 170(2) (a) and (b) of the 1999 Constitution of the Federal Republic of Nigeria and by virtue of Section 147(2) of the Electoral Act 2010 (as amended), be and hereby declared as the elected Governor of Ondo State of Nigeria. The first respondent shall pay costs of ₦20,000.00 only to the petitioner.*

The decisions of the Tribunals so far have been applauded by many Nigerians, who see them as a vindication of the general dissatisfaction that had trailed the elections at all levels.

Democracy can only be sustained with a credible electoral system and with the help of the Election Petition Tribunals, Nigeria is on her way to the path of having a free and fair electoral system devoid of the electoral fraud as the tribunals would be on ground to throw out any undeserving candidate who rigged his or her way into any political office.

### **4.3 FACTORS AFFECTING ELECTORAL PROCESS AND GOOD GOVERNANCE IN NIGERIA.**

The electoral process has been marred with conflicts generated by ethnic chauvinism, sectional interest and religious divide, malpractices, violence from the political class to outwit one another in pursuit of their parochial interest and this makes the process undemocratic. These factors shall be discussed as follows:

#### **\* Ethnicity and Communal Tensions**

Since the colonial era, ethnic, regional, religious divisions constitute the form of expression of social cleavage in Nigeria. In Nigeria, political parties and candidates are representatives of a particular ethnic or religious group and voters support parties and candidates. The voting pattern in Nigeria elections followed the configuration of ethnic and religious cleavages. At local and national levels, tensions arising from communal identity conflicts have a major influence on electoral contest and political process. In Nigeria's political landscape, it is difficult to draw a line indicating where communal tensions end and where political conflicts begins. It is difficult to separate communal tension and political conflict. This is because of the nature of Nigerian politics which is known as 'prebendal politics'<sup>150</sup>. The concentration of resources in the state makes the possession of state powers a means to end control of state resources. The system of prebendal politics spurs individuals, groups, communities and constituencies to capture state power in order to control state resources. The control of state power, the incumbents try to retain it by all means, including use of violence.

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<sup>150</sup> Joseph R. (199) Democracy and Prebendal in Nigeria: The Rise and fall of the Second Republic. Ibadan: Spectrum publishers 2006 P. 188 - 190

At the same time, those aspiring to take over power sometimes pursue their goal by employing extreme measures such as violence. In the context for power, individuals employ ethnic, communal and religious symbols and sentiments in order to outwit their rivals. This drags an entire ethnic, regional or religious community into political competition which is squarely between political parties. Each time candidates and political parties are identified in a particular ethnic, regional or religious group. Victory or defeat in the electoral contest is defined in communal terms. Thus, electoral violence is triggered by individuals and political groups to use all available means, like the use of violence to defend their communal honour.

\* **Ethnic and Religious Divides**

In Nigeria, ethnic, regional and religious communities engaged one another in violent confrontations. In their studies on ethnic relations in Nigeria scholars like Plotnicov and Nnoli<sup>151</sup> presented that inter-group clashes and years of violent confrontations by some communal groups in Nigeria have eroded trust and social capital existing in the communities vulnerable to political manipulation. The communal tensions not related to elections can degenerate into bloodshed during elections. In Nigeria, people who live outside their state of origin are most times excluded from participating in governance and political life of their place of residence because they are perceived as ‘non - indigenes’<sup>152</sup>. In the past, attempts by non-indigenes to resist their exclusion from politics and governance have resulted in highly contested elections and violence.

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<sup>151</sup> Nnoli, O. (1978) *Ethnic Politics in Nigeria*. Enugu: Fourth Dimension Publishers P. 201-206

<sup>152</sup> Plotnicov, L. (1971): “An Early Nigeria Civil Disturbance: The 1945 Hausa-Ibo Riot in Jos” *Journal of Modern African Studies* vol. 2 P. 297 – 305.

\* **Injustice and Culture of Impunity**

There is a culture of impunity in Nigeria. The Nigeria legal system and law enforcement agencies are not able to arrest, prosecute, and convict offenders; as such, victims of violence normally receive little or no redress. Members of the security forces implicated in violations of civil and political rights, including electoral violence, are also not usually held accountable. The awareness of the possibilities of getting away with acts of violence has fostered unabated continuation of those acts. Reports indicate that more than 11,000 people were killed in hundreds of separate outbreaks of politically motivated communal violence in Nigeria between 1999 and 2011<sup>153</sup>. During the same period, the country recorded several high profile case of politically motivated assassinations. In all these, no one was convicted. The tendency of political actors to use violence in the electoral process is defined by the state's capacity to enforce law and order. Sadly, the capacity of Nigerian State to enforce law and order is undermined by the erosion of the state's monopoly of the use of violence. The state's monopoly of the use of violence in Nigeria is gravely challenged by the activities of 'cult gangs' area boys, ethnic militias, unlicensed vigilante groups, and armed bandits that operate in rural and urban areas under development. In Nigeria, a large section of the people lack access to opportunities and resources to actualize their potentials. This situation breeds a class of economic marginalized people (mostly youths) who are used to perpetrate electoral violence. This group of people is enticed by the wealthy violent entrepreneurs who sponsor most of the violent political encounters. The electoral violence in Nigeria

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<sup>153</sup> Aniekwe, C. and Kushie, J. (2011): Electoral Violence Situational Analysis: Identifying Hot Spots in the 2011 General Elections in Nigeria. Abuja: NAPEN. P. 123 – 133.

is mostly carried out by gangs whose members are recruited, financed, and sometimes, armed by state and party officials or their agents.

These gangs are mostly illiterate, unemployed and poor young men, who are mobilized to attack their sponsors' rivals, intimidate members of the public, rig elections, and protect their patrons from similar attacks<sup>154</sup>.

\* **Confidence in Electoral Tribunal**

The electoral justices system involves the prosecution of offences and the resolution of petitions against electoral results. This belief by political actors that they cannot secure justice in election tribunal reduces their inclination to seek legal redress at allegations of election fraud. During Nigeria's 2011 elections the leading opposition candidate, Muhammadu Bahari, was reported by the national televisions as saying that he will not lodge petition regarding the outcome of the election since his previous attempts at legally challenging election outcomes did not yield any meaningful result. In Nigeria, the judiciary, which is central to electoral dispute resolution, enjoys a considerable degree of credibility at the federal level due to some land mark judgments it has given in the past. However, the credibility of Nigeria's judiciary was badly dented by revelation emerging from a dispute between the two most senior judicial officers in the country – the Chief Justice of the Federation Hon. Justice Dahiru Musdapher and the President of the Court of Appeal Justice Ayo Isa Salami<sup>155</sup>. The disclosure by the President of the Court of Appeal that the Chief Justice of the Federation tried to influence the Sokoto State Governorship election appeal indicates that the judiciary is

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<sup>154</sup> Election Violence in Nigeria (2005) Ladan. .M. and Kiru A.

<sup>155</sup> Ajaero, C. (2011) "Judiciary's Dubious Role" Newswatch Magazine, 21 February.

prone to corruption and vulnerable, in response to attempts by the Chief Justice of the Federation to remove him as the President of the Court of Appeal. Justice Ayo Isa Salami accused the Chief Justice of trying to influence the decision on Sokoto State Governorship election appeal.

The allegation indicate that the judiciary is prone to corruption and venerable to interference, it also made many people to suspect that some other judgments given by the judiciary may have been influenced by these interferences. This is, perhaps, why many politicians find it more rewarding to seek redress through violence rather than the judicial process.

\* **No Internal Party Democracy**

Political parties are a major building block of democracy, but the inability of many political parties in Nigeria to operate in a democratic manner introduces tension and violence in the electoral process. In Nigeria, political godfathers control the parties at local and national levels. These godfathers select the delegates who elect party leaders and candidates through control of the delegates. They decide who gets the party's nomination and leadership positions. The activities of these godfathers create so much dissatisfaction in the political process because of their disregard for formal procedures for party nomination of candidates. Some of the tactics used by these political godfathers to eliminate popular candidates from party primaries includes the following.

1. Declaration of a candidate as "consensus candidate" and the insistence that those entitled to vote must support the candidate, that other aspirants must withdraw.

2. The use of zoning to exclude unwanted candidates by moving the party zone for a particular position to an area where the excluded candidate is not local.
3. The use of violence by thugs or security personnel to harass and intimidate candidates and supporters of candidates who oppose the godfathers.
4. The use of money to bribe officials and induce voters to support particular candidates.
5. Application of results by declaration; e.g an aspirant wins a nomination, but polling officials disregard the results and declare the loser the winner.

In some instances, the results of party primary elections are overturned by the party godfathers. For instance in the 2011 general elections.<sup>156</sup> Olu Agunloye was replaced as candidate for one of the Ondo State senatorial seats by the party leadership. This forced him to defect from Labour Party to the Action Congress of Nigeria (ACN). Party members who dare to express their dissatisfaction with the mafia-style political process in the parties are normally charged with engaging in “anti-party” party activities and suspended or expelled from the party. Depending on the capacity of the disgruntled party members to fight back, serious intra-party crisis and violence often follow each episode of party convention in Nigeria.

#### **4.4 THE PROSECUTION OF ELECTORAL OFFENCES**

There has been consternation and sometimes anger at the inability of the Nigeria State to prosecute electoral offenders. This, some Nigeria’s alleged, may be responsible for the progressive degeneration of the electoral process in Nigeria. It is therefore contended that the outcome of the 1999 General Elections is better than the 2003

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<sup>156</sup> Ibrahim, J. (2007): Nigeria’s 2007 Elections: The Fitful Path to Democratic Citizenship. Washington, DC: United States Institute of Peace.



elections and the 2003 elections better than the 2007 elections. The exception to this rule has been the 2011 elections that were adjudged better than the 1999, 2003 and 2007 elections. Even at that, the issue of electoral offences, electoral violence the impunity that accompanies it and the inability to prosecute electoral offenders effectively still persists<sup>157</sup>.

Section 158(1) of the Electoral Act, 2002 provides that an offence committed under the Act shall be triable in a Magistrate's Court or any High Court of a State in which the offence is committed, or the Federal Capital Territory, Abuja. The same section is repeated in the Electoral Act, 2006 and in section 150(1) of the Electoral Act, 2010 (as amended). Section 158(2) of the Electoral Act, 2002 provides that a prosecution under the Act shall be undertaken by legal officers of the Commission or any legal practitioner appointed by it. The same section is repeated in section 158(2) of the Electoral Act, 2006 as well as in section 150(2) of the Electoral Act, 2010 (as amended).

The question is whether Nigeria has derived the benefit of professional prosecution of electoral offenders with domiciling the power of prosecution with officers of the Independent National Electoral Commission. By the account of the Commission, minimal success has been recorded. The Chairman of the Independent National Electoral Commission, Professor Attahiru M. Jega stated the position of the Commission on the issue, his report after the 2011 general elections.<sup>158</sup> That the issue of

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<sup>157</sup> [www.Inecnigeria.org/professorAttahiru.M.Jega](http://www.Inecnigeria.org/professorAttahiru.M.Jega).

<sup>158</sup> In the report of the Registration and Election Review Committee (RERC) set up by the Independent Nation Election Commission (INCE) 2012. [www.Inecnigeria.org](http://www.Inecnigeria.org)

electoral offences and the impunity with which they are committed is also something that we have to deal with. We have done our best since we came in as a new Commission to prosecute electoral offenders, both during the registration exercise and the elections. And we recorded quite a number of successful prosecutions, even though these are relatively few compared with the large number of offenders. One of the major challenges we have, obviously, has to do with institutional. He further went ahead to give a breakdown of cases and issues handled by the commission as follows:

65 suspects were charged with snatching of Ballot Boxes

24 suspects were charged with loitering after voting

7 suspects were charged with buying and selling of voters cards

8 suspects were charged with Dereliction of Duty

13 suspects were charged with Multiple Registrations

9 suspects were charged with Impersonation

23 suspects were charged with Intimidation/Assault of INEC officials

7 suspects were charged with falsification of results

3 suspects were charged with unauthorized destruction of ballot papers

1 suspects was charged with Hijacking of INEC Results

4 suspects were charged with being in possession of Ballot papers

7 suspects were charged for disorderly conduct

7 suspects were charged for bribery and corruption

Some of the accused persons in relation to the cases tracked were prosecuted by different agencies.

1. The Police prosecuted a total of 223 cases
2. The Independent National Electoral Commission (INEC) prosecuted 45
3. The various Ministries of justice prosecuted 21
4. Five suspects among the cases tracked have not been charged to court.

In some of the states, such as Edo, Oyo and Enugu States, lawyers from the Independent National Electoral Commission took over the prosecution of some of the cases from the police at the stage of trial. In Sokoto and Niger State, few of the cases were prosecuted by the Independent National Electoral Commission.

In Rivers State, the bulk of the cases tracked were prosecuted by the Independent National Electoral Commission.

## **INDEPENDENT NATIONAL ELECTORAL COMMISSION**

### **NUMBER OF ELECTORAL OFFENCES AND PROGRESS MADE SO FAR**

#### **LIST OF ELECTORAL OFFENCES DETERMINED AND PENDING (F.N)<sup>159</sup>**

S/N	STATE	NO OF CASES FILED	NO OF ELECTORAL OFFENCES DETERMINED/ STRUCK OUT	NO OF CONVICTIONS	NO OF ELECTORAL OFFENCES PENDING	REMARKS
1.	ABIA	3	3	0	0	
2.	ADAMAWA	5	4	4	1	
3.	AKWA IBOM	0	0	0	0	

<sup>159</sup> Inecnigeria.org, Status of INEC's Prosecution of Electoral Offenders as at 30<sup>th</sup> May, 2012.

4.	ANAMBRA	24	17	0	7	
5.	BAUCHI	35	6	-	29	
6.	BAYELSA	2	-	-	2	
7.	BENUE	16	0	0	16	
8.	BORNO	21	-	-	21	
9.	CROSS RIVER	14	7	0	7	
10.	DELTA	21	-	-	21	
11.	EBONYI	0	0	0	0	
12.	EDO	12	-	-	12	
13.	ENUGU	17	5	0	12	
14.	EKITI	16	0	0	8	
15.	GOMBE	3	-	-	3	
16.	IMO	9	8	0	1	
17.	JIGAWE	31	6	7	25	
18.	KADUNA	15	15	0	0	
19.	KANO	25	22	4	3	
20.	KATSINA	16	15	0	1	
21.	KEBBI	19	8	5	11	
22.	KWARA	0	0	0	0	
23.	LAGOS	17	14	0	3	
24.	KOGI	4	2	0	2	
25.	NASARAWA	11	8	0	3	
26.	NIGER	2	0	0	2	
27.	OGUN	28	2	0	26	
28.	ONDO	32	4	1	28	
29.	OYO	30	2	0	28	
30.	OSUN	4	1	0	3	
31.	PLATEAU	20	7	0	13	
32.	RIVERS	12	0	0	12	

33.	SOKOTO	2	0	0	2	
34.	TARABA	0	0	0	0	
35.	YOBE	0	0	0	0	
36.	ZAMFARA	16	3	3	13	
37.	FCT	0	0	0	0	
	<b>TOTAL</b>	<b>482</b>	<b>167</b>	<b>24</b>	<b>315</b>	

In the report of the registration and Election Review Committee (RERC) set up by the Independent National Electoral Commission in 2012, their findings was as follows. There are limited reports of prosecution of electoral offences. Under the current laws, INEC has the power to carry out the prosecution of persons, who are accused of electoral offences. With the numerous reports of offences allegedly committed during the April 2011 general elections, including electoral violence, it does not appear that INEC has the manpower and resources to pursue all of the prosecution. What was clear, however, from the RERC's zonal meetings is the general view expressed by participants at the meetings that electoral offences in the country would only begin to reduce and pre-and post-election violence arising from them considerably reduced, if perpetrators were expeditiously prosecuted. In this respect, RERC finds it compelling to underscore the need for government to take urgent action to set up the process, including legislation, for the establishment of the Electoral Offences Commission, alongside other measures for the prosecution of electoral offences, as recommended by the ERC and accepted by government in its white paper on ERC Report. INEC should engage government and the National Assembly on the urgent need for such legislation.

## **CHAPTER FIVE**

### **5.0. CONCLUSION:**

We have within the confines of our understanding and the time and resources available to us tried to examine the prosecution of electoral crimes and democratic development in Nigeria. After a thorough examination, we have come to the conclusion that the progress of democracy in Nigeria is circuitous and dilatory with an indeterminate pattern tainted with excessive personalism. This is because the rule of law is not institutionalized. Human rights are sometimes brazenly, and sometimes subtly abused,

even election are not only violent but are administered unfairly to the benefit of the party in power. No society can build its democracy, economy and social welfare with this kind of ideologies. That is why there is urgent, need to curb electoral malpractices and violence. It is however believed that Nigerians desire a true democracy, and the best way to restore the people's confidence in electoral system and democracy is by creating an enabling environment for free and fair election. To this, various stake holders such as the Independent National Electoral Commission (INEC); The judiciary and politicians should rise up to the challenges preventing democratic development in Nigeria. It would be absolutely useless to end this dissertation without giving some recommendations that would help salvage the image of the present electoral system in Nigeria, the election tribunals and indeed the whole polity as regards the conduct of elections in Nigeria. For Nigeria to make good impact on its electoral conduct, some of these measures below are recommended as viable means to file out the manifest imperfections that have defaced electoral conduct in Nigeria.<sup>160</sup>

## **5.1 RECOMMENDATIONS:**

- a. There should be a complete overhaul of the electoral system, including new legislations, registration and electoral procedures. There should be electoral reforms that would encompass every political party, labour unions and opinion leaders in the society. There is need for everyone, particularly, the youths to have a change of thought and ideology. The idea of approaching elections with an attitude of violence and malpractice will always leave behind sorrow, tears

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<sup>160</sup> The Constitution: Joint Statement on Nigeria's Recent Elections, Vol.17. No2, June.2014

and blood. The youths have always been used by politicians to carry out these practices of violence and lawlessness, while their children are sent abroad to have better education and quality standard of living. This is done at the expense of ignorant, misled and radicalized youths, who are the victims of the killings and deaths we often hear about<sup>161</sup>

- b. There should be a provision in the Electoral Act and in our Constitution for prosecuting any electoral offender, whether the person is holding any political office or not, in which the person must be jailed and pay heavy fine for committing any electoral offence. This is because if this provision is not made, people will continue to commit electoral crimes, and those who have committed one crime and the other should be prosecuted<sup>162</sup>.
- c. The power of the president to appoint the Chairman and other members of the national electoral body should be removed. Such power should instead be vested on the National Assembly or the National Judicial Council (NJC). This is of course to ensure transparency in the whole process. If this is not done there would not be any transparency in any election that will be held in the nearest future in this country. So we urge our National Assembly to look into this, and amend the section that vested the power on the president<sup>163</sup>.

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<sup>161</sup> Institute for Democracy in South Africa (IDASA), Enforcement of Electoral Laws and reduction of Electoral violence in Nigeria, July, 2006

<sup>162</sup> Compass Mail Newspaper February 1 7-19 February, 2015

<sup>163</sup> Report of the Electoral Reform Committee, volume 1, main Report, December, 2008 p. 134 – 145 accessed from [www.information.ng.com](http://www.information.ng.com).



- d. The time limit for petitions to be heard and concluded should be revisited. As it is now, no time limit is prescribed.
- e. Provision should be made for the creation of independent oversight and monitoring entities for future elections. Election monitors should be made an important integral part of the country electoral process. Credible Nigerian monitors drawn from reputable civil society groups, religious bodies, foreign monitoring groups, executive operatives of corporate bodies e.t.c. should be given accreditation as monitors with the added and important responsibility of certifying the freeness and fairness of elections in all the polling centers in the country. The electoral body is bound to approve or reject results from the polling booths based on the certification of the monitors.
- f. There must be new electoral guidelines on party primaries and nomination of candidates and any dispute on it must be resolved before the conduct of any election.
- g. An open ballot system, where results are announced at the polling center and signed by all parties and observers is *sine qua non* for a free and fair election in Nigeria. This is because if the results of an election is not announced at the polling center and signed by all parties and observers such results cannot be regarded as a genuine results of such an election, for example looking at the governorship elections across Nigeria in 2007, you will agreed that most of the results were announced in Abuja rather it would have been announced in each state were the election took place, that is why there is problem of governorship

results which led to the burden of deciding the winner of an election on the judiciary.<sup>164</sup>

- h. All incumbents desirous of re-election must resign from their office at least three months before elections so as to remove the present situation where all instruments, resources and agencies of the state are employed by incumbent to prosecute their electoral interests or those of their cornices. Non partisan officers of the State such as Chief Judges or credible citizens of the various constituencies should be sworn in to complete the tenures of incumbents that desire re-election.
- i. The use of police, army and other forms of security agencies by parties and private politicians during elections must be made a criminal offence and anybody found to have violated this stands to be jailed. In the case of *BUHARI v. OBASANJO*,<sup>165</sup> pats-Acholonu JSC, of blessed memory, warned that:

*...it is scary to send policemen to election places when they have not been properly tutored that in the exercise of their duty to maintain law and order in election areas, their allegiance is to the constitution.*

- j. On election petition tribunals, it is suggested that for it to avoid delay, election petition tribunals should be constituted in such a way that no single tribunal handles more than five petitions, and judges should be deployed in large numbers all over the country for timely adjudication of the petitions.

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<sup>164</sup> Joshua E. Aloba, Election petition in Nigeria; cases and materials, 2007, P. 5

<sup>165</sup> (2003) 13 NWLR (Pt 941) 1

- k. Senator Adesewe Ogunlewe who is a member of the Electoral Reform Commission, stated that, for the case of voter's registration and identification at polling centers, the National ID card should be used for all eligible voters. He further stated that the voters register should be linked to the national ID card so that voters data can easily be traced, and to ensure that a voter does not vote more than once at an election as it would reflect because of the number on the ID card.
- l. The Nation's Assembly should pass an autonomous Electoral Offences Commission Act that invest the Commission with the capacity to investigate all electoral fraud and related offences, coordinate enforcement and prosecution of all electoral offences.
- m. The envisaged Commission will have the capacity and legal instrument to set up Mobile Court to try election offences on election days and adopt measures to prevent and eradicate the commission of electoral malpractices and facilitate rapid exchange of scientific and technical information among other democracies on the conduct of joint operation and training geared towards the eradication of electoral malpractices and fraudulent election.
- n. Civil society groups and organizations should mount sustained media advocacy for the passage of an Electoral Offences Commission Act.
- o. The Inter-Agency Consultative Commission on Election Security should decentralize the training of security officers on electoral matters and electoral

duties to take place at the various Local Governments across the federation. The trainings should not be episodic and *ad hoc* but should commence and carried out on a quarterly basis at least one year before the general elections at the Divisional Police Headquarters level. This will create synergy among all the security forces and agencies engaged in election security, as they will be trained using the same Code of conduct, the Electoral Act, 2010 (as amended) and the Constitution of the Federal Republic of Nigeria 1999 (as amended).

## **5.2. CONTRIBUTION TO KNOWLEDGE**

This study has contributed to knowledge in the following ways.

- i. It has identified the best ways to tackle the arrest, investigation and prosecution of offenders.
- ii. It has suggested that the independent National Electoral Commission should invest in private legal practitioners and give them the responsibility for the prosecution of electoral offenders as the Election Commission is burdened with the conduct of elections and does not have the capacity to focus on the issue of electoral offences.
- iii. It has shown that it is better to integrate electoral offences as part of the crimes; provided in the various states laws and make the arrest and prosecution of the said offences the responsibility of the Nigerian Police Force and the office of the Attorney General of the various states. This will make it possible to prosecute offenders at the ward and Local Government levels where lawyers may have

easy access due to difficult geographical terrain and paucity of funds. The office of the Attorney General of the State will then be able to take over, continue or terminate such prosecution depending on the national interest.

- iv. It has revealed that the best way to restore the people's confidence in the electoral system and democracy is by creating an enabling environment for free and fair elections. To this, various stake holders such as the Independent National Electoral and the politicians should rise to the challenges preventing democratic development in Nigeria. Moreover the political leaders and the elite should respect the Constitution of the country.

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