

**ELECTORAL LAWS AND CREDIBLE ELECTIONS IN NIGERIA:
AN APPRAISAL OF 2010 ELECTORAL ACT ON 2011 AND 2015
GENERAL ELECTIONS**

BY

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ZARIA, NIGERIA**

AUGUST, 2017

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PhD/Law/01658/09-10**

**A DISSERTATION SUBMITTED TO THE SCHOOL OF
POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY,
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PHILOSOPHY OF LAWS - PhD**

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AUGUST, 2017

DECLARATION

I declare that the work in this thesis titled ELECTORAL LAWS AND CREDIBLE ELECTIONS IN NIGERIA: AN APPRAISAL OF THE 2010 ELECTORAL ACT ON 2011 AND 2015 GENERAL ELECTIONS has been carried out by me in the department of Public Law Ahmadu Bello University, Zaria, Nigeria. The information derived from the literature has been duly acknowledged in the text and list of references provided. No part of this thesis was previously presented for another degree or diploma at this or any other institution.

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Signature

Date

CERTIFICATION

This thesis titled ELECTORAL LAWS AND CREDIBLE ELECTIONS IN NIGERIA: AN APPRAISAL OF 2010 ELECTORAL ACT ON 2011 AND 2015 GENERAL ELECTIONS by Bello Mohammed MAGAJI meets the regulations governing the award of the degree of Doctor of Philosophy in Law – PhD of Ahmadu Bello University, Zaria, Nigeria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This work is dedicated to the memory of my son Late ABUBAKAR BELLO MAGAJI who had been my support, pillar and confidante. His death as a soldier fighting gallantly for his country against insurgents in the battle fields of Maiduguri will remain in my memory forever. May Allah grant him Al-Janna Firdausi. Amen.

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This work cannot have come to this present level without the rich and robust academic contribution by way of objective and positive comments, criticism and suggestion of the External examiner in the person of Professor M. I. SAID. I am highly indebted to him for allowing me (and undoubtedly others before me and coming after) to benefit from the wealth of academic, religious and moral knowledge which Allah has endowed him with. I pray Allah to continue to guide him, protect him and bless him and his family in whatever endeavour Allah has destined them to embark upon, Ameen.

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LIST OF ABBREVIATIONS

ALL FWLR	-	All Federal Weekly Law Report
Anor	-	Another
CFRN	-	Constitution of the Federal Republic of Nigeria
ECN	-	Electoral Commission of Nigeria
EMA	-	Electoral Management Body
EOC	-	Electoral Offences Commission
ERC	-	Electoral Reform Committee
FCT	-	Federal Capital Territory
FOI	-	Freedom of Information
Ibid	-	Same citation with the one fully cited above
INEC	-	Independent National Electoral Commission
NGO	-	Non-Governmental Organization
NLR	-	Nigerian Law Report
NWLR	-	Nigerian Weekly Law Report
NYSC	-	National Youth Service Corps
Op.cit	-	Cited elsewhere
Ors	-	Others
UNDP/ECA	-	United Nations Development Programme
vs	-	Versus

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ABSTRACT

Towards the end of 1990, international dynamics, pressures and persuasion combined to move Nigeria towards the embrace of a political system based on the global principles of democracy. The legal framework for this foundation was provided for by Decree No. 24 of May, 1999 which was a prelude to the promulgation of the Constitution of the Federal Republic of Nigeria. This inter- alia provides for the transition to civil rule through the conduct of elections by Independent Electoral Commission to the offices of President and the Vice-President, Governors and Deputy-Governors, Chairmen and Vice Chairmen, the National Assembly, the Houses of Assembly and the Local government councils. That attempt was initiated in 1999 and was again repeated in April 2003; April 2007; April 2011 and in February 2015. This democratic position is further consolidated by the provisions of the said Constitution which provides in Section 1 (2) that the Federal Republic of Nigeria shall not be governed, nor shall any persons or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provisions of the Constitution. Furthermore, Chapter 2 of the same Constitution under section 14(2) (a) and (c) and section 15 (3) (d) strengthen the aforementioned democratic position as it provides that sovereignty belongs to the people of Nigeria from whom government through the Constitution derives all its powers and authority and the participation by the people in their government shall be ensured in accordance with the provisions of the Constitution. Stemming from the constitution the Electoral Act was promulgated. The 2006 Electoral Act provided the platform for the rules for the conduct of the 2007 election in Nigeria. It did not provide the free and fair election as desired. This led to several amendments leading to the promulgation of the 2010 Electoral Act which provided the ground rules for the conduct of the 2011 and 2015 General Elections in Nigeria. The thesis appraises the 2010 Electoral Act on the 2011 and 2015 General Elections. It focuses on issues relating to the Elections management by INEC, electoral fraud/ offences ad provided in the Act and the desirability to enfranchise Nigerian Diaspora population. The thesis submits that the Electoral Act 2010 (As Amended) did not provide the desired platform for free, fair and credible elections in 2011 and 2015 General Elections in Nigeria. Even as great improvements had been recorded compared to previous Elections. The thesis however submits that amendments to some provisions of both the 1999 Constitution of the Federal Republic of Nigeria and the Electoral Act 2010 (as amended), are necessary to strengthen the Electoral system to give Nigerians free, fair and credible election in 2019 and beyond.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Towards the end of 1990, international dynamics, pressures and persuasions combined to push Nigeria towards the embrace of a political system that is based on the global principles of democracy. Nigeria like other African countries is a signatory to International Conventions on Democracy and Elections in the 1990s¹. The decade was significant not only to countries of West Africa (Nigeria inclusive), but the entire continent of Africa in general because it was during this period that many African countries returned to democratic governance. From the 1990s, West Africa paraded an array of emerging democracies such that at the close of that decade, Benin, Ghana, Liberia, Mali, Nigeria, Senegal, and Sierra Leone among other African countries were included in the list of states with “minimal democracies”²

Nigeria returned to civil rule on May 29, 1999. The 1999 elections marked the beginning of a transition from military to civil rule. The country held three elections, including the April 2007 elections that brought President Umaru Yar’Adua to power following the victory of his party, the People’s Democratic Party (PDP). Political transition advanced from 1999 to the next phase with conduct of the 2003 elections. In the lead-up to the 2007 elections, Nigerians were considerably hopeful that the elections would be free and fair. But there were concerns in many circles about the poor state of readiness of the Independent National Electoral Commission (INEC) and law enforcement agencies. The outcome of the April 2007 polls further betrayed peoples’

¹ See Table 1, Appendix 1

² Doorenspld. R. (2003), “Political Parties, Party System and Democracy in Sub Saharan African” in Salith MMM. A (ed) African political Parties Evolution, Institutionalisation and Governance London Pluto Press P.4

confidence in the electoral system³ by a massive electoral fraud financed through money politics.

Firstly there has been concerns with regards to the management of the 2011 and 2015 General Elections by the Independent National Election Commission (INEC) Despite amendments both in the Constitution of the federal Republic of Nigeria 1999(CFRN'99) and the Electoral Act 2010 (as amended) to strengthen the capacity of INEC to deliver free, fair and credible elections, yet the INEC is constrained by certain structural and legal issues that require further amendments as discussed in this thesis.

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 has 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 incapacity of the Independent National Electoral Commission to prosecute electoral offenders encourages electoral impunity, voter apathy and the gradual disengagement of the Nigerian 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

³Adetula A. O. (2008) Money and Politics in Nigeria: International Foundation for Electoral System IFES-Nigeria, Maitama, Abuja p.15 Electoral Act, No2, 2006, Laws of the Federation 2004.

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, 2010(as amended) an offence committed under the Act shall be triable in a Magistrate Court or 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. The Police with the responsibility for the arrest, investigation and giving evidence in Court on electoral matters are sometimes posted out of their State Commands and moved to contiguous states on Election Day. This is done to ensure their neutrality on Election Day. Unfortunately, some of the officers on duty on Election Day are posted back to their State Commands after elections making documentation of electoral offences difficult and also making it difficult for credible evidence to be gathered and serious prosecution to be carried out.

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 State Offices including the Federal Capital Territory, Abuja and do not have the capacity and resources to prosecute offences committed in 119, 973 polling units, 8, 809 wards, 360 Federal Constituencies, 109 Senatorial Districts and 774 Local Governments in Nigeria. It is more difficult to see how legal officers of the Commission will prosecute about 870,000 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 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 into question.

The effect of this state of affairs is that there is shoddy investigation and prosecution of electoral offenders. A research conducted by Human Rights Monitor on the Arrest and Prosecution of Electoral Offenders from January to March 2012 in 18 states of the Federation tracked a total of 294 cases, and out of this number 24 cases had been concluded and sentences passed, 78 of the cases were struck out for lack of diligent prosecution, 181 of the cases are still ongoing. 6 of the suspects were discharged and acquitted and 5 suspects have not been charged to court.

Unfortunately, attempts to amend the Electoral Act and create an Electoral Offences Commission through the introduction of an Electoral Offences Commission Bill have not materialized. This is curious because the Independent National Electoral Commission has stated clearly that it does not have the capacity and resources to prosecute electoral offences.

It is therefore important to find out whether persons with vested interest in the perpetration and perpetuation of electoral fraud and malpractices are blocking the introduction and passage of a separate Electoral Offences Commission with powers to arrest, investigate, and prosecute electoral offenders. It is also important to project whether the passage of the Law will curb electoral fraud and raise the integrity of the electoral process.

Thirdly, the Diaspora population in various countries contribute to the GDP in Nigeria yet the Electoral Act provision seems to disenfranchise them. They need to bring them into the main stream of the electoral process is necessary.

Politics has been seriously monetized with political offices made so comfortable for politicians in a manner that has made the contest into political offices a do-or-die – affair⁴. It was against this background that the 2011 and 2015 General Elections were conducted based on some amendments to the 1999 Constitution of the Federal Republic of Nigeria thus, paving way to changes or reforms to the electoral system.

The constitution of the Federal republic of Nigeria 1999 (as amended) is the supreme legal instrument as it both regulates Nigeria’s political arrangements and gives fundamental human rights legal force within the country.

It is within this framework that rights associated with governance in Nigeria can be founded on part I of the Constitution. Specifically, the Constitution begins:

This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. The federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or any part thereof, except in accordance with the provision of this Constitution.⁵

The constitution makes it clear that, Sovereignty belongs to the people of Nigeria from whom government through the Constitution derives all its powers and authority. Here, the spirit of the law implies the integral role that the Nigerian people play in governing. The Constitution goes on to list the fundamental rights and freedoms of Nigerian citizens, each of which play a role in assuring equitable access to participation in government. Freedom of thought, conscience, religion⁶ and expression, including the “freedom to hold opinions and receive and impart ideas and information without

⁴ Kukah, M.H. democracy and Civil society in Nigeria spectrum , Zaria 2007

⁵ Section 14 (2)(a), CFRN 1991

⁶ Ibid section 38

interference”⁷ are each expressly guaranteed. Without these rights, access to public offices could and easily be impeded by discrimination based upon religious beliefs or political ideology.

It is in Section 40, that the key freedoms of assembly and association are granted to Nigerians. The Constitution provides for political associations where it states that, the Nigeria citizen may form or belong to any political party, trade union or other association for the protection of his interest⁸

The implication that every Nigerian citizen has the right to freely associate for political purposes infers the citizens’ right to participate in government through elections to public office, as parties are the only vehicles for seeking political office under the constitution. The Constitution further establishes the Independent National Electoral Commission (INEC)⁹ as the institution to assist in the realization of the promise of democracy through the ballot box. Paragraph 15(a) of the Third Schedule to the Constitution vests INEC with powers to;

Organize, undertake and supervise all elections to the offices of the President and Vice-President the Governor and Deputy-Governor of a state, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation.

The right to participate in government is also guaranteed, through the transformation of the African Charter on Human and People’s Rights as domesticated into

⁷ Ibid section 39

⁸ Ibid section 40.

⁹ *ibid*, section 153.

Nigerian law. The African Charter (Ratification and Enforcement Act) expressly grants a right to participate in government¹⁰.

Nigeria is a party to various international human rights instruments. These instruments complement domestic laws. The right to participate in government and to fair trial is also embodied in these international instruments; among them is Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), Constitutive Act of the African Union (2009), African Charter on Peoples' Rights, African Charter on Democracy, Elections and Governance, ECOWAS Protocol on Democracy and Good Governance, and the Protocol to the African Charter on the Rights of Women¹¹.

Thus it is against the aforementioned issues and background i.e the 1999 Constitution and amendment thereof, the Electoral Act 2010 (as amended), International Legal instruments, Conventions and Protocols that the 2011 and 2015 General Elections were conducted. This is the focus of this thesis as discussed in subsequent Chapters.

1.2 Statement of Research Problem

Nigeria went to the polls in 2011 and 2015 with the Electoral Act (2010) as the legal and institutional platform. After the two Elections, however, it became obvious that the much desired free, fair and credible elections were not fully achieved going by the number of problems that dotted the electoral process. Firstly, despite Constitutional amendments to give INEC financial autonomy structural problems continue to confront it thereby hampering its ability to conduct free, free and credible elections. Thus it is over

¹⁰African Charter on Human and People's Rights (Ratification and Enforcement) Act, Art. 13 "Every citizen shall have the right to freely participate in the government of his country, either directly or through freely chosen representative within the provision of the law.

¹¹ See comprehensive list in Table 1 of the Appendix.

stressed due to multi task that both the Constitution and the Electoral Act have assigned to it.

Interlocutory appeal shall not operate as a stay of proceedings e.t.c. However, the most obvious lapses were in the area of Electoral fraud.

Secondly, the issue of electoral fraud and the lack of credibility of the electoral process have been with the Nigerian people for some time. It has more or less become a feature of Nigerian elections. It is rooted in the “do or die” politics practiced by some Nigerian politicians and political parties. Unfortunately, as a large number of those that engage in electoral fraud and irregularities get away with it, it becomes the norm rather than the exception.

This sad history of electoral fraud or rigging has serious implications for our democratic future because the phenomenon is growing rather than declining. As the elections go by the principal forms of rigging and fraud are increasing and are being perfected in successive elections since 1964, 1965, 1979, 1999, and 2003. The result is that elections have become turning points in which the outcome has been the subversion of the democratic process rather than its consolidation. Not surprisingly, major political conflicts have emerged around rigged elections.

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 disengage 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 forces in the country.

Although the law prescribes the processes and procedures for the legitimacy of elections, the same law also recognises 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 recognises the fact that some individuals and groups may attempt to subvert the electoral process and 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.

Thirdly, is the issue of disenfranchising the Nigerian Diaspora. Both the Constitutional and the Electorate Act did not provide for their voting rights. Despite their huge financial contribution to the GDP of Nigeria.

These three key issues and others has been closely discussed in this thesis with the view to addressing them in the concluding Chapter of this thesis.

1.3 Objective of the Research

Modern democratic culture and practices in governance is relatively new in Nigeria's history¹². Even though elections have been held in Nigeria from 1958 to date yet the culture of free and fair election is yet to be attained. Elections were hitherto characterized by fraud, partisanship and even violence¹³. The need to have credible electoral law and process becomes not only imperative but necessary. The specific objectives of this work are;

1. To examine whether INEC as presently constituted legally and structurally have been able to manage the 2011 and 2015 General Elections in Nigeria.
2. To appraise the Electoral Act, 2010 (as amended) in order to determine the adequacy or otherwise of sanctions for electoral offences and fraud as provided in the Electoral Act 2010 (as amended) during the 2011 and 2015 General Elections.
3. To examine the electoral Act 2010 with regards to Nigerian Diaspora Disenfranchisement with a view to enfranchising them through constitutional and electoral amendments.

1.4 Justification of the Study

The justification for this study is premised on three grounds

Firstly, the need to examine the desirability to further strengthen INCE by further amendments to Electoral Act in order to enhance its capacity, efficiency and efficacy to deliver free, fair and credible elections.

Secondly; the provisions of the electoral Act 2010 (as amended) on electoral fraud are not effective in dealing with Electoral fraud in the 2011 and 2015 General Election.

¹² From the colonial period under the 1922 Clifford constitution to date. Nigeria conducted 11 General Elections as follows 1947,1955,1964,1979,1993,1998/1999,2003.2007 and 2011

¹³This is one of the issues addressed by this thesis.

The need to identify areas to improve the efficacy of the law with responds to reducing Electoral fraud provides justification for this work.

Thirdly, the need to consider enfranchising the Nigerian Diaspora in Elections (they did not participate in 2011 and 2015 General Elections) considering their contribution to the Gross Domestic product of Nigeria (GDP).

1.5 Research Methodology

This research would primarily be doctrinal. Consequently, relevant legal materials including case laws, legal papers and authorities have been consulted and analysed with a view to appraising the Act as it impacted on the 2011 and 2015 general elections. The study therefore utilizes secondary sources of data and content analysis of relevant laws. The Constitution of Federal Republic of Nigeria 1999, the Electoral Act 2010 (as amended), published books, scholarly journal articles, newspapers, articles, conferences and institutional papers as well as materials downloaded from the internet have been accessed and appraised.

1.6 Scope of the Research

The scope of this work is focused mainly on the provision of the electoral Act 2010 (as amended), as it relates to the conduct of free, fair and credible elections devoid of electoral fraud by a truly independent body. This is as it affects the conduct of the 2011 and 2015 General elections in Nigeria. The scope has been limited to the Act and the General Elections of 2011 and 2015.

It did not cover election to local councils even though provided for in the Electoral Act 2010(as amended). It is also limited to the legal aspects of the elections as provided for in the CFRN 1999 and the Act. Thus historical or political issues though have bearing on the discourse on democracy and election would not be in direct focus.

1.7 Literature Review

This thesis reviewed several works that bear on the subject of this research. i.e 2010 Electoral Act as it impacts on 2011 and 2015 General Election. These include books, journals, law conference proceedings, Technical Working Group (TWG), technical reports, special election reports on 2011 and 2015 elections by stakeholder's i.e. Civil Society organizations, High Commissions and embassies in Nigeria, national and international observer's, security agencies, the media (print and social), the World Wide Web (the internet), law reports i.e. land mark cases, Institutes and Centres, on views and opinions of scholars and experts on this field. Some have been discussed hereunder showing their relevance and contribution to the literature on this topic however identifying their lacuna in this area which this present work seeks to address.

a. Understanding the 2011 General Elections in Nigeria: The Beginning Ofa New Era¹⁴

This work is in two volumes: the first volume is a discourse on elections in Nigeria as from 1998 —2007 and the second volume was specifically on the study of the 2011 General Elections in Nigeria. These works made very robust contributions to the literature of elections in Nigeria. Coming from a background of academic and an electoral Commissioner, Ujo analyzed various political and legal issues relating to election in his works under review. The role of Independent National Electoral Commission, as an umpire in the election is analyzed. Despite the great deal of work and contribution made by these two volumes with combined pages of 1,000 consisting of 24 Chapters, yet there exist some Lacunae. Thus, even though his work was based.

¹⁴ Ujo A.A “Understanding the 2011 and 2015 General Elections in Nigeria (2012), International Institute for the study of Election and Election Management (IISEEM)”

On the 1999 Constitution of Nigeria, a lot of amendments have taken place which the work not *capture* nor anticipated. Again the 2002 Electoral Act was the basis of his 1998/99 work whereas the current Act is 2010(as amended), which amended a lot of provisions that were in the 2002 Act. Even in terms of political parties, in Ujos work only 9 parties were registered whereas in 2011 General Election, fifty three (53) political parties were in the contest for various offices even though 63 political parties were registered by INEC. This clearly presented several administrative, legal and logical problems which Ujo could not have anticipated or addressed in his 1999's work. Ujo attempted to address these lacunae in his subsequent works¹⁵, this attempt through laudable still left a lot of desirable explanations and inputs, for instance, firstly, the works did not have the legal instruments for election that is Electoral law in focus. There was no attempt to fully appraise the cases that came up following the 2011 elections. Thirdly, there were some obvious inaccuracies and/or omissions. For instance, the Electoral Act 2010 as amended provides that the amount for presidential campaign limit is as follows:

- (1) (I) Election expenses shall not exceed the sum stipulated in subsection (2) -(7) of this section.
- (2) The maximum election expenses to be incurred by a candidate at presidential election shall be one billion naira (₦ 1, 000,000,000).¹⁶

However, Ujo puts the limit as ten billion (₦10, 000,000,000)¹⁷

This present work examines these deficiencies by addressing issues in their present Constitutional and legal perspectives as they relate to the 2011 and 2015 General Elections in Nigeria.

¹⁵ Ujo A.A understanding the 1998-99 Elections in Nigeria (2000) Klamidas Communication Ltd Kaduna, Nigeria.

¹⁶ Ibid.

¹⁷ Ibid.

b. The Role of Nigeria Police in Elections¹⁸

This work is in nine chapters. It discusses generally the concept of democracy as it relates to elections in Nigeria. It further captures the relevance of party politics in Nigeria using the 1999 Constitution as its platform. It also looked at electoral offences against the background of the 2002 Electoral Act. Even though his work touches salient areas relating to this work, Okoigun's work on elections in Nigeria did not advert itself to the following areas, namely, that the work does not have a theoretical frame work upon which it is premised.

Again his work, having looked at election in Nigeria dating from 1959 to 2003 left out some important elections having indirect hearing on the present work that is 2007 general elections and beyond. These defects inform the need for further work to fill these gaps thus making the present work timely and relevant.

c. Democracy And National Security Issues: Challenges and Prospects¹⁹

Mbachu²⁰ examines the theoretical perspective to democracy in Nigeria. The author, an academician supported his work by academic authorities by looking at various dimensions to politics and democracy in Nigeria against the background of national security thus underscoring the need for security as *a sine qua non*, to democracy and the growth of democratic cultures, elections, and party politics. However, the work did not consider the legal perspective to democracy and election in that the constitutional basis of democracy and election were never considered. It did not also look at election as a major theme in the work. This research is-of the opinion that these are major *lacunae* which the present Work addresses.

¹⁸ Okoigun , R. O, The role of Nigerian Police in Elections , CSS Ltd, Broad Street Lagos, Nigeria (2000)

¹⁹ Mbachu, O. Democracy and National Security issues, Challenge and Prospects, Medusa Publishers Ibadan

²⁰ *ibid*

d. National Human Right Commission: An Independent Review Of Evidence Of Gross Violations Of The Right To Participate In Government To Public Service And To Fair Trial Through The Election Petition Process In Nigeria 2007 And 2011²¹.

The National Human Rights Commission's work²² is an independent review of evidence of gross violations of the rights to participate in government, to public service, and to fair trial through the election petition process in Nigeria 2007 and 2011. This work is a Report undertaken by the Technical Working Group (TWG) of the National Human Right Commission. This work is a landmark contribution to the literature on elections in Nigeria particularly the 2007 and 2011 elections.

Remarkable as this Technical Committee Review (TCR) work is, there are a number of gaps that need to be addressed in respect of the 2011 election which the report did not address. Firstly, the report did not consider substantially the 2011 election cases. This is because of the 84 cases reviewed by the reports, only 4 related to 2011 election²³. There were over 139 electoral petition cases in the 2011 General Election for the president and National Assembly elections alone. The review by TCR report on only 4 cases alone is grossly underrating the quantum of cases that went to the tribunal under the 2011 General Election. Some of these cases are landmark cases on election in Nigeria. The need therefore to properly review these cases as this thesis seek to becomes timely.

²¹ National Human Rights commission (2014): An Independent Review of Evidence of Gross Violations of the Right to participate in government to public Service and to fair Trial through the Election Petition Process in Nigeria 2007 and 2011, NHRC Project, Abuja.

²² *ibid*

²³ i. *Atika Otito vs kunle Odidi and six Others* (2011) 7 NWLR (PT 1245) P 108 (S/N 53)
ii. *Alhaji I.M. Sawawa vs Badmani Kabir and Others* (2011) 2 NWLR (PT 1232) P417 (S/N 79)
iii. *Babangida Omono Yare vs Iyiola Omisere and Others* (2013) 3 NWLR (PT 1180) P58 (S/N 82)
iv. *Yusuf vs Sunti* (2010) 4 FWLE (PT 502) P.1002 (S/N 84)

e. Nigeria: Post-Election Violence Killed 800²⁴

This contribution by Seylou Diallo focuses on the deadly election related and communal violence in northern Nigeria following the April 2011 presidential voting where more than 800 people were killed in three days of rioting in three Northern States. This contribution gives a detailed account of the violence that occurred in the 12 states of Northern Nigeria. It also traced the history of election violence in Nigeria from 1960 to date. The writer noted that even though there was improved election in Nigeria in 2011 elections but this improvement were dimmed by the circle of violence that followed it. He supported his contribution with pictorial, evidence of violence. His 9-page contribution on violence with regards to 2011 election was a good contribution to the literature on election violence and failure of the Act. However, this contribution is limited to the violence that occurred in northern Nigeria only despite the fact that there was evidence of pockets of violence in other parts of Nigeria prior to during and after the elections.

Furthermore, his contribution was limited only to the 2011 general elections and there was no recommendation as to ways of curbing election violence in future: this gap needs be filled.

f. Lessons from Nigeria 2011 Elections²⁵

This paper was a brief to the European Union on selected countries including Nigeria's election of 2011. It was an overview of the April 2011 elections where it looked at the steps taken by INEC and Government towards ensuring credible elections in Nigeria. It commended reforms on electoral, constitutional and the economy, which affected the 2015 polls and truly brought a fair and credible election in Nigeria. It further

²⁴ Seylou Diallo Nigeria Post –Election Violence Killed 800 AFP / Getty Images Retrieved www.afp on 24 July 2011

²⁵ Africa Briefing (2011). Lessons from Nigeria's 2011 Elections, No 81 15, Abuja/Dakar/Brussels, 15 September

discussed the proposals of UWAIS electoral reform committee which it advised should be widely published and reform effort enhanced to make the system more inclusive. It noted further that the freedom of Information Act which has been signed into law and guarantees the right of access of individuals and groups to information held by public institution and the new sovereign Wealth Fund Scheme were important steps forward. Constitutional reform should be done with a more holistic less piecemeal approach, with the full involvement of the Nigerian people, who have long been demanding it.

The paper made far reaching recommendations towards moving both the electoral system in the country in particular and governance in Nigeria better, some of these include:

- i. Releasing funds to INEC so it can begin early preparation for the 2015 elections
- ii. Directing INEC to compile, maintain and update the national register of voters on a continual basis, in accordance with Section 9 (1) of the 2010 Nigerian Electoral Act;
- iii. Using the Uwais committee's extensive recommendations as the basis for a broad debate on constitutional reform, including a review of the simple-plurality electoral system for legislative election
- iv. Responding to the genuine grievances to those living in parts of the North that are considerably poorer than some wealthier Southern states and prioritizing and improving their dire living conditions, while not overlooking states with similar problems in the south.
- v. Disclosing the result of the investigation into post-electoral violence, including the identities of those responsible and the causes;

- vi. Prosecuting those responsible for electoral malpractice or post-electoral violence regardless of their status;
- vii. Putting more effective procedures in place for challenging possible massive rigging, as opposed to individual instances of abuse at polling stations.

The above report/briefing was essentially on the 2011 elections and projected at better process for the 2015 elections. However, the report did not discuss the inadequacies of the legal frame work for the 2011-2015 general elections, which is the focus of this thesis.

g. Nigeria's 2011 Election Most Credible Since 1999²⁶

This was a paper by the United State Assistant Secretary for African Affairs on the 2011 elections presented to the centre for strategic and International Studies in Washington DC. The paper appraised Nigeria's 2011 elections and challenges confronting the nation. The report stated that:

Nigeria has conducted its most successful and credible elections since its return to multiparty democracy in 1999. Despite obvious imperfections, these elections have given the country a solid foundation for strengthening its democratic institutions in the years ahead.²⁷

Noting that as a witness to that historic occasion. He could vouch for the enthusiasm that Nigerians demonstrated towards the elections and their democratic rights. He also acknowledges what he called a strong commitment on the part of the government to improve the electoral process months before the election and the adequate funding provided.

Carson noted that the elections were clearly another step forward in Nigeria's continuing democratization process, but added that more still needed to be done to

²⁶ Johnnie C. (2012) Nigeria's 2011 Elections Most successful , Credible Since 1999, centre for strategic and International Studies in Washington DC, US.

²⁷ Ibid

improve Nigeria's electoral procedures and more importantly, to strengthen the country's democratic institutions and governance. The report coming from one of the highest level of US engagement with Nigeria provides an insight into the conduct of the 2011 general elections where it rated the election successful and credible since 1999, (his assertion may be factual when compared to previous election from 1999).

However, the report did not look at the violence which almost marred the 2011 elections. Furthermore, the report did not look forward to proffer far reaching recommendations on the just concluded 2015 elections and beyond. This is a major lacuna in this report considering the high level of this report ie: from the United States office of the secretary for African Affairs. This thesis will look at these inadequacies.

h. Review Of Election Security during the 2011 General Election in Nigeria: Conference Proceeding²⁸.

This is a monograph of conference proceedings on the 2011 General Elections. Which consist of three paper presentation on the issue of election security in Nigeria. They are:

- 2011 General Election Review: Experience sharing, Lessons Learnt and the way forward. The Nigeria Police perspective.
- Civil society Assessment of the 2011 General Elections.
- Post –Election Violence in Nigeria: Emerging Trend and Lessons.

This monograph extensively discussed the issues of election security as evidence from pages 10-31. However, the report was restricted to only security issues even though post-election violence were discussed in the presentation.

²⁸ Review of Elections security during the 2011 General Elections in Nigeria Conference proceeding (2015) Cleen Foundation Management series No.4

The report did not project ways of stemming of electoral violence in future elections: it did not again look at the prosecuting of electoral related violence, which are traceable to security breaches. This is a major lapse on this proceeding which would be addressed by this thesis.

i. Social Media and the 2011 Elections In Nigeria²⁹

The study ³⁰ analyses the role of social media in the 2011 elections highlighting the ways in which key elections stake holder's utilized social media during the election.

It also analyses the treatment of social media in the Nigeria's electoral legal framework particularly the Electoral Act 2010 (as amended).

This is a study by policy and Legal Centre (PLAC), which observes that the 2011 General Elections witness a remarkable use of social media as a political communication tool in Nigeria. Three major issues underlined the tremendous use of social media tools during the 2011 elections. Firstly the use of social media in Nigeria's 2011 elections reflects a global trend towards "internet elections" or "e-electioneering". Around the world, rapidly expanding access to internet , increased availability of internet –ready smart phones and other communication devices, as well as the evolution of web based new media-personal websites, social networking sites, blogs, e-newspapers, have redefined methods of political communication, leading to a significant shift towards the use of social media in the electoral process. Previously, network television and newspaper dominated coverage of electioneering as the primary sites of election related information. But today, the social media has become a major election information sharing platform

²⁹ Social Media and the 2011 Elections in Nigeria PLAC Policy and Legal Advocacy centre, Abuja, 2011, p.32

³⁰ ibid

globally. Because of its ease of use speed and reach, social media is revolutionizing efficiency of election administration coverage and reporting.

The second issue that underlined the use of social media in Nigeria's 2011 election according to this study is the tendency of some Nigerian Politicians to tap into the opportunities offered by the social media for on-line campaigning. During the 2011 General Elections, many politicians particularly the presidential aspirants used social media tools to connect with the voters and constituent. Facebook and twitter appear to be the most widely used social media platforms by the politicians. For example, in December 2010, it was estimated that the president Goodluck Jonathan follows close to 300,000 on his facebook page. Other presidential aspirants like Dele Momodu, Ibrahim Shekarau, Nuhu Ribadu, Atiku Abubakar and Ibrahim Babangida all had Twitter and other social media accounts. Political parties like Peoples Democratic Party (PDP), Action Congress of Nigeria (ACN) and Congress for Progressive Change (CPC) also maintained Facebook accounts. Social media offered politicians and their parties the opportunity to broadcast messages and recruit huge number of volunteers to support their campaign.

The third issue that underscored the use of social media in Nigeria's 2011 elections is the tendency of Nigerian civil society and the electorate to take up social media as a tool for improving the efficiency of election observation. Prior to the conduct of the 2011 elections, 'elections in Nigeria have been largely flawed by vote rigging and other electoral malpractices. The 2003 and 2007 elections were particularly marked by dissatisfaction by candidates, voters and observers. The elections were trailed by complaint of irregularities such as disenfranchisement of prospective voters, snatching of ballot box from election officials and stuffing of the boxes with invalid ballot papers, as

well as allegations of collusion between election officials and politicians to alter election result and subvert popular mandate. The flaws that characterized the conduct of the 2007 elections severely dented the integrity of elections in Nigeria's and triggered demands for freer, fairer and more transparent elections according to the study.

To address the flaws that marred previous elections in Nigeria, various organizations institutions and individuals set up social media platforms that enabled the citizens to oversee the electoral process and report electoral malpractice to authorities through their mobile phones, computer and other electronic devices.

Through social media platforms, overwhelming number of videos, photos tweets and comments were shared. "The widespread use of these real-time media severely limited electoral malpractices because we found that people were aware that they were on camera and this made them operate at their best behavior"³¹

Attahiru Jega, Chairman of the Independent National Electoral Commission (*INEC*), also agrees that the use of social media during the 2011 elections "enhanced transparency in the electoral process and made INEC more accountable to the public in the conduct of elections" according to, this study.

The 2011 general elections offer a unique opportunity to examine the use of social media in elections, especially the usefulness and applicability of social media in the electoral environment. Although it seems obvious that social media contribute in no small measure to the success of the 2011 elections, it is pertinent to understand specifically how particular stakeholders in the 2011 elections, like INEC politicians/political parties, the electorate and CSOs, used the social media during elections.

³¹Ibid.

This 21-page work by PLAC thoroughly examined and discussed the role of social media in the 2011 elections. However the study is commendable even though it left some evident lapses i.e. it did not discuss social media role in triggering electoral violence through false reporting of election results; secondly it did not discuss adequacies or otherwise of the Electoral Act 2010 (as amended) in not capturing the social media as a tool for enhancing or attaining credible elections; thirdly this study is restricted to the 2011 General Elections only while the thrust of this thesis includes the 2015 General Elections. This work will address the obvious lapses of this study as pointed immediately above.

j. The State Of Electoral Offences And The Challenges Of The Judicial process In Nigeria³²

This learned author in his contribution on the topic of election which is mainly on 2011 General Elections in Nasarawa State Law Journal titled “*The State of Electoral Offences and the Challenges of the Judicial Process in Nigeria*”, x-rayed the present position of the electoral offences visa-o-visa the judicial process in Nigeria. In his fifteen (15) page contribution, the learned author attempted an examination of the fifteen (15) electoral offences contained in the Electoral Act with their various penalties, which he noted were mainly prison terms and monetary. He juxtaposed this position with the challenges of judicial process which he identified as:

- i. The burden of proof of criminal allegation in election petitions.
- ii. Non-compliance with the electoral Act.
- iii. The doctrine of substantial compliance.

³²Shigaba D.G. (2012) *The State Electoral Offences and the Challenges the Judicial process in Nigeria* Masarawi State University Law Journal Volume 5 January 2012 P 154.

He concluded that:

“Election offences should be made unattractive to politicians so that elections with integrity will be enthroned to our nascent democracy”³³ Robust as this contribution seems to be, it only applies to the 2010 General elections and did not take cognizance the two amendments of electoral Act 2011, Thus the realities in the 2015 General elections which the author neither anticipated nor discussed were confronted by the problems he raised in his contribution to the journal. This shows that the combined effect of the amendment to electoral Act 2011 and the amendment of the INEC manual shows that here is a gap in his work i.e the elections of 2015 when this work intends to fill.

k. Impact Of Judicial Activism On Electoral Laws In Nigeria

This is a voluminous work of 298 pages consisting six researched chapters as follows:

Chapter One; Introduction, definitional analysis & history of election: Chapter two; Legal Frame work for elections & electioneering process in Nigeria; Chapter Three; electoral conflicts & legal resolutions in Nigeria, election petition; a sui generis: Chapter four : impact of judicial activism and electoral democracy: Chapter Five; Notable leading judgments of his lordship. Honorable Justice Dahiru Musdapher (CJN) on election matters: Chapter Six; Annotatiti of electoral Act, 2010 (as amended in 2011).

This work attempted a very extensive historical, legal and judicial look at Nigeria’s electoral system taking an extensive historical overview of Nigeria’s history of elections and a closer look at the legal framework of the elections and mechanism for resolving electoral conflicts. Its chapter on the impact f judicial activism on the electoral

³³ibid

laws and Nigerian democracy brings to fore the -need for drastic changes in the electoral system. The notable leading judgment of Honorable Justice Dahiru Musdapher shows the versed and richness of Nigeria's electoral cases and the quest by politicians to reach the apex court on any court ruling that does not favor them. The annotation of the Electoral Act 2010 (as amended) in the work makes the work a rich compendium of election matters in Nigeria. However, this work is limited to the 2011 elections only, in terms of the legal framework and the cases cited. The work did not, for instance, capture the latest amendment to the 2010 Electoral Act i.e. the third amendment signed in 2015 that ushered in the 2015 General Elections. Also the scope of the work excludes some fundamental aspects of the electoral process as follows:

- a. Violence related to the 2011 elections;
- b. Exclusion of some electorate in the electoral processes i.e. Diaspora population, internally displaced Persons and some classes of disabled persons;
- c. The need to unbundle INEC with respect to some electoral processes e.g. prosecution of electoral offenders, registration and monitoring of political parties;
- d. The attached Electoral Act 2010 did not contain the third amendment to the Act;
- e. The cases mentioned as leading judgment of his lordship contain only relating to only 1999-2010 cases no cases relating to the 2011 General Elections was cited.

I. Election Rigging and the Problem of Electoral Act in Nigeria³⁴.

This is a journal contribution by a political scientist in the Afro Asian Journal of the Social Sciences. The seventeen-page contribution is on election rigging and the problems of Electoral Act in Nigeria. The paper grappled with the election rigging and

³⁴ Awopeju, A Election Rigging and the problem of Electoral Act in Nigeria. Department of science Joseph Ayo Babalola University, Ikeji-Arakeji, Osun State, Nigeria

the flaws inherent in Nigeria Electoral Act. Making use of secondary data as the methodology of his paper, the paper examined the history- of electoral process in Nigeria from the era of the first republic to the 2007 Fourth Republic. It was observed that election rigging/corruption was not a new phenomenon in the Nigeria body politic. Apart from the 2003 Presidential Election, election rigging in Nigeria is a recurring decimal and it was as old as the polity itself he asserted.

He structures the paper into five parts. In part one he gives an introduction, in part two he deals with conceptual clarification of election, in part three he looks: at the conceptual frame work of the study, in part four he examines the flaws of Nigerian Electoral Act, while he makes his conclusions and recommendations in part five.

This contributor is writing from an entirely political science background consequently his discussions were devoid of legal frame work on elections. His discussion the electoral act is principally on the Electoral Act of 2006. He recommended its amendment noting that the Electoral Act of 2011 as been signed into law. He neither discussed the content nor highlighted any observable flaws to see whether the flaws he discussed in page ten of his paper has been taken care of by the 2010 Electoral Act amendments. Furthermore, his work only dwells on election rigging. It did not discuss other pertinent issues relating to elections e.g. electoral violence electoral disputes etc. This work thus is restricted only to the election prior to 2011.

However, this present work looks at the 2011 and 2015 elections using the Electoral Act 2010 (as amended) as the legal framework.

m. Elections And Letting The Votes Count In Nigeria: Implications For Democratic Stability In An Emerging Third World Society³⁵.

This work is a contribution to the African Journal of Social Sciences by three authors³⁶. The paper examines the primacy of electoral voters in an emerging democracy and its implications of democratic consolidation and good governance in Nigeria. It takes on the important question of understanding the validity Nigeria, with implications for democracy in Africa. This paper noted that a credible election is yet to be enthroned in the process of choosing election officials in Nigeria and blames this electoral malfeasance on the adoption of faulty, atavistic and moribund balloting system by the electoral umpire (independent national electoral commission INEC). Drawing from the 2007 and 2011 elections, the paper submitted that the electorate votes never count for who emerges as a winner and accounts for the high level of bad governance and democratic fragility in Nigeria. Factors responsible for this were identified by the paper and suggest as a panacea that, the state should invest in politics and also digitize its electoral process. Rich and robust as this contribution is, it is essentially from apolitical science perspective. Consequently, it did not dwell on the legal framework of election (i.e. Electoral Act) as this present work intends to do. The work for instance did not identify any gap in the Electoral Act when the authors where examining the possible reasons for election failure in Nigeria in their paragraph five. It is the intention of this present work to fill this gap by showing that the major causes of Electoral fraud etc. in Nigeria are traceable to the Electoral Act.

³⁵ Agbor, U.I; Okoro, J; Adams, J.A; (2011) Elections and letting the Votes Count in Nigeria. Implications for Democratic Stability in an Emerging Third world Society.

³⁶ Ibid

n. Nigeria's Historic Elections: Uncertainties and Anxieties of a vital Process³⁷.

This is study work on the elections in Nigeria for the Chatham House by an Associate Fellow. The study looks at the prospects of a successful 2015 Election after a false start in February and the postponement of the Presidential and National assembly elections to the 28th March from the original date of February 14th 2015. It looks at the prospects of the use of new technology by independent national electoral commission (INEC). It posited however that there is wide spread concern that the system (the use of card reader) though sound in theory, may fail in practice.

The study posited that assuming the card readers' work, and that the accreditation and voting process are smooth, the process is still Vulnerable at the point of collation. According to the writer even in the event of a free and fair election, this period is likely to trigger significant violence as in 2011 when over 800 people died and thousands were displaced. The writer also looked at some problems that may negatively affect the elections i.e. the presence of foreign fighters on Nigerian soil the seeming security storm in the Niger Deltar.

This write up is an exposition of the likely challenges to the electoral especially the use of card reader etc. The paper did not look at the Electoral Act or the Constitution as a major obstacle to free and fair elections. The paper did not recommend any way to confront the challenges it highlighted. It is pertinent to note also that contrary to the pessimistic postulation of the paper with regards to the use of card reader and possible violence this did not come to pass. This present work shows that the use of technology appears to be one of the solutions that will bequeath to Nigeria a free and fair election in

³⁷ Sola, T. (2015) Nigeria's Historic Elections: Uncertainties and Anxieties of a vital Process. Retrieved 26 March 2015 from <http://www.Chathamhouse.org> at 0900hrs

future. This work will also show that unlike 2011 the level of violence in 2015 is much more reduced.

o. Emerging Democracies in Africa: Challenges & Opportunities³⁸.

This is a report on the two-day international conference for all countries in the African Continent organized by the National Institute for Legislative Studies of Nigerian National Assembly. It is a one hundred and sixty-four-page report consisting of an Introduction and Executive Summary. It consists of presentations at six sessions the presentation includes the following:

- a. Managing Conflict and Development: Sharing Experiences by Ambassador Etobo, E. E.
- b. Challenges of Leadership in Emerging Democracies in Africa: A Legislative Perspective by Prof Adair, J.
- c. Revising Youth Unemployment and Violence in Africa: Strategies for Quick Wins by Dr. Ukonjo-Iweala, N
- d. Youth Unemployment in a Global Contest: Change in the Modern Age by Prof Cunnigen. D
- e. Youth Unemployment in a Global Contest: Focus on Nigeria by Prof Iyayi,
- f. Presentation on the theme “Effective Governance: Delivering on Infrastructure and Social Services in Africa”

This conference and the resultant report above is a bold attempt made toward discussing democratic development in Africa. It looks at the challenges opportunities in emerging democracies in Africa. The discussions and presentations including the

³⁸ National Institute for Legislative Studies, Abuja (2013) Emerging Democracies in Africa : Challenges & opportunities National Assembly , Nigeria P.53

discourse that follow are rich and robust. These coming from eminent political and academic leaders from Africa informed the quality of this conference.

However this Conference looks at the issues from broader perspective. It did not make a focused case study of major electoral obstacles confronting emerging democracies like Nigeria. Issues like ways to curtail election violence, rigging, electoral irregularity, electoral malpractices and constant tinkering with electoral rules i.e. the various internal and external lesson –learning reviews the commission undertook as a measure towards the continuous improvement of the electoral process. Chapter 5 highlights the key issues and challenges the commission faced in the conduct of the, 2011 General elections. Chapter 6 presents reports from the commissions’ state offices that drew attention to specific and peculiar challenges faced by these offices in the field and how these challenges were addressed. Finally, chapter 7 concludes the Report by discussion the way forward, highlighting critical success factors that could play a significant role in the preparations for the 2015 General elections.

The report as note earlier is very comprehensive in that it touché on major themes of the 2011 General Elections. For Instance, under Post-election issues, it discusses post – election violence that followed the 2011 General elections. It also gave the number of election petitions and that went to the tribunal, the court of Appeal and the Supreme Court detailed and comprehensive as this report seems to be it has some observable gaps.

The report did not discuss the pros and cons or observable in Electoral Act 2011 (as amended) even though a lot of amendments were made to the electoral Act prior to the 2011 General Elections in order to cure the defects that would militate the smooth conduct of the 2011 General elections.

p. Nigeria’s 2011 Elections: Best Run, But Most Violent³⁹

This is a contribution to the journal of the United States institute of peace. It noted that Nigeria’s 2011 general elections received high praise for being well managed, but post-election violence claimed 800 lives over three days in Northern Nigeria and displaced 65,000 people, making the election the most violent in Nigeria history

The violence was triggered by a belief that the challenger, Gen Muhamudu Buhari (rtd), a Northerner should have won the election

Two special commissions established to examine the factors leading to the violence will have limited effect in breaking the cycle of violence unless their reports leads to ending impunity for political violence in addition, local peace making initiatives and local democratic institution must be strengthened. This report concisely dealt mainly on the violence that erupted after the election. However, it did not pin point those responsible for the violence nor recommend punishment nor ways of stemming future violence. The scope of the paper is therefore very limited which shows the papers limitations. This is the defects that this thesis intends to cure.

q. 2015 Elections: Observers And Monitors Lopsided Reports⁴⁰

This is an editorial report by the Pilot of 24th April, 2015. It x rayed the activities of the election observers and monitors in the 2015 General Elections. After assessing the functions and roles of these bodies, it concluded that it leaves much to be desired. It condemned what it saw a flooding of southern Nigeria especially the southern East and Rivers States by every manner of group in the civil society industry, in the name of “Election Monitoring” or “observation”, the paper continued:

³⁹ Dorina, B. (2011). Nigeria’s 2011 Elections: Best run, but most violent. Peace brief, US Institute of peace, Vol. 103,PP1-18

⁴⁰ Editorial (2015): Nigeria Pilot, April 24,PP.15

“We are not aware of any civil society, local or international, that monitored the two last elections in the core Northern States. This explains why the atrocities that were perpetrated during the elections in that region were either not well reported or not at all. These included underage voting, over voting and voting without the card reader’.⁴¹

The paper poured vituperations on the general conduct of the elections and the manner it was conducted and concluded that the monitors and observers were there only to do the bidding of their external sponsors. This scathing criticism of these set of bodies that are an essential aspect of democratic elections may not be entirely true.

Understandably some of the observers might not live up to expectations but surely a good number of these groups are living up to expectation. Accordingly, some of the inaccuracies as pointed by this Editorial are issues that have been addressed objectively by this thesis.

r. Looking Towards The 2015 General Elections⁴²

This is a paper presented at the Nigeria’s Civil Society Situation Room meeting on the state of the nation presented by Attahiru M. Jega.⁴³ It was an attempt by the writer to look at the prospects of the 2015 General Elections. The writer looked at the conduct of the 2011 General Elections and discussed some major issues relating to the conduct of 2015 General Elections. Such issues include: election support infrastructure permanent voters card, INEC citizen contact center, voter and civic education, continuous voter registration exercise and constituency. In concluding, he asserted that works focus on repositioning the core processes of election in a way that will enable INEC to address some of the most obvious challenges that it faced in the April 2011 election.

⁴¹ Editorial (2015): Nigeria Pilot , April 24,PP.15

⁴² Jega , A. M. (2013) Looking Towards The 2015 General Elections Room Meeting on the states of the Nation, July 9th 2013, Pretorea Hotel, Asokor, Abuja, Nigeria

⁴³ Chairman, Independent National Electoral Commission (INEC) between 2010-2015

The paper's main focus is on the role of INEC in conducting elections with specific reference to 2001 General Elections and a forecast of the 2015 elections.

Accordingly, it is narrow in scope as it is only limited to the role of INEC. It did not discuss the conduct of elections in its major ramifications.

Accordingly, this thesis is aimed at discussing the conduct of the 2011 and 2015 elections in their major themes.

1.8 Organizational Layout

This thesis has seven chapters;

Chapter one is the introductory chapter wherein the general background to the work is discussed. This includes the objective, statement of research problem; research methodology, objective and justification for this work are outlined. Literature review of related work is also attempted.

Chapter Two looks at the conceptual framework of the thesis showing the perspective from which this work is based.

Chapter Three is an overview of the Electoral Laws in Nigeria where attempt to look at the Electoral laws holistically is made.

Chapter Four is an attempt to look at the imperatives and challenges to a free, fair and credible election in Nigeria.

Chapter Five and Six examine how the 2010 Electoral Act impacted on the conduct of free, fair and credible elections in 2011 and 2015 respectively.

Chapter Seven concludes the work by drawing conclusions and making findings and recommendations based on the general and detailed discussions in preceding Chapters.

CHAPTER TWO

CONCEPTUAL FRAMEWORK

2.1 Introduction

The focus of this thesis is the legal perspective to elections particularly the 2011 and 2015 General Elections in Nigeria. This is under the Electoral Act of 2010¹ (as amended). However, elections largely fall under the political domain and accordingly, the need to explain basic fundamental political principles, concepts and framework become necessary. Therefore the conceptual framework under which this work is based would be discussed. This is necessary as it is central to the theme of this thesis and would provide a clearer platform upon which the understanding of this work would be based.

The most widely praised as the best system of government in our contemporary world is democracy, which allows for high level of peoples participation in decision-making and policy formulation through representatives. A major determinant of democracy is the electoral process that provides the electorate the institutional framework for choosing representatives through a competitive free and fair election. Essentially, elections are the only acceptable institutionalized process enabling some or all of the recognized members of a democratic society to choose office holders. For elections to be credited as free, fair and credible, adherence to existing regulatory framework which is aimed at ensuring fairness, transparency and accountability in the electoral process as enshrined in the Electoral Act must be upheld by all stakeholders².

Election, electoral process, electoral reform and Electoral Act/law are some of the concepts that are related to this study. Focusing on the term election, and just like other

¹ Electoral Act. 2010(as amended).

²David, Manu and Musa (2015), *Elections, Electoral Reforms and Abuse of the Electoral Act in Nigeria: An Analysis of the 2015 Electoral Process. IOSR Journal of Humanities And Social Science (IOSR-JHSS) Volume 20, Issue 4,p.13.*

social science concepts it has defied a universally acknowledged definition. As such election has several conceptual definitions. For example Usman³ defined election as the means of peaceful change of leadership in organized societies as it provides the best option for an orderly succession of leadership. While Doves and Hughes⁴ say it is a procedure recognized by the rule of an organization, be it state, club, a voluntary organization or whatever, where all, or some members choose a smaller number of persons to hold an office, or offices of authority within that organization. An essential fact is that, election is the formal procedure recognized by law as well as decision taken by the electorate to decide those who occupy public offices and also the policy direction of a polity. In this regard, election can be defined as the process or procedure in which the electorate choose their representatives through an open competitive, free and fair process for a specified period of time. For election to be successful it must undergo some processes, and is termed as electoral process. Electoral process according to Hounke and Gueye⁵ refers to the necessary stages in the preparation and organization of an election. For elections and electoral process to be considered as fair it must have some basic structures, which include: statutory provisions establishing the electoral bodies⁶, delineation of wards/constituencies⁷, registration of political parties⁸, registration of voters⁹, recruitment and training of ad-hoc staff, procurement of electoral material, logistic, screening of candidates, provision of polling agents, monitoring of agents,

³Usman D J (2014) A Rethink on the standing of proving criminal Allegations in Election Petitions under Nigeria Law: Journal of Law, Policy and Globalization. Vol. 29, 2014. p. 51

⁴ Doves, R.E and Hughes, J.A. (1983) Political Sociology: In IOSR Journal of Humanities and Social Sciences. Vol. 20, no.4 p 51

⁵ Hounke, M and Gueye, A.D (2010). The Role of Security Forces in the Electoral Process: The Case of six West African countries in Journal of Humanities and Social sciences. Vol. 20, No 4. P. 51

⁶ Section 153, Third Schedule Part 1 (F) CFRN 1999 and Electoral Act (2010) (as amended) LFN 2004.

⁷ Ibid.

⁸ Ibid. Section 15 (b) and Section 7.

⁹ Ibid. Section 15 (e) and Section 9.

accreditation of voters, actual voting, counting of votes and providing avenues for settlement of disputed results¹⁰.

The analytical framework adopted is within the context of 2010 Electoral Act (as amended). This is because it is the current electoral law that guide the conduct of 2011 and 2015 electoral process which is central theme of this thesis.

2.2 Democracy and Good Governance

The number of democratically elected governments worldwide continues to grow, but many countries have made incomplete democratic transitions¹¹. The consolidation of democracy is a lengthy process, and numerous obstacles remain. As Zakaria¹² notes that this is the rise of "illiberal democracies". A more accurate description may be that many democratizing countries have made partial or incomplete transitions, demonstrating some but not all fundamental aspects of a democratic political system¹³.

Most newly established democracies exhibit limited competition within their political systems. In the vast majority of countries, both economic and political power remains concentrated in the executive branch¹⁴, with little genuine oversight by other branches of government¹⁵. Elections rarely offer citizens a real choice among clearly differentiated platforms and policies¹⁶.

Many of the institutions considered key to democracy have yet to function effectively. In many countries, weak judicial systems are still too susceptible to political

¹⁰ Ibid. Section 285 and Section 133 – 145.

¹¹ Centre for Democracy and Governance (1998), Bureau for Global Programs and Research, U.S. Agency for International Development, Washington DC. 20523 -3100. P.3.

¹² Zakaria, F. (1997) Emerging Democracies Journal of Foreign Affairs, Abuja 1999, Nov-Dec p.9.

¹³ Ibid.

¹⁴ Thus in Nigerian the CFRN 1999 in Chap VI Part 1 vests so much powers to the Executive with the power to appoint even the Chief Justice of the Federation (section 231) and control of several Executive Bodies Section 153 (1) a-n, Ministers, Service Chiefs, Inspector General of Police etc .

¹⁵ Section 88 CFRN 1999 gives powers of oversight and investigation to the National Assembly.

¹⁶ This is despite the number of political parties in Nigeria.

influence and lack the commitment and capacity to make rule of law a reality¹⁷. While many countries are embracing decentralization, often local governments do not have the authority or the means to provide a meaningful opportunity for citizen participation.

Nongovernmental actors continue to play a critical role in pushing for political reform. While more developed in some countries than others, civil society organizations and the media are providing oversight and scrutiny of government actions in many countries around the world¹⁸. Nonetheless, many governments see increasing capacity of the nongovernmental sector as a threat, and continue to support restrictions on the media and civil society.

Expanding democratic participation and building a democratic culture is a long-term process. Despite many encouraging trends, most citizens still consider their political systems to be distant and unresponsive to their daily needs. Even in regions such as Latin America where democratization has progressed, most citizens feel disenchanting and isolated by their governments, lacking meaningful access to justice systems or to governmental decision-making processes. Additionally, endemic corruption has a corrosive effect on people's confidence in both public and private institutions¹⁹.

To remain viable, new democracies must improve the management of national economies and expand the provision of essential services. At the same time, sustainable economic growth requires not only economic restructuring but also governmental reforms to improve transparency and accountability.

¹⁷ Op.Cit.n.12

¹⁸ The CFRN 1999 confers on the mass media an obligation where it provides that “the press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental Objectives contained in this Chapter and uphold the responsibility and accountability of the government to the people”

¹⁹ Lately in Nigeria there has been massive corruption investigation across the Executive , Legislative and even the judiciary (Daily Sun 24 , October, 2016,p.5)

The disparities between urban and rural populations present an enormous challenge in the political, economic, and social spheres of developing countries. This is particularly true in the governance area, where efforts to strengthen democratic local governance.²⁰

Women have been at the forefront of democratization movements in many countries. However, this involvement has not necessarily resulted in increased political opportunities for women in new democracies. The inclusion of women's rights in new constitutions, the setting of targets for women's representation in legislative bodies, and the establishment of links by women's advocacy organizations, both with elected officials and with the population at large, are evidence of change. Yet obstacles remain. For example, many women still lack the training and skills to make them more effective politically²¹.

2.3 Rule of Law

Respect for the rule of law and a well-developed justice system²² are underpinnings of a democratic society and a modern economy. Effective rule of law resolves conflicts and fosters social interaction in accord with legal norms and widely accepted societal values. It also enhances predictability, equitable treatment, and a respect for basic human rights provides services in accord with societal demand and expectations; and helps curb the arbitrary exercise and abuse of power by other branches of government, elites, and other privileged groups. In all these regards, justice sector

²⁰ Section 7, CFRN 1999 provides for the system of local government by democratically elected local government councils. Also the Electoral Act 2010 (as amended) sections 103-116 provides for the procedure for such election, Sadly however, some states in Nigeria have not conducted such elections for many years instead have interim local council administrators.

²¹ Op.Cit.n.12

²² Sec 6, Part II, CFRN 1999

institutions must perform their functions effectively. At the same time their operations must be transparent, accountable, and in compliance with the law.

In many states with weak or incipient democratic traditions and underdeveloped economies, the processes and institutions which are necessary to uphold the rule of law are incompletely evolved and ineffective. Often, their legal framework does not correspond to social reality and contemporary needs. The lesser relevance of formal law and institutions is often accompanied by the limited availability of justice sector services so that large masses of the population must rely on unofficially recognized alternative mechanisms which often have their own nondemocratic biases. When these conditions prevail, the rule of law, democratic reform, and sustainable economic development are all very difficult to advance.

When a nation's constitution, its organizational, procedural, and substantive laws, and its regulations are inadequate to its needs, promoting the rule of law often requires major reform of the country's legal and regulatory framework.

Many developing countries inherited antiquated legal structures from colonial powers. Often, these structures are inconsistent with contemporary social and economic realities. In many cases, constitutionally recognized human rights guarantees are not duplicated in the secondary laws which effectively govern sectoral operations. Sectoral operations are also impeded by laws defining basic organization in ways which entrench inefficiencies, facilitate or encourage corruption, and undermine institutional mandates.

Improving legal frameworks commonly involves three areas of concern. First among these is the framework itself, which is the basis of the social contract between the governors and the governed. It provides a blueprint for the institutions, processes, and rules by which the government functions; it defines citizens' rights and responsibilities;

and it establishes the relations among the branches of government. Whatever the quality and adequacy of the initial blueprint, over time some aspects may require alteration because society or its needs and values have themselves changed. A second concern is with legislation that often establishes the detailed organization and procedures of courts and other sectoral institutions in patterns that conflict with changing standards of efficacy and efficiency. A final concern is with substantive laws that often conflict with basic human rights principles, in some circumstances, solutions to these problems require the introduction of new societal preferences, or the efficient conduct of valued activities. In short, while legal change is not the only element of reform, it is sometimes essential if legal and justice systems are to contribute to broader political and economic development.

Effective, equitable, and transparent administration of justice requires efficient and effective institutions. In most countries, the justice sector comprises several interdependent institutions— the judiciary, the prosecutors, the investigators and police, public defenders, and the private bar. To function fairly and effectively, all actors must be knowledgeable of and operate under the same interpretation of laws and practices.

Ironically, in many countries, justice officials may be among the most common abusers of citizens' rights. Public sector professionals including judges, prosecutors, public defenders, and police throughout much of the developing world suffer from inadequate training, low salaries and insufficient resources, inadequate organizational structures, and varying, but rarely sufficient, degrees of independence from other branches of government. The resulting inefficiency in the courtroom; lack of adequate capacity for prompt, fair, impartial, and competent investigation, prosecution, and handling of civil and criminal cases; and inadequate availability of counsel in indigent criminal cases undermine citizen confidence.

Equal access to justice which ensures that all individuals are able to seek and receive redress for their grievances with other private parties and with state officials or organizations continues to elude most developing societies. In many countries, years of colonialism and brutal dictatorship have robbed individuals of any expectation of fair treatment by governmental institutions. Often there is little understanding or information about rights and how to use the justice system to defend them.

Inadequate capacity of the courts and resulting case backlogs frequently mean that justice delayed is justice denied. In addition, judicial ineptitude, neglect, and corruption fuel a pervasive lack of confidence and discourage reliance on the formal justice sector.

2.4 Election and Political Processes

Free and fair elections are indispensable to democracy²³. Although other elements of democracy can develop before competitive elections are held, a country cannot be truly democratic until its citizens have the opportunity to choose their representatives.

Countries that hold free and fair elections are overwhelmingly more liberal than those that do not, and countries that protect civil liberties are overwhelmingly more likely to hold free elections than those that do not.²⁴

Elections can be a primary tool to help force political openings and expand political participation. In recent years, elections have been a principal vehicle for democratization, as authoritarian governments have frequently fallen to democratic forces. Electoral campaigns also tend to foster political liberalization. For an election to be free and fair, certain civil liberties²⁵, such as the freedoms of speech²⁶, association and

²³ A detailed discussion on the imperatives and requirements election for free and fair edition is discussed in Chapter (4) of this Thesis

²⁴ Marc Plattner,(1998) “Liberalism and Democracy: Can’t Have One Without the Other,” *Journal of Foreign Affairs* (1998) P.173.accessed from www.dmo.org on 7/7/2016 at 6pm.

²⁵ Chap IV of the CFRN 1999 guarantees such civil liberties.

²⁶ Ibid. Section 39.

assembly²⁷, are required. Elections offer political parties and civic groups an opportunity to mobilize and organize supporters and share alternative platforms with the public. They also serve to encourage political debate.

Elections are also increasingly seen as a device to resolve conflict following years of civil war. Armed movements have often agreed to put down their weapons in exchange for the opportunity to contest power in fair elections. More often than not, such elections have helped to end civil wars and produced, if not democracies, more representative political institutions and more open political systems.

In countries where an election could help spur or accelerate a transition to democracy, the institutional capacity to carry out elections is often weak. Election commissions may not yet exist or they may lack the technical capacity or political will to administer a fair election. Electoral laws may be antiquated and require major revisions²⁸. Legislators drafting a new law may lack sufficient knowledge of electoral systems and practices.

The electoral framework refers to those constitutional provisions, laws, regulations, and institutions that govern electoral processes. Although not a sufficient condition in and of itself, an impartial electoral framework is necessary for free and fair elections and electoral processes. Impartiality may take a number of forms, but is generally recognized by a broad public acceptance of the electoral framework. Impartiality is therefore best served by encouraging a substantive and inclusive debate on the electoral framework.

²⁷ Ibid section 40.

²⁸ Nigeria's Electoral laws have over the years continuously been amended. The present amended Electoral Law (2010) is the focus of this thesis.

Election monitoring is key for effectively overseeing electoral processes. Election monitoring is designed to reduce the opportunities and incentives for electoral fraud; identify and address problems with the electoral process; and legitimize a peaceful transfer of power.

In many countries, citizens are likely to be unaware of their rights and responsibilities as voters and political participants. They may be unfamiliar with the mechanics of voting or the range of parties and candidates from which they can choose. Independent civic groups, if any exist, often lack the resources and know-how to educate citizens and lobby for democratic reforms.

In many developing countries, political parties are often personality-based organs that lack the organizational capacity to campaign nationwide, present ideologically compatible candidates, and recruit and train poll watchers. When new governments take office, they are often ill prepared to staff, administer, and oversee government agencies. An election serves little purpose if the resulting government cannot at least partially meet voters' expectations.

There are also sizeable number of disadvantaged group that are disenfranchised e.g Internally Displaced persons (IDP), handicapped persons and diaspora persons. The issue of some of these groups forms one of the statements of research problem of this thesis²⁹.

Peaceful and efficient transfers of political power facilitate smooth transitions in democratic government. This essential element is especially important in political environments in which new individuals, groups, or political parties are coming to power

²⁹ See Chapter I of this work and the recommendations in Chapter 7.

in the legislative or executive branches of government at the national, regional, and local levels.

CHAPTER THREE

OVER VIEW OF ELECTORAL LAWS IN NIGERIA

3.1 Introduction

The Legal framework for an electoral system is a composite of laws including constitutional provisions¹, electoral Acts², guidelines³, legal precedence⁴ and codes of conduct⁵. Such statutes/laws must be unequivocal in policy goals and thematic directions that should facilitate the functions of the election management body(EMB) in its engagements with all stakeholders, such as allowing for successful delineation of electoral constituencies, defining contestable positions, eligibility of candidates, and clearly defining the roles and ethical expectations of election managers⁶. Additionally, it should enable effective mechanisms for conflict and dispute resolution before, during and after elections⁷. Such legislation should be coherent, complete, systematic and fully applicable, as their defects would undermine the electoral system. The General elections in Nigeria⁸ encompassed the entire processes enumerated above and same is of necessity governed by laws, the foundation of which are the relevant provisions of the 1999 Constitution of the Federal Republic of Nigeria⁹ (As Amended); with broader provisions contained in the Electoral Act 2010¹⁰ (As Amended), while the guidelines¹¹ of the

¹ Constitution of the Federal Republic of Nigeria 1999 (as amended).

² Electoral Act 2010 (as amended) Laws of the Federation of Nigeria, 2004.

³ Independent National Electoral Commission Guidelines/ Manual 2009.

⁴ These include number of Landmark Cases that settled some areas of election disputes e.g Action Congress (AC), and *Alhaji Aliku Abubaker vs INEC* (2007), *Rt. Hon Rotimi Chibuike Ameachi vs INEC*, *Celestine Omeha and Peoples Democratic Party (P.D.P)(2007) SC 252.*, *Mr. Peter Obi (Governor of Anambra State vs INEC and 7 others* (2007) SC 123 and *Ugu vs Ararume* (2007) 12 NWL R Pt 1048 at 367.

⁵ Code of Conduct for Political Parties (2003)

⁶ Igini, M.(2015) Election Issues, being a paper delivered at the Conference on post 2015 General Elections at the electoral Institute, Abuja on 20/May/2015 under the Fourth Democratic Dispensation.

⁷ Op. Cit. Note 1 section 285.

⁸ Nigeria had General Elections in 1999,2003,2007,2011 and 2015.

⁹ Op. Cit Note 1.

¹⁰ Op. Cit Note 2.

¹¹ Op Cit Note 3.

Independent National Electoral Commission (hereinafter called INEC) outlined step-by-step procedures/rules and ethical expectations for the election cycle.

One of the pre-conditions for free, fair and credible elections is a coherent, unambiguous legal framework. This is so because elections are predicated on the viability and potency of a legal architecture anchored on the principles of inclusion, integrity, justice and equity. The Electoral legal framework defines political relationships, creates a framework for the actualization of citizens franchise and a conflict management system. The legal framework must be structured to ensure the sanctity of the votes, an ordered process and participation of stakeholders. Its non-existence could potentially undermine the integrity of elections and create pathways to political instability.

Generally, no government can be considered as legitimate if the electoral process is not free, fair, transparent and peaceful. For it to be legitimate it has to be devoid of manipulative tendencies and transparent to all the stakeholders. Nigeria's history of elections indicates that the electoral process had been marred by irregularities such as ballot snatching, stuffing of ballot boxes, electoral violence, and falsification of election results, political corruption, connivance between politicians and electoral bodies to favor a candidate or a political party¹². These irregularities in the electoral process and the desire to improve on the conduct led to the numerous reforms aimed at changing the electoral process in line with global best practices. The 2010 Electoral Act/law (as amended) represents such electoral reform.

In Nigeria, however, a disturbing phenomenon is the fact that the electoral processes in Nigeria's histories of election were devoid of transparency and fairness, which rendered the conduct of elections not to be free and fair. It is in regard to these

¹² David, N.A, Manu, Y.A and Musa A. (2014) Electoral Process and the Challenges of Democratization in Nigeria's Fourth Republic in Journal of Research on Humanities and Social Sciences Vol 4 NO.17.

challenges that reforms became imperative in order to correct these anomalies and improve transparency and efficiency through fairness, accountability and integrity in the system¹³. An electoral reform is a broad term that covers, among other things, improving the responsiveness of electoral processes to public desires and expectations¹⁴. Another view describes electoral reform as the process of introducing fair electoral systems where they are not in place, or improving the fairness or effectiveness of existing system¹⁵. Therefore, electoral reform can be seen as the process of bringing amendments to the electoral process in order to enhance fairness, accountability and integrity in the electoral system by strengthening the existing legal framework. The final resolutions of electoral reforms become binding laws or act. An electoral law is a constituted rule and regulations set to guide the process and conduct of elections.

Development of Electoral Laws in Nigeria up to the 2015

The adversarial nature of politics as a contest for the advantage of interest and access to power, and again given the notorious fact that politicians whose conducts are supposed to be regulated by laws are the ones who design electoral legal framework. Most of the election laws enacted in Nigeria between 1922 and 2007 were largely influenced by vested political interest¹⁶.

In fact, election management during these periods in Nigeria were characterized by one form of crisis or another and sometimes even leading to violence, killings and destruction of properties¹⁷. However, the electoral law principles above started receiving

¹³ Ibid P.48.

¹⁴ IDEA (2012) Electoral Assessment and Reform. Retrieved on 23/10/2016, 11am. From www.idea.int/election reforms.

¹⁵ Odion I.P(2012) Electoral Reforms and Post Election Violence. Problems and Way forward. Retrieved on 23/10/2016, 12noon from community Vanguarding.com.

¹⁶ OP. Cit. Note 6.

¹⁷ The Post election violence of 2011 claimed many lives and properties worth billions of Naira particularly in Northern Nigeria and Akwa Ibom State.

closer attention in Nigeria from August 28th 2007 when the Yar'adua government instituted the Uwais Committee on Electoral reforms¹⁸, The development of electoral legal framework in Nigeria has a very volatile history spanning many years (93) years when these changes have occurred¹⁹.

In terms of legal development, the legal framework for elections in Nigeria evolved in the following chronology:

The "Elective Principle" introduced by Sir Hugh Clifford was used in 1922 for the Calabar and Lagos Municipal Elections and was also used in the 1946 Council election²⁰. The guidelines only provided for the participation of a few Nigerians and voting was conditional upon tax payment, restricted to adults with an annual income of not less than 100 Pounds sterling. There was restriction of voting either by tax or sex, up until 1959 when full universal adult suffrage was adopted nationwide and was also retained in 1979.

The Elective principle of 1922 was modified in 1951 to include provisions for Regional Electoral colleges with the expansion of the representation of indigenous Nigerians in the 148 member House of Representatives out of which 136 got elected. In the legal framework, the Eastern and Western Regional Houses of Assembly had a Primary, Intermediate and Final Electoral Colleges, while the Northern Regional House of Assembly had a system of open voting in wards and villages as the beginning of a five stage process with the Electoral College as the final stage.

¹⁸ This Committee headed by former Chief, Justice of Nigeria, Muhamudu Uwais made some for reaching recommendation with a view to strengthening the electoral laws and process.

¹⁹ Human Rights Watch (2007) "Election or "Selection" Human rights abuse and threats to free and fair elections in Nigeria, No. 1, 2007, April retrieved on 3/7/2016 at 8pm from <http://www.hrw.org>.

²⁰ EKO-Daves (2011) A Critical Appraisal of Election Laws in Nigeria retrieved on 20/8/2016 @<http://www.unilorin.edu.ug>.

By 1958 the first detailed electoral regulation, the Elections Regulations of 1958 (For the House of Representatives) was drafted, but was amended subsequently in 1959, as the Federal Legislative House Regulations of 1959. Yet, this was replaced by The Nigeria Electoral (Transitional Provisions) Act of 1961 which was the first comprehensive Electoral law drafted by the Indigenous Nigerian legislature.

The latter Act was replaced by a more comprehensive Electoral Act of 1962, the first most definitive Electoral framework in post-independent Nigeria. The 1962 Act had a post-election dispute requirement including the need to pay deposit on lodging an election petition. This latter addition was later abolished in the amendment of the Electoral Act of 1964. Further developments of Electoral laws were stymied by the post-election conflicts which led to military interventions and civil war in 1966 up to 1970. It wasn't until 1979 that political activities were restored again.²¹

The 1977 Electoral Decree introduced several milestones including; reduction of voting age from 21 to 18years, the mandatory need to show a three year tax clearance certificate before a person can qualify to contest elections, the disqualification of electoral officers from voting in elections, and for the first time, it placed a time limit for the conclusion of election petitions before winners are sworn into offices different from what we currently have. The 1977 Electoral decree was modified in 1978 and created the procedure for fielding candidates for election. The 1977 Electoral Act was succeeded by the 1982 Electoral Act, with the Federal Electoral Commission mandated by the Act to compile a new voter's register. The Act was used to conduct the 1983 election that was followed by much disputation with another military intervention due to post election

²¹ Electoral Decree No.4 of 1977

crises. As a result, further development of electoral Laws were put on hold until 1987²². The effective period of the frame work was extended²³.

In terms of legal framework development, these frameworks introduced for the first time, educational qualifications for candidates seeking governorship positions and membership of the House of Assemblies to possess at least School Certificate or equivalent. The Decree ousted the jurisdiction of the courts in intra-party and inter-party disputes. Thus, Election Tribunals established under the Decree could only entertain election petitions only on the ground of undue return at the election.

The history of the 1993 General Election is well documented; suffice to say that it can be used as an example of the fact that even if an election was well conducted with a good legal framework, we can still have an unacceptable outcome if the political ambiance is unsupportive of transition, indicating that more than a good legal framework and good election management were not enough for political transition. At any rate, as a legal framework, the 1993 framework, gave way for another Decree²⁴. This Decree also established the National Electoral Commission of Nigeria (NECON). The latter frame work was replaced²⁵. The Decrees were meant to guide the transition elections planned by the General Sani Abacha Government. The General Abdulsalam Abubakar regime commenced a new transition program using a new legal frame work²⁶.

These frameworks led to the restoration of political activities that heralded the current political dispensation. Since the use of the latter framework, there have been

²² Vide Transition to Civil Rule (Political Programme) NO 1987.

²³ These were through the State Governor (Basic Constitutional and Transitional provision) Decree No. 50 of 1991, Decree No. 18 of 1992 and Decree No. 13 of 1993.

²⁴ Decree No 3 of 1996.

²⁵ These include the local Government (Basic Constitutional and Transitional Provision) Decree of 1997 the State Government (Basic Constitutional and transition provisions) of 1997 and the National Assembly (Basic constitutional and Transitional Provision) Decree No.6 1998.

²⁶ Decree No. 34 of 1998 the National Election Assembly (Basic Constitutional and Transitional Provisions) Decree No.5 of 1998 and the Presidential (Basic Constitutional and Transition provisions) Decree no. 6 of 1999.

several amendments of the main electoral framework in the form of the 2001 Electoral Act, the 2002 Electoral Act, the Electoral Act of 2006 and the Electoral Act of 2010 (as amended). The last amendment provided for tenure of Office of The Secretary to INEC, and empowers INEC to determine the procedure for voting at an election, but rejected the proposal for INEC to conduct all elections the same day, the Senate Committee noted that the commission lacked the capacity to manage large scale elections in a single day and also rejected the proposal to make presidential debates mandatory before an election. Thus, it can be seen from the long periods of development and the constant changes even within short periods to the legal framework for elections that many interest and factors influence the development of such frameworks; hence, it has been more of an evolutionary development than a revolutionary one.

Table 1 The Table below gives an overview phase of the electoral Development in Nigeria

Era/Time Frame	Electoral legal framework	Elections used for	Regime
Elective principle 1922-1951	Elective Principle in the Hugh Constitution up to the McPherson Constitution	Municipal Council elections, and later Regional legislative elections	Colonial regime
Federal Legislative Elections Regulations 1958-1961 Elections Regulations of 1958 Federal Legislative House Regulations of 1959	Post-independence Federal principles	Federal legislative Elections	Late Colonial to early Post-Independence Civilian regime
Early Post Independence Electoral Acts Nigeria Electoral (Transitional Provisions) Act of 1961 Electoral Act of 1962 Electoral Act of 1964	Post-independence Federal principles	Regional and Federal parliamentary elections	Early Post Independent civilian regimes
Post-independence Military inspired electoral Frameworks Electoral Decree of 1977	Post-independence Federal principles after military interventions	1979 General Elections 1993 General Elections	Post-Independence Military regimes

Transition to Civil Rule (Political Programme) Decree of 1987			
<p>The State Government (Basic Constitutional and Transitional Provision) Decree No. 50 of 1991.</p> <p>The National Assembly (Basic Constitutional and Transitional Provisions) Decree No. 18 of 1992.</p> <p>The Presidential Election (Basic Constitutional and 'transitional) Decree No. 13 of 1993.</p> <p>Decree No.3 of 1996</p> <p>Local Government (Basic Constitutional and Transitional Provisions) Decree of 1997.</p> <p>The State Government (Basic Constitutional and transitional Provisions) Decree No. 22 of 1997.</p> <p>The National Assembly (Basic Constitutional and Transitional Provisions) Decree No.6 of 1998.</p> <p>The Transition to Civil Rule (Political Programme) Decree No. 34 of 1998.</p> <p>The National Assembly (Basic Constitutional and Transitional Provisions) Decree No. 5 of 1998.</p> <p>The Presidential Election (Basic Constitutional and Transitional Provisions) Decree No.6 of 1999.</p>		1999 General Elections	
<p>Post Military Era</p> <p>Civilian Legal Frameworks</p> <p>The 1982 Electoral</p>	<p>Post Military Intervention Civilian legislature developed</p>	<p>1983 General Elections</p> <p>2003 General Elections</p> <p>2007 General Elections</p> <p>2011 and</p>	<p>Post-military intervention civilian Regimes</p>

Act The 2001 Electoral Act, The 2002 Electoral Act, The Electoral Act of 2006 And the Electoral Act of 2010 (Amended in 2011, 2012 and 2015)	frameworks	2015 General Elections.	
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3.2 Electoral Laws: Reforms and Amendments

Given the fact that elections are the major pillar of leadership selection and governance legitimation in liberal democracies, constant and un-seizing effort for the reformation of the electoral process is an imperative in all countries that are democratizing. It is especially necessary in countries in transition to democracy, such as Nigeria, where there is a long history of badly conducted elections; where elections have been bastardized, and where many voters have become despondent and have virtually given up hope of their votes counting in choosing their elected executives or representatives in legislatures²⁷.

A series of badly conducted elections could create perpetual political instability and easily reverse the gains of democratization. If adequate care is not taken, badly conducted elections can totally undermine democratization and replace it with authoritarian rule, of the civilian or military varieties. At best, they can install inept and corrupt leadership that can herald, if not institutionalize bad governance. There are many illustrations or manifestations of this throughout Africa. But nowhere is this as amply illustrated as in the Nigerian case, especially between 1999 and 2007²⁸.

For example, it can be argued that the consequences of badly conducted elections and poorly managed electoral processes are major contributing factors to military

²⁷ Jega, A.M, (2015) Electoral Reforms in Nigeria; Challenges and Prospects being a Paper delivered at the First University of Abuja Public Lecture Series, Thursday, October, 29,2015.

²⁸ Ibid.

interregnum in Nigeria's political history. At inception of the Fourth Republic, the 1999 elections were conducted under military rule. There were fundamental flaws in the elections, but Nigerians wanted to get rid of military rule and have power transferred to civilians. They tolerated and accommodated the outcome, and hoped for future improvements. The 2003 elections, unfortunately, did not represent a substantive improvement over the 1999 elections, in terms of transparency and credibility. Rather, the elections at best represented "business as usual", in terms of inflation of votes, fraudulent declaration of results, use of armed thugs to scare away or assault voters and cart away election materials and many other irregularities and illegalities, which were committed with impunity.

The 2007 elections were manifestly the worst in Nigeria's history, as declared by both domestic and international observers. The EU observer mission, for example, noted that the elections fell "short of basic international standards"²⁹, and were characterized by violence and crude use of money to buy votes. There was reckless mobilization of ethno-religious cleavages and heightened use of money and thugs to influence results³⁰. The pre-electoral processes, such as party primaries were conducted in grossly undemocratic fashion. In many cases, the results were said to have gone to the highest bidder. The winner of the presidential election, late President Umaru Musa Yar'adua, himself admitted on the day of his inauguration, that there were serious flaws in the election that brought him to power. Arguably, in order to preempt a major crisis of legitimacy, he pledged to embark upon electoral reforms and subsequently inaugurated the Electoral

²⁹ Eu, July 2007: European Union Election Observer Mission federal Republic of Nigeria General Elections 2007.

³⁰ Ibid.

Reform Committee³¹, with the mandate to make wide ranging recommendations for electoral reform in Nigeria.

The modest effort at electoral reform following the submission of the report of the Justice Muhammadu Uwais Electoral Reform Committee (ERC), as represented by the introduction of new legal and administrative reform measures, and the inauguration of a new Chairman and Commissioners, paved the way for remarkable improvements in the 2011 and especially the 2015 general elections.

3.2.1 Electoral laws and Reforms: 2010 - 2015

The recommendations of the Muhammadu Lawal Uwais electoral Reform Committee serve as the background and context for the appreciation of the reform measures, which have been implemented and what remains to be done. The recommendations were arrived at after about one year of work, which consisted of gathering of memoranda from the general public, interactions with key stakeholders, public hearings conducted in all the six geopolitical zones, a workshop with a select group of national and international experts, and extensive debates and deliberations by the 23 - member committee. Some of the recommendations include the following;

Strengthen and protect the autonomy of INEC from political interference. This is to be done first, by giving the National Judicial Council (NJC) a major role in the appointment of Chairman and National Commissioners of INEC, instead of the current role of the president in nominating these officers; and second, by placing INEC on First Line Charge and granting it relative financial autonomy.

Reconstitute the Commission accordingly, and especially so as to remove the stigma of the 2007 elections and improve its integrity.

³¹ Op.cit.n.18

‘Unbundle’ INEC. That is, create other agencies to handle responsibilities being undertaken by INEC, which have overburdened it, such as constituency delimitation; registration and regulation of political parties; and prosecution of electoral offenders; and thus allow INEC to focus on its core mandate of organizing and managing elections.

Introduce some form of proportional representation, to promote inclusiveness, especially in National and State legislatures, and improve the representation of women, persons with disabilities and the youths.

Improve the transparency and credibility of the conduct of elections, and eliminate persistent fraudulent activities, which are perpetrated with impunity in Nigerian elections. Review and amend the Electoral Act 2006 and the 1999 Constitution to substantially improve the electoral legal framework.

On each of these major recommendations, many specific recommendations were also made. In respect of nos. iii and vi, model legislations were drafted and submitted along with the general recommendations. While many of the recommendations of the ERC were accepted by the government and the legal framework was accordingly amended, the major ones notably nos. i-iv, were either partially accepted and addressed or simply ignored. For example, while INEC was placed on First Charge and thus gained some relative financial autonomy, the mode of appointment of Chairman, National Commissioners and Resident Electoral Commissioners remained the same, and this continued to nurture a deep-seated perception of the Commission as only doing the bidding of the incumbent who nominated them; under the notion that “he who pays the piper dictates the tune”! In any case, it can be said that there is still ‘unfinished business with regards to the recommendations of the ERC, which subsequent effort at electoral reforms would need to seriously address.

3.2.2 Electoral Laws and amendments

Following the conclusion of the 2011 general elections, the movement for the amendment of the 2010 Electoral Act (as amended) and the 1999 Constitution (as amended) to address key challenges arising from the 2011 elections commenced. Civil society organizations like the partners for Electoral Reform, Youth Initiative for Advocacy, Growth & Advancement, Nigeria civil Society Situation Room, Centre for Democracy and Development, Alliance for Credible elections etc, led diverse advocacy initiatives on ensuring reforms to the electoral Act. Some of the key issues on the reform agenda include the appointment of INEC commissioners, unbundling of INEC, electronic voting, the role of military and security agencies in elections, prosecution of electoral offences etc.

Some of the achievements made towards these directions include the following amendments.

i. Tenure of the Secretary to the Independent National Electoral Commission³²:

Section 8 (1) was amended to fix a definite term of office for the Secretary to the Commission. A period of 4 years from the date of appointment was inserted in the section. The tenure is renewable for another period of 4 years only. The position of the Secretary was first established by the 2006 Electoral Act, which empowered the commission to appoint its own Secretary. This amendment puts an end to the controversy on the tenure of the Secretary created by the silence of both the 2006 Electoral Act and the 2010 Electoral Act (as amended). The office of the INEC Chair, National Commissioners and Resident Electoral Commissioner are tenured.

³² The Preamended Act provides in section 8(1) a-b and 2a-c that there shall be a secretary to the commission and then went ahead in the subsections to outline qualification and mode of appointment with duties only.

This prevents abuse of power and sit-syndrome by public officials. The provision on the tenure for the INEC Secretary could potentially stem abuse of power and controversies that have trailed the office in the past.

- ii. Increased number of days for transfer of registered voters³³:** Section 13 (2) was amended to increase the number of days for applying for transfer of voter registration details to 60 days before the date of an election as against the 30 days” stipulated in the 2010 Electoral Act As amended. The import of this provision is all application for transfer must be filed 60 days before an election. This amendment avails the electoral commission adequate time to process request for transfers while also facilitating the prompt update of the voter register ahead of an election. In the same vein, this amendment may also reduce the arbitrary abuse of the transfer option witnessed in the staggered elections, where voters transferred from one location to the other at will. However, the flip side to this amendment lies in its potential to disenfranchise eligible voters who may be confronted with unforeseen circumstances; that necessitate relocation from one place to another 30 days to an election.
- iii. Increased number of days for applying for duplicate voter card³⁴:** Section 18 (1) and (3) were amended to increase the number of days from 30 to 60 days within which a registered voter can apply for a duplicate voter’s-card in cases where his/her voter’s card is lost, damaged or destroyed. This provision .prevents the electoral commission for issuing any duplicate card 60 days to an election even if the commission has reasonable grounds to accede to the request. This provision benefits the electoral commission but could negatively impact on voter

³³ Ibid section 13.

³⁴ Ibid section 34.

turnout because once a voter loses his/her card after the 60 days requirement elapsed; he/she cannot apply for a duplicate voter card to vote in an election. Ordinarily, registered voters are duty bound to safely keep their voter card; however there are some unforeseen circumstances or accidents that are totally not within control of voters. This could lead to either loss or damaged voter cards. To preclude registered voters who are victims of accidents or natural events from voting due to the fact that it occurred after the 60 days' timeline could be tantamount to injustice. The legal framework should aim to guarantee citizens access to the electoral process and not stifle the political space.

iv. Voting rights of Internally Displaced Persons (IDP): Section 26 was amended with the insertion of a new subsection that provides for the participation of displaced persons in voting at elections. It compels INEC to ensure IDPs are not disenfranchised in the event of an emergency affecting an election. Emergency in this context could be insecurity, environmental or natural disasters. This amendment creates a level playing field for the exercise of franchise by all the stakeholders. The voting right of an estimated 3 million displaced persons was a topical issue in the 2015 elections. The electoral commission was confronted with the complexity of managing this challenge vis-à-vis an extant legal framework that confines registered voters to vote in polling units where they are registered³⁵. This necessitated the reforms introduced by INEC to accommodate IDPs in the 2015 elections. The commission reviewed its guidelines and manual to ensure IDPs in Adamawa, Borno and Yobe states vote in the IDP camps and centers. The new amendment can be interpreted to legitimize the administrative actions taken

³⁵ Ibid section 58 provides that “No person shall be permitted to vote at any polling unit other than the one which he is allotted”.

by INEC to accommodate voting and results collation in IDP camps / centers. The new provision was drafted in a manner that gives INEC the latitude and flexibility to determine the procedure for ensuring Nigerians displaced by an emergency are not - disenfranchised. Furthermore, the amendment provides sufficient legal bases for the electoral commission to undertake IDP voting.

- v. **Expanded jurisdiction for Oath-taking by election officers³⁶**: Section 28 (1) was amended to expand the jurisdiction of administering Oath of neutrality for election officials to any court or Commissioner for Oaths. Previously, only the High Court could administer Oath of Neutrality to election officers. With this amendment election officials can approach any court or Commissioner for Oaths to affirm their neutrality. The amendment will accelerate the process of oath taking by election officials.

3.2.3 Challenges to reforms and amendments to Electoral Laws

As previously experienced, the amendment process took the normal trajectory of previous reform process. Since the enactment of the 2003 Electoral Act, it has become a norm for electoral reform to dovetail right into the electioneering period. For instance in the 2011 general elections, the amendments occurred four months to the general elections. This current amendment assumed a worse dimension, as the Bill which scaled through the National Assembly on March 10, 2015 received presidential assent on March 26th, 2015 two days to the historic March 28 Presidential elections. Till this minute, the new amendment is largely obscure even to election administrators and experts.

The attitude towards electoral amendment in Nigeria does not only impact on the management of elections by INEC but also affects planning by other stakeholders. For

³⁶ Ibid section 28.

instance the planning of voters education program becomes onerous for political parties, media and civil society. It must however be stated that the 2015 elections was conducted using the Electoral Act 2010 (as amended) despite the existence of a newly amended electoral law. This is the impasse the African Charter on Democracy, Elections and Governance³⁷ sought to cure when it stipulates that electoral amendment must occur at least 6 months before the date of an election. This provision was also reinforced in the ECOWAS supplementary protocol on Democracy and good governance.

However, this notwithstanding, the key argument in this thesis, is that “it is not yet Uhuru”! There were many challenges faced in this reform effort, much as we tried, which are yet to be successfully addressed. There is, the need for a deliberate, purposeful and focused continuation of the reform of the Nigerian electoral process leading to the next general elections in 2019³⁸, so as to tackle subsisting challenges, clean up, sanitize or cleanse the political terrain, stabilize the polity and create a solid foundation for consolidating and deepening democracy in Nigeria, as well catalyze economic growth and socioeconomic development.

³⁷ Nigeria assigned this instrument of ratification of the African charter on democracy, elections and good Governance on April 2012 but it is yet to be ratified see Table 1 the appendix

³⁸ The Federal Government has again inaugurated another committee to look at the Electoral laws with the view to strengthening the electoral laws and processes. It is headed by former Senate Attorney General and Minister of Justice.

CHAPTER FOUR

CREDIBLE ELECTIONS IN NIGERIA: IMPERATIVES AND REQUIREMENTS

4.1 Introduction

Credible elections are vital for economic, socio and political development of any nation practicing democracy. Some of the requirements for a free, fair and credible election are the legal framework which regulates generally administration of election including the establishment of an electoral management body, fundamental freedom, party structures, judiciary etc. This Chapter identifies key requirements both legal and Institutional for credible elections in Nigeria including the provisions of the 1999 Constitution (as amended), which is the grundnorm of all the laws in Nigeria, relating to electoral matters in Nigeria. It examines the Electoral Act 2010 (as amended) as well as the Electoral Guidelines and other issues that are necessary to credible elections in Nigeria. It identifies some of the lapses in the legal framework as it is presently and recommends measures to addressing them.

The concept of democratic national elections is one of the most important developments in human society¹. Once perceived as a serious threat by conservative governments around the world,² the idea of national governments by the consent of the people has radically modified in the concept of the right of kings to own and rule their subjects according to their whims and caprices.³

Elections are the central tool for measuring democracy, and the extent to which the electoral process produces the exact will of the people, is what indicates the thoroughness of democracy in a society.

¹ Aduche Wokocha, (2015) Dimensions of Free and Fair Election: 2015 Nigerians Elections: Issues and Challenges, RSUT, Nkpolu, P/ Court. Retrieved on 6/11/2016 at 11am from www@ust.edu.ng

² By the late 18th Century when USA emerged most other nations operated monarchy and the idea of peoples Government was an-athema as it meant end of the Kings realm dominant and discretional rule.

³ Monarchs were absolute or near absolute.

Democracy is a republican phenomenon founded on the principles of egalitarianism, liberty and accountability⁴. It may be analyzed as consisting of six major presuppositions:

- i. That all people (participants qualified) are equal
- ii. That all participants carry equal value and therefore stake in the polis,
- iii. That all participants are entitled to lead or participate in leadership
- iv. That the leaders lead for, from and at the instance of the people
- v. That government or state policies must pursue the common goal of all
- vi. And that all leaders are under duty to account to their people.

Strict and absolute, democracy demands all the above presuppositions of all practitioners. Democracy sharply contrasts from monarchy, autocracy, feudalism or oligarchy all of which divest power or sovereignty from the people and transfer same to some king, Lords or few Nobles who rule as of right and not necessarily on behalf of the people.⁵

Invented in Athens, attempted in Rome and refined and fully developed in the United States of America, democracy has met and undergone several transformations and transmutations across time to the present day.

Appositely defined as a government of the people, by the people and for the people,⁶ democracy describes a system of government in which the constituent people of the state, determine who rules or leads them and by extension the policies of their nation, in equality and freedom, thus, collectively determining their collective destiny. While the

⁴ Op. Cit Note 1.

⁵ Unlike in democracy where the elected official governs at the instance of the electorate in accordance with pre existing rules made for the interest of the people.

⁶ In the Gettysburg speech made by President Abraham Lincoln of U.S.A on 19/Nov/1863.

origin of democracy is usually traced to the Greek City state of Athens,⁷ its modern form of Representative democracy is largely developed from the USA where the attempt at transferring the political philosophies of John Locke⁸ and J. J. Rosseau⁹ to reality was first undertaken. So high and unusual was the risk at the time, that when France eventually joined USA in its bold attempt about ten years later, English philosophers like Edmund Burke had to refer to democracy as *rule by the ignorant mob*,¹⁰

Election is at individual level, an inalienable opportunity and political expression of citizenship and at a collective level, an expression of sovereignty by which a people determine their preferred policies according to the manifesto of competing persons or parties.¹¹

Thus, the key element in election is “choice” it is ultimately organized to enable the people of a determinate *polis* express their choice by voting for the candidate of their choice.

Election is the soul of democracy, for it is the singular activity that distinguishes democracy from the rest. Election is the means by which the people in their mass choose their leader and express their views of government policies in modern times. The key function of election is to avail the people an opportunity to choose between contending ideologies and methods of public administration. As Eric Bjornlund¹² stated.

Elections provide a peaceful democratic means for societies to channel competition for political power and make collective decisions. By casting votes to select who will represent them in public offices, citizens express preferences about the policies those representatives will pursue. Citizens

⁷ Introduced by Solon who was the ruler (Archon) of Athens in 594 Bc. Available online @<http://www.constitution.org> retrieved on 7/11/2016.

⁸ Locke, J. Second Treatise to Civil Government Chapter 12,P.415

⁹ Rosseau J.J. The Social Contract. Available on line @<http://www.constitution.org> retrieved on 7/11/2016

¹⁰ Burke E. Reflection on the French Revolution available [online @http://www.constitution.org](http://www.constitution.org) retrieved on 7/11/2016.

¹¹ OP. Cit, Note 4

¹² BJornland, E @www.democracy International.Com/downloads/Bjornland

may also make decisions on issues through special elections called referenda.¹³

Beside the element of choice, elections lend legitimacy to governments and function as a check on the government of the day as it puts every party and official in government on alert and compels them to act responsibly so that the people may not vote them out the next election.¹⁴

However, elections have thrown up critical situations, with the worst examples to be found among the less developed 3rd world countries e.g. in Liberia where the then incumbent, President Charles D. B. King declared an electoral victory by a vote count that is 15 times more than the voting population of the country. The most one sided election has been that of North Korea, in 1962 where the workers party victory of 100/100 of registered voters.¹⁵ Worse still, elections have also produced Adolf Hitler of the German Nazi party,¹⁶

Election, which could be described as a widely and universally accepted means through which, by voting, individuals are openly and methodically chosen to represent a body or community in a larger entity or government, is one of the cardinal features of a democratic process. Truly, if the elementary definition of democracy is accepted as the government of the people, by the people and for the people, then elections would seem to be the only mechanism through which a democratic government can be realized and entrenched.

¹³ Ibid.

¹⁴ In Nigeria the CFRN 1999 stipulates a 4 year term for elected officials e.g. section 135(2) stipulates a 4 year term for the President.

¹⁵ See http://en.wikipedia.org/wiki/Liberian_General_Election_1927. Retrieved 20/10/2016.

¹⁶ In 1939 Adolf Hitler was democratically elected to lead Germany, he would eventually later turnout to be the most heinous Government ever known to the modern man.

4.2. Credible Elections: Concept and Dimension

Previous and current efforts by Nigeria to institute liberal democracy as a system of government have always been either scuttled or severely constrained by the problems arising from elections. The issue has not been whether or when to hold elections, since that fact and necessity of elections are taken for granted in the practice of liberal democracy. Rather, the issue has been how to ensure and guarantee credibility and acceptability of elections and their outcomes. With election so critical in a democratic political system, it is under stable why its credibility should be a matter of serious concern. It is common knowledge that elections, particularly in Nigeria, are often characterized by all manners of malpractices with their attendant, socio-political, economic and security challenges.¹⁷ So much interest has been directed at developing clear measures of a free, fair and credible election.

The 1994 Inter Parliamentary Union¹⁸ declaration on criteria for free and fair elections, unanimously adopted by the council at its 154th session in Paris.

In any state, the authority of the government can only derive from the will of people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage.¹⁹

The USA Department of state has captured these requirements in the publication *Principles of Democracy*.²⁰

Identifying the fact that free and fair elections allow people living in a representative democracy to determine the political make- up and future direction of their

¹⁷ The 2003,2007 and 2011 General Elections are Clear examples

¹⁸ The Inter Parliamentary Union is a Union of National Legislatures see <http://www.ipu-Accessed> on 20/10/2016

¹⁹ Ibid.

²⁰ @http://www.america.agov/st/democracy-english/2008_0609215618_eaifas_9156436 accessed on 20/10/2016 at 9pm.

nation's government; that free and fair elections increase the likelihood of a peaceful transfer of power as it helps to ensure that losing candidates will accept the validity of the election's results and cede power to the new government, as well as realizing that otherwise, dictators can use the resources of the state to tamper with the election process.

It will be recalled that election alone without ensuring free and fair processes have been manipulated by many in history to produce absurd results that remain clear examples of electoral robbery. For example, we have had the Korean examples in which 100% of registered voters were recorded as having voted in a one party election;²¹ elections have returned voters participation that more than doubles the registered voters list for the exercise.²² In the 2003 elections in Nigeria, Rivers State among others, polled more votes for the then incumbent presidential candidate of the ruling party, than the actual number of votes on the registered voters list of the state.²³

Elections alone are therefore no indicants of democracy unless they can be qualified as having been free, fair and credible. It is only then that all parties will consider the outcome fair and the government enthroned by it be truly adjudged legitimate in fact and in law.

Elections are said to be credible, when rules, regulations and laws governing the electoral process are followed and ultimately, credible candidates are freely and fairly selected to represent the electorate. In other words, a free and fair election, legitimizes an electoral outcome. There are four major variables on which the concept of free and fair elections rests. These are: (i) the political parties; (ii) The individuals; (iii) the voting process, and (iv) the election outcome. Thus for an election to be considered free and fair,

²¹ Op.Cit Note 15

²² Ibid.

²³ Ibid.

the: Parties must be free to compete, to organize, to recruit members, to articulate policies, to stage rallies and to solicit votes. The less the political system restrains opposing parties from the business of organizing and campaigning, and the less it systematically, favours a particular party (typically the ruling party), the less free and fairer the election may be said to have been. By the same logic, for an election to be free and fair, the: Individual must be free to participate in the political process – to join the party of his choice, to campaign for it, to seek political office in its platform and of, to vote for it (or not to vote at all).

On the voting process; Each person should have one and only one vote, and... each person should be counted equally... no one who satisfies some limited set of conditions (such as minimum age and sound mind) should be refused registration, no registered voter should be prevented from voting, nor should anyone be allowed to vote more than once, nor should any vote be counted for a party except those individuals legally cast, nor should any legally and properly cast votes be discarded or disregarded.

On the election outcome, an election would be free and fair if the results are accurately reported and the legitimate voters allowed to assume office.

Accordingly, when all the conditions germane to the four variables as defined above are observed in the process, conduct and outcome of an election, that election could be considered to be free and fair; hence, credible. However, It is common knowledge that the above outlined conditions are hardly possible in any election particularly in Nigeria. The activities of such bodies or group like the Electoral management body, the behaviour of politicians and security agents, often determine how far, such conditions as highlighted

can be possibly determine the extent to which it has contributed to credible election or otherwise, in Nigeria.²⁴

4.3 International Instruments for credible Elections

There are established principles of political rights and freedoms relating to elections contained in declarations, conventions, protocols and other international instrument's adopted by the United Nations (UN), African Union (AU), Economic Community of West African States (ECOWAS) and the Commonwealth. Some of these instruments shall be briefly considered.

(a) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) All appropriate measures shall be taken to ensure that women are on equal terms with men without any discrimination:

- (a) The right to vote in all elections and be eligible for election to all publicly elected bodies;
- (b) The right to vote in all public referenda;
- (c) The right to hold public office and to exercise all public functions. Such rights shall be guaranteed by legislation.²⁵

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

²⁴ i.e. INEC

²⁵ Art,4, "Convention on the Elimination of All forms of Discrimination against Women available online at; <http://www.ohchr.org/ENProfessionalInterest/Pages/CEDAW.aspx> accessed on 4 September 2015

- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of Government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.²⁶

4.3.1 The Universal Declaration of Human Rights

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.²⁷

In addition to the above,

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access of public service in his country.
- (3) The will of the people shall be basis of the authority of government: this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.²⁸

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.²⁹ Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.³⁰

²⁶ Art. 7, *Ibid*

²⁷ Art. 20 'The Universal Declaration of Human Rights' available online at <http://www.un.org/en/documents/udh> accessed on 4 September, 2015.

²⁸ See Art. 21, *ibid*.

²⁹ Art. 1 'Convention on the Political Rights of Women, 193 U.N.T.S. 135, *entered into force* July 7, 1954'

Available online at <http://www1.umn.edu/humanrts/instree/e2cprw.htm> accessed on 4 September, 2015.

³⁰ *Ibid*.

Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.³¹

(b) African Commission on Human and Peoples' Rights

(1) Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

(c) Every citizen shall have the right of equal access to the public service of the country.

(3) Every individual shall have the right of access to public property and services in strict equality of all persons before the law.³²

International Covenant on Civil and Political Rights

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security or public safety, public order the protection of public health or morals or the protection of the rights and freedoms of others.³³

(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

(2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the

³¹ *Ibid.*

³² Art. 13 'African Commission on Human and Peoples' Rights' available online at <http://www.achpr.org/instrumentts/achpr/> accessed on 4 September, 2015.

³³ Art. 21, 'International Covenant on Civil and Political Rights' available online at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> accessed on 4 September, 2015.

protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

- (3) Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.³⁴

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

4.4 Legal Requirement for Credible Elections in Nigeria

The requirements for credible election include; a legal framework e.g Constitutional Electoral, a well-developed system of political parties for competitive elections, an independent judiciary for the resolution of electoral disputes, an independent and non- partisan electoral Institution Management body.

³⁴ Art. 22, *ibid*

a. The 1999 Constitution (as amended)

The Constitution whether written or unwritten, rigid or flexible, unitary or federal, has two basic function namely- It is an expression of the will or desires of the people who make up the state or country; and it is a social contract between the government as an entity and the people on the one hand. It is a contract between those who hold public offices and the people, and it is also a social contract between and among the various ethnic peoples who make up the state or country.³⁵

The Constitution is the supreme and most important law of the country. Section 1 (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) makes it clear that if any other law is inconsistent with the provisions of the Constitution that other law shall be void to the extent of the inconsistency. The courts have upheld that section in countless decisions.³⁶ For this reason alone any law dealing with elections that contradicts

³⁵ Ese, Malemi (2006), *The Nigerian Constitutional Law*, Princeton Publishing Co, Lagos pp.12 & 15. In *I. G. P. vs A.N.P.P.* (2007) 18 NWLR (pt 1066) 457 at 495- 496, the Court of Appeal held as follows: “The Constitution of any country is the embodiment of what the people desire to be their guiding light in governance, their supreme law, the grundnorm of all their laws. All actions of the government in Nigeria are governed by the Constitution and it is the Constitution as the organic law of a country that declares in a formal, emphatic and binding principles the rights, liberties, powers and responsibilities of the people both the governed and the government.” See *F.R.N. vs Ifeogwu* (2003) 15 NWLR (pt 842) 113; *AG Abia State vs AG Federation* (2002) 6 NWLR (pt 763) 264; *Abacha vs Fawehinmi* (2000) 6 NWLR (pt 660) 228

³⁶ See *NPA v. Eyamba* (2005) 12 NWLR (Pt. 939) 409 at p. 443. In the case of *Merwa & Ors vs Nyako & Ors* SC. 141/2011, the Supreme Court held as follows: “The Supremacy of the Constitution of the Federal Republic of Nigeria 1999 is captioned by sections one and three, part 1 of chapter 1 under general provisions which state that – Section one of this Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.” Section 3 “if any other law is inconsistent with the provisions of this constitution this constitution shall prevail and that other law shall to the extent of the inconsistency be void.” This court had given recognition to this supremacy and had expatiated on the Constitution through various judgements in its interpretative jurisdiction. The Constitution is described as the grundnorm and the fundamental law of the land. All other legislations in this country take their hierarchy from the provisions of the Constitution. It is not a mere common legal document. It is an organic instrument which confers powers and also creates rights and limitations. It regulates the affairs of the nation state and defines the powers of the different components of government as well as regulating the relationship between the citizens and the state. Once the powers, rights and limitations under the Constitution are identified as having been created, their existence cannot be disputed in a court of law. But the extent and implications may be sought to be interpreted and explained by the court. The provisions of the Constitution take precedence over any law enacted by the National Assembly even though the National Assembly has power to amend the Constitution itself. Per Adekeye J.S.C. pp 123-124, paras. E - G. See *A-G Ondo State vs A-G Federation* (2002) 1 NWLR (pt. 772) 222.

the provision of the Constitution will be of no effect, The Constitution also states clearly that the Government of Nigeria or any part thereof shall not be governed or controlled by any person or group of persons except in accordance with the provisions of the Constitution. In other words, no one can occupy elective offices at the local, state or federal level unless he or she has been elected in accordance with the provision of the Constitution or any law made in accordance with the Constitution.

The Constitution prescribes certain qualifications that persons vying for some offices recognized or created by the Constitution must meet before they can participate in elections in those offices.³⁷

With respect to electoral matters, the relevant items of the Second Schedule dealing with legislative powers are items 22 of Part 1.³⁸ Item 22 of the Exclusive Legislative List is ‘election to the offices of President and Vice President or Governor and Deputy Governor and any, other office to which a person may be elected under this Constitution, excluding election to a local government council or any office in such council. Items II and 12 of the Concurrent List are respectively as follows;

The National Assembly may make laws for the Federation with respect to the registration of voters and the procedure regulating elections to a local government council.

12. Nothing in paragraph 11 hereof shall preclude a House of Assembly from making laws with respect to election to a local government council in addition to but not inconsistent with any law made by the National Assembly.

³⁷ See sections 106 & 107 for membership of House of Assembly; Sections 65 & 66 for membership of National Assembly; Sections 177 & 182 for qualifications and disqualifications for election to the office of Governor of a State and sections 131 and 137 for qualifications and disqualifications for election to the office of President of the Federation.

³⁸ Exclusive Legislative List and 11 & 12 of Part II Concurrent Legislative List

b. Electoral Act 2010 (as amended)

In line with its constitutional power to make laws for the peace, order and good government of the Federation or any part thereof with respect to item 22 under the Exclusive Legislative List,³⁹ ‘the National Assembly enacted the Electoral Act 2010.’⁴⁰ The Electoral Act 2010 is not the first of its kind. It was built on the provisions of the Electoral Act 2006, which it repealed. But not sufficient enough to bring about an overhaul of the electoral system in the terms recommended by the Uwais panel.⁴¹

It is against this background that the Electoral Act 2010 (as amended), was passed by the National Assembly, after much deliberation and debate. The key provisions of the Act reflect government’s attitude towards the recommendations of the Uwais Committee expectedly, the recommendations of the Uwais Committee that were not reflected by the government, including the one on independent candidacy, were not reflected in the Act. Also, some of the seemingly novel provisions of the Act, such as the one on continuous registration, the oath of neutrality by election officials, prohibition of double nomination, among others, were merely lifted from the 2006 Act; the provisions of which are same in many material respects as the new Act.

There are uniquely novel provisions however. Of note in this regard is the provision of the Electoral Act 2010 which prohibits substitution of candidates by political

³⁹ Item 22 is on election to the offices of President and Vice-President or Governor and Deputy Governor and any other office to which a person may be elected under the 1999 Constitution (as amended), excluding election to a local government council or any office in such council. See Second Schedule, Part 1 of 1999 Constitution (as amended)

⁴⁰ Laws of Federation of Nigeria 2011

⁴¹ Alabi, M. O. A & Omololu, O. T. (2012), ‘Uwais Report, Electoral Act 2010, and the Future of Democratic Elections in Nigeria’ in Layonu, A. I. & Adekunbi, A. A. O. (eds.) *Reflections on the Nigerian Electoral System* First Law Concept, Ibadan pp. 207-236

parties except in cases of death or self-withdrawal.⁴² The bulk of the provisions of the Electoral Act 2010 relates to procedural issues that were already covered by the Electoral Act 2006, which was repealed by the new Act. The current Act is arranged in nine parts, with 152 sections and three schedules. The Act repeals both the Electoral Act 2006 and the INEC Act. The functions, powers, revenue base and other matters connected with INEC and its staff remain essentially the same as in the repealed 2006 Act. The provisions of the 2010 Act in respect of the registration of voters, the provisions of registration officials and the creation of offences were more or less repetitions of the 2006 Act with some juggling of figures.

As for the procedure for election, the major change was the prescription of the order of the election in section 25(1) of the 2010 Act. The other novel provision, which is commendable, is the provision of section 33 which bars political parties from substituting candidates' - 'after submission.⁴³

Ironically, the procedure of voter accreditation before the actual voting commences, for which the INEC was commended in 2011, even though not a novelty in Nigeria's electoral history, not provided for under the Act but was adopted, perhaps, in pursuance of the powers of the Commission⁴⁴ to fix the day and hours of polls.

In line with the provisions of the 1999 Constitution, the Electoral Act 2010 vests the power to register and regulate the activities of political parties in the electoral commission and created several offences in relation to election⁴⁵

⁴² See Section 33 which provides that a political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 31 of this Act, except in the case of death or withdrawal by the candidate

⁴³ *Op cit* n. 18 above

⁴⁴ See section 46

⁴⁵ See section 117-132

The 2010 Act like the repealed 2006 Act, stipulates a continuous voters' registration system. In section 10(2), an applicant for registration under the continuous registration system shall appear in person at the registration venue with proof of identity, age and nationality. Apart from preventing registration by proxy, the innovation helps to establish the true identity of voters and prevent voting by non-human objects etc. Other adjustments to the contents of the repealed Act were designed to prevent frustration associated with litigations arising from the conduct of elections, as well as enforcement of internal democracy in selecting party candidates for election. Essentially, these changes were meant to ensure more credibility and reduce acrimonious intra-party crises often associated with the choice of party's flag bearers. Aside from this, the Act imposes stiffer punishments for culprits engaged in the buying and selling of voters' cards.

On the whole, while the Electoral Act 2010 contains a number of provisions that seek to enhance the conduct of free and fair elections, these provisions were mostly cosmetic and are not far-reaching enough to bring about the desired reform of the entire electoral system. The Act merely seeks to make some marginal changes within the limits permissible under the existing constitutional framework. Such changes in the texts of the Constitution that are necessary for tackling the ills of the electoral/political system were not made by the National Assembly. It is therefore not surprising that the maladies of the previous years, which had robbed Nigeria of the needed credibility for democratic consolidation, were repeated in various forms and different degree, before, during and after the April 2011 elections.

c. Case Law

Case law refers to that body of principles and rules of law which, over the years, have been formulated or pronounced upon by the courts as governing specific legal

situations. This assertion seems to run contrary to the general impression that judges do not make laws but simply apply them as and when the need arises. The primary duty of making laws is that of the legislature and judges do not go about make laws in the same manner and with the same ease as legislators do. But they are not altogether detached from the law-making process. A judge that is confronted with a legal problem does not have to resign helplessly where the established laws are inadequate in resolving the problem. It is a cardinal maxim of our law that where there is a wrong there must be a remedy.⁴⁶ Judges are, therefore, encouraged to formulate fresh rules of law or to extend the existing ones to deal with novel cases.⁴⁷ By so doing, they add to the corpus of existing laws through their judicial pronouncements. This law making function of the courts is sustained by the operation of the doctrine of judicial precedent.⁴⁸

At present, the decisions of the Nigerian courts cannot but constitute the least creative source of law in the country. The reason why that should be so is that the enactments which create the courts and give them their powers restrict them to applying only two types of law apart from rules contained in local statutes.⁴⁹ The first is the received law, which is expressly declared to be the law of England.⁵⁰ That, of course, does not prevent a body of Nigerian case law growing up around this received law. This has indeed occurred, and Nigerian decisions upon the rules of English law are cited by the

⁴⁶ Asein, J. O. (1998), *Introduction to Nigerian Legal System*, Sam Bookman Publishers, Ibadan p. 67

⁴⁷ See e.g. the strict liability principle developed in *Rylands vs Fletcher* (1886) L.R. 3. H.L. 330

⁴⁸ The doctrine of judicial precedent (otherwise called *stare decisis*) requires all subordinate courts to follow decisions of superior courts even where these decisions are obviously wrong having been based upon a false premise. This is the foundation on which the consistency of our judicial decision is based: See *Ngwo vs Monye* (1970) 1 All NLR 91 at 100. It is however, the principle of law upon which a particular case is decided that is binding. Such a principle is called *ratio decidendi*. A statement made in passing by a judge which is not necessary to the determination of the case in hand is not a *ratio decidendi* of the case but an *obiter dictum* and it has no binding effect for the purpose of the doctrine of judicial precedent. See *Dalhatu vs Twiaki & Ors* (2003) LPELR 917. Also *N.A.B Ltd v. Barri Eng. (Nig) Ltd* (1995) 8 NWLR (pt 413) 257 pp. 289 -290.

⁴⁹ Except where under the rules of Private International Law a foreign law is applicable

⁵⁰ *Ibid*

courts almost as frequently as those of the English judges. But it does prevent Nigerian common law and equity striking off on their own, and in places departing from the pattern of development in England.⁵¹

Constitutionally, the responsibility of the court is to interpret laws and apply them to facts of the case before the court. Decisions reached as a result of the interpretation by superior courts of records have the force of law and sanction like any other law made by legislature. For example, an interpretation on a point of law by the Supreme Court of this country is law. Such pronouncements of courts of records as contained in our various law reports are laws, which can be referred to and applied, in subsequent cases, if the facts and circumstances are in *Pari material*. Under common law, the method of applying the *ratio decidendi* of previous cases to the case in hand is called *stare decisis* (let what was previously settled or decided not be disrupted or altered).

Case law is a very important source of electoral law. Nigeria now has a fairly developed electoral jurisprudence which has been well documented.⁵²

d. Electoral Guidelines

Section 153 of the Electoral Act, 2010 (as amended) gives power to Independent National Electoral Commission

(INEC) to issue regulations, guidelines or manuals for the purpose of giving effect to the provisions of the Electoral Act and for its administration thereof.

Consequently, the Commission usually issues guidelines and regulations for general elections.⁵³ An example of this is Guidelines and Regulations for the 2015

⁵¹ Park, A.E.W. *The Sources of Nigerian Law* (Sweet & Maxwell 1963) 54

⁵² See Popoola, A.O. 'Election Petitions and the Challenge of Speedy Dispensation of Justice in Nigeria' being a paper commissioned for presentation at the Induction Course for newly appointed Judges and Kadis of the Sharia Court of Appeal by the National Judicial Institute, Abuja 4-15 June, 2007.

⁵³ Available online at www.inecnigeria.org/wp-content/uploads/2015/01/FINAL accessed on 10 February 2015

General Elections. In the case of *Okechukwu vs Onyegbu*,⁵⁴ the Court of Appeal referring on the purport of the Manual for Election Officials, 2007 made pursuant to section 161 of the Electoral Act 2006 (now section 153 of the Electoral Act, 2010 as amended) stated as follows:

The Manual for Election officials, 2007 (exhibit AK in the instant case) was published by INEC for the fundamental objective of giving effect to the provisions of the Electoral Act, 2006. The guidelines are undoubtedly meant to be strictly constructed and adhered to by the electoral officials concerned in the process and procedure for election.

(e) Electoral Management Bodies/Electoral Commissions In Nigeria

Of the greatest importance and most central to election credibility among the activities and institutions listed above, is the independence or otherwise of the electoral management body. This is because the success or failure of any election can be easily traced to the doorstep of the agency, organ or body saddled with the responsibility of managing the electoral process. It will be pointed out here that there exist direct linkages between electoral process and the managing body. It has been posited and widely acknowledged that more than anything, the quality and credibility of elections depend greatly on the extent of competency and viability of the electoral bodies. Nigeria is a classical example of this assertion because it shows a strong relationship between elections and the managing body.

A flash back at the political history of Nigeria since independence will reveal that past efforts at democratization collapsed due to failure of electoral bodies known as electoral commissions to conduct credible elections. it is also unfortunate to note that electoral commissions in Nigeria have failed to learn from history. The problem faced by past commissions continues to recur and beset present electoral management body while

⁵⁴(2010) All FWLR (pt. 524) p. 117 at 136-137.

past shortcomings continue to manifest. The process of transition or transfer of power after each successive military regime becomes process of rebuilding, recreating and bringing into being, institutions that have been dissolved or kept in abeyance. Therefore, the history of hitherto electoral management bodies or commissions in Nigeria has been a history of dissolutions, constitutions and reconstitutions. To illustrate this, a table is hereby presented on Electoral Commission in Nigeria.

Table I: Electoral Commissions and Their chairmen in Nigeria:

Republic	Electoral Commission	Chairman	Tenure
First Republic	Electoral Commission of Nigeria (ECN)	Sir Koth Ahayomi	1960 - 1964
	Federal Electoral Commission (FEC)	Chief E.E. Esua	1964 - 1966
Second Republic	Federal Electoral Commission (FEDECO)	3. Chief Michael Ani	1979 - 1983
		4. Justice Ovie-Whiskey	1983 – 1983
Third Republic	National Electoral Commission (NEC).	5. Prof Line Awa	1987 - 1989
		6. Prof Humphery Nwosu	1989 - 1993
		7. Prof Okon Uya	1993 - 1994
		8. Chief Sumncr Dagogo Jack	1994 - 1998
	National Electoral Commission		
Fourth Republic	Independent National Electoral Commission (INEC)	9. Justice Ephraim Akpata	1999 - 2000
		10. Dr. Abel Guobadia	2000 - 2005
		11. Prof. Maurice Ewu	2005 - 2010
		12. Prof Attahiru Jega	2010 – 2015
		13. Prof Y. Mahmed	2015- date

Source: Electoral Commissions in Nigeria and Their Chairmen since 1960 (Maijaabsolute.com). Accessed on 14th February, 2013.

Electoral Processes and Credibility of Elections

Credibility of election in Nigeria could be determined from three stages of the election processes.

Pre-Election

- i. Universal suffrage,⁵⁵ for all eligible men and women to vote without qualification based on numerical strength, sex, property or literacy.
- ii. Freedom to register as a voter⁵⁶ or run for public office⁵⁷
- iii. Availability of a correctly collated voters registers⁵⁸
- iv. Freedom of speech for candidates⁵⁹ and parties, including criticism of incumbent government policies or performance
- v. Freedom of information and the press⁶⁰ to enable the public to be properly and objectively informed on the options available

f. Election⁶¹

- i. Strict rules that require party representatives to maintain a reasonable distance from polling places on Election Day to enable voters make an uninfluenced choice.
- ii. Opportunities for electoral officers and independent (including international) monitors to assist voters with the voting process but not the voting choice.
- iii. The availability of an impartial umpire at elections, either, trained and politically independent electoral officers or preferably representatives of participating political parties in the election.
- iv. Accessible polling places that do not discriminate against voters' preference, preferably not in private quarters, with receive and transparent ballot boxes and

⁵⁵ CFRN 1999 sections 77 (2), 117(2), 132(5) and 178(5) gives every Nigeria citizen who has attained the age of 18 years right vote.

⁵⁶ Section 12(1-3) of the Electoral Act 2010 (as amended).

⁵⁷ CFRN 1999, section 65(2), 106,131,177 stipulates qualification to run.

⁵⁸ OP. Cit Note 29, Section 9.

⁵⁹ Op. Cit Note 30 Section 39.

⁶⁰ Ibid.

⁶¹ This is covered by section 25-77 of the Electoral Act 2010 (as amended)

ballot papers, preferably with the pictures of contestants to be thumb printed, marked with pen or punched through.

- v. Secret ballot to ensure private voting space, this ensures that a voter's choice at elections is not subsequently used to discriminate against him or her.
- vi. Adoption of a transparent polling station votes counting and recounting procedures, before party agents and the voting public preferably with on the spot declaration of poll results.
- vii. Availability of absentee ballot, which will enable legitimate voters who would unavoidably absents, vote before the elections date.

Post-Election

- i. There must be clear rules for challenging the outcome of vote counts and contestations at appellate levels.
- ii. The proceedings at Electoral tribunals or courts must be speedy fair and⁶² transparent.
- iii. There must be mechanisms for punishing electoral offenders as a deterrent measure⁶³.
- iv. All contestations should be exhausted before a candidate is sworn in as winner. This will ensure that the apparatus of state is not deployed towards bending the outcome of the process.⁶⁴

These standards have been endorsed as standards globally understood as the process for attaining a credible free and fair election. The outcome of which will be representative of the people's truly expressed will and acceptable to all parties, winners

⁶² The CFRN 1999 stipulates 180 days maximum for any electoral case to be determined.

⁶³ The Act provides for electoral offences and penalties. However the efficiency of these provisions is the focus of this thesis.

⁶⁴ In Nigeria this has given undue advantage to the incumbent.

and losers alike. Such a process will in the end, engender reduced post-election contestations and imbue the product government with true and adequate credibility.

4.4 Issues and Challenges to Credible Elections in Nigeria

Nigerian electoral activities seem to have progressed regressively, peaking in the 2007 General Elections which has been adjudged the worst and most expensive attempt in the history of Nigeria⁶⁵. An examination of the election and post electoral activities of 2007 clearly illustrate this fact.⁶⁶

The General election of 2011 was a considerable improvement on the 2007 elections, consequently, contestations were less. Nevertheless, a number of far reaching judicial decisions in the post electoral contestations have appeared to defeat the seeming democratic gains which Nigeria recorded in the election itself. These decisions on critical issues such as the limitation of time for election petition and the redefinition of the effective date of elected tenure, all of which pose grave dangers to the future of democracy in Nigeria, are discussed herein.

For convenience, this work shall, treat the issues and challenges under the three periodical headings of pre-elections, election and post-election issues and challenges.

a. Pre-elections issues and challenges:

General elections in Nigeria raised a number of pre-election concerns, these concerns constitute the challenges on the path to a free and fair election in Nigeria. The pre-election issues here include; Registration of voters, freedom of speech and assembly for candidates and parties, Preparation of election materials and regulations and guidelines for the election.

⁶⁵ Op.Cit.

⁶⁶ This follows from the widespread annulment and reconduct of elections all through the federation.

i. Voters Registration:

The issues of conflicts arising from the last general election were multi-faceted, but a major one among them was the discrepancies of voters' registration. In a good number of the contested cases. The issue of defective voters register (defective for containing ghost names, multiple registration and exclusion of voters) were key complaints. In some cases, the names on voters registers displayed at the respective polling stations had no relationship with the people of the area who registered to vote. Names of persons, long dead were found on the list, multiple registration of persons and names of persons who had nothing to do with the areas were similarly seen on the register.⁶⁷

This defect disfranchised voters who were otherwise prepared to perform their civic responsibility, and made false 'ab initio', the results declared as coming from those stations.

ii. Freedom of Expression

This has always been a challenge It would be recalled for example, that vide a combination of EFCC, ICPC, Code of Conduct Bureau and the INEC itself much was done to exclude Alhaji Atiku Abubakar from participating in the elections of 2007 until he was belatedly rescued by the Supreme Court in the case of *Attorney General of the Federation vs Atiku Abubakar and 2 others*.⁶⁸

In the case of *ANPP & others vs Inspector General of Police*,⁶⁹ the Court of Appeal deprecated the forceful and illegal dispersal of a campaign meeting by the police and the government of the day on the grounds that the eminent persons assembled there

⁶⁷ In many cases results were even returned where there had been no voting at all. This was the Crux of the matter in *INEC and others vs Comrade Adams Oshomole* (Unreported decision of the court of Appeal in Benin) in suit No CA/B/179B/2007.

⁶⁸ (2007)10 NWLR (pt1040) P.177.

⁶⁹ (2007).

did not have police permit to convene the rally. This case may appear as an extreme situation, but by a combined use of police and thugs, contestants and parties have in many constituencies, been prevented from successfully conducting their campaigns on the basis of equality of parties and candidates.

Recent experience in non PDP controlled states in the pre-2015 election like Rivers and Adamawa show that we have learnt nothing from the past and are ready to worsen the stakes. Rallies and programmes of the rival party then All Progressives Congress (APC) have been disrupted by an unconstitutional deployment of the police by the party at the centre – then people’s Democratic Party (PDP).

iii. Election Materials

This is an important indicant of free and fair elections, because unless fool-proof materials such as ballot boxes and especially ballot papers and result declaration forms etc are ready and secured, the election itself will be marred by the use and production of defective or out rightly fraudulent ballot papers and results.⁷⁰ The case of the Ekiti rerun election of 2009 is a case in point on falsification of results, while the very disturbing decision in *Mohammadu Buhari vs INEC and Others*,⁷¹ where the apex tribunal confounding held that non serialization of ballot papers among others, did not substantially affect the outcome of the election.⁷² This means that it did not matter that the ballot papers in issue were fake as they did not have INEC serial number which fundamentally indicates the originality of voting ballots.

⁷⁰ INEC V. Adams Oshornole (Supra)

⁷¹ (2008) ISCNJ P.1

⁷² Ibid

iv. Enforcement of Regulations

An uncompromised enforcement of enforcement of electoral guidelines and the regulations contained in the parent law, are major requirements of a free and fair election. In 2007, regulations were largely observed in breach and till date, nobody, not even those explicitly implicated in the decided cases⁷³ has been arraigned let alone, successfully prosecuted for the violation of the electoral law and guidelines⁷⁴. This will be a major test for subsequent elections in Nigeria as the non-prosecution has already sent the wrong signal to culprits that they can continue with business as usual.⁷⁵

b. Election Day Concerns

The major concern that faces election days in general elections, would be security. Security for Voting Citizens to ensure a safe voting environment, and security for the votes cast, to ensure that the will of the people as expressed by their ballots will prevail. If we cannot ensure that the votes count, we shall have wasted precious time by voting and endangered the continuance of our democracy. It will be important for votes cast at each polling station to be counted and publicly declared by the station officer in an environment devoid of harassment, threats and other forms of intimidation.

To ensure a conducive election day outing, polling stations must be in public places and not in private quarters⁷⁶ as in previous elections where particular party stalwart's premises including residence were used as polling stations.

Election Materials must also arrive the respective polling boots on time and secured, to be used as and at when scheduled in a publicly displayed or advertised schedule.

⁷³ Such exhibition of lack of political will to enforce laws encourages electoral criminality.

⁷⁴ This among others is the stated problem this thesis seek to address.

⁷⁵ Ibid.

⁷⁶ This practice privatizes the ballot boxes as supporters of the opponents of the host candidates cannot freely enter the premises to vote.

Finally in Election Day measures, election monitors local and international must be freely accredited and allowed to observe all aspects of the day's activities for transparency. The challenge here is therefore whether we are prepared and willing to conduct such transparent business on the days in question, by curtailing violence, crime and abuse or illegal deployment of forces whether the police or the Army.

c. Post-Election Measures

At present, there are no indications of sufficient change or reform of the Electoral Appeals system, to warrant the expectation that things can be different in future elections. The American election in 2000⁷⁷ which was the closest to contestable elections in recent American history was disposed admirably expeditiously and judiciously. It would appear that the present endless delays are therefore politically contrived, and designed to buy time for sworn-in candidates with bad cases, especially as there is no legal consequence or penalty for occupying public offices and stealing from public coffers through criminal violation and rape of the will of the people. The recent post-2011 elections decisions of the Supreme Court on the 180 days rule has further worsened this reality as all the Respondent now has to do is, find ways to delay the process beyond 180 days and be rewarded with a full tenure in office.

The said decision, enunciated in the consolidated cases of *ANPP vs Alhaji Mohammed Goni & 4 Ors* and *Alhaji Kashim Shettima & 1 Other vs Alhaji Mohammed Goni & 3 Ors.*, delivered on February 17, 2012, made it unambiguously clear that the import of the provisions of Section 285(6) is that;

An election petition tribunal must mandatorily deliver its judgment within 180 days from the date of filing of the petition, failing which, the tribunal

⁷⁷ In this election, the on tested issues between Vice President AlGore and then Govenor George Bush were disposed of y the courts within days of the appeals.

becomes automatically stripped of its jurisdiction to continue further hearing of the petition.

By practical implication, where an order for retrial is given by an Appellate Court, such order can only be valid if it is given before the expiration of the originally stipulated 180 days from the date the petition was filed. Even at that, such retrial order becomes absolutely ineffectual, and a nullity, the moment the originally allotted 180 days expires. This judgment clearly departs from the Supreme Courts position 30 years earlier when in considering the same question In *Paul Unongo vs Aper Aku*⁷⁸ the court, per Justice Uwais, JSC (as he then was), held in the opposite direction, stating that:

I do not see how a reasonable person will have the impression that a party has had a fair hearing where his petition which has been instituted within time limit stipulated by the Electoral Act cannot be concluded because the time available to the court for the petition to be heard will not be sufficient for either both parties to the petition to present their cases or will not allow the court, at the close of the parties' cases, sufficient time to deliver its judgments.

There can be no doubt that the provisions of Section 129(3) and Section 140 subsection (2) of the Electoral Act, 1982 neither allow a petitioner or respondent reasonable time to have a fair hearing, nor give the court the maximum period of three months to deliver its judgment after hearing a petition as envisaged by Section 33 subsection (1) and 258 subsection 1 of the Constitution, respectively.”⁷⁹

In the end, it must be said that simple rules, firmly enforced, and judiciously applied, in a manner consistent with the doctrines of Natural Justice is all that is required to ensure a smooth and expeditious Election Appeals System. Achieving this will be a major challenge for Nigerian Elections.

An examination of the legal regime for election credibility of election administration in Nigeria i.e. the Constitution of the Federal Republic of Nigeria 1999 (as

⁷⁸ (1983) 2 SCNLR 332, the supreme court while considering sections 129(3) and 140(2) of the 1982 Electoral Act (i.e provisions in pari material with sections 285(6) of the 1999 Constitution as amended and 134(2) of the Electoral Act 2010)

⁷⁹ Ibid at P.340 Paras H-B.

amended), the Electoral Act 2010 (as amended), case law and guidelines regulating the conduct of institutions and agencies involved in elections are key for the credibility of elections. The National Assembly did a commendable job in 2010 in its amendment of the 1999 Constitution among which are: making the Independent National Electoral Commission (INEC) financially independent when it made its expenditure derivable directly from the Consolidated Revenue Fund;⁸⁰ conclusion of time limitation for the hearing of election petition in the constitution to address the problem of delay in the hearing of election petition⁸¹. The Electoral Act 2010 also contains provisions to address delayed hearing of election petition unlike the position under the repealed Electoral Act 2006.⁸² However, there is the need to further amend the Constitution as well as the extant Electoral Act to further guarantee and strengthen the independence of INEC by making the Commission not subject to the direction and control of any person or authority in the exercise of all its operation.⁸³ Additionally, the constitution as well as the Electoral Act should be further amended to accommodate other plausible recommendations of the Electoral Reform Committee such as independent candidacy, giving greater weight to the substance of the petition rather than mere technicalities among others. This is imperative to restore credibility in the electoral process in Nigeria and ensure the conduct of free, fair and credible elections in the country.

⁸⁰ See section 84 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

⁸¹ *Ibid.* See section 285(5) and (6).

⁸² See section 134 (1) and (2) of the Electoral Act 2010 (as amended)

⁸³ Under section 158(1) of the constitution. INEC shall not be subject to the direction or control of any other authority or person in exercising its power to make appointments or to exercise disciplinary control over persons.

CHAPTER FIVE

ELECTORAL ACT 2010 AND THE 2011 GENERAL ELECTIONS

5.1 Introduction

Nigeria's democratic institutions were significantly shaken in 2007 by opaque election administration, widespread irregularities, violence and substantial misconduct. Even though the 2007 elections resulted in a transfer of power from one elected president to another for the first time in Nigeria's history, domestic and international observers described them as seriously flawed. Irregularities included polling stations that opened hours late, closed early or failed to open at all; lack of secrecy in voting; errors in the voter register; ballot papers that did not, include all of the candidates¹. In its 2007 election statements, observers found that "in many places, and in a number of ways, the electoral process failed the Nigerian people. The cumulative effect of the serious problems the delegation witnessed substantially compromised the integrity of the electoral process."² The delegation further noted that "the serious flaws during this electoral process threaten to further erode citizen confidence in the country's democratic institutions."³

Responding to broad criticism and calls for reform, the newly elected president Aihaji Umaru Musa Yar'Adua established the Election Reform Committee (ERC)⁴ and tasked it with reviewing the electoral process for ways to improve its quality and deepen Nigeria's democracy. After a process of broad consultations, the ERG released its report in December 2008. The report recommended fundamental changes to increase the credibility and transparency of the election process. For example, the report called for

¹ Jega, A.M. (2013) Electoral Reforms in Nigeria: prospects and challenges; being of paper delivered at the 7th International Electoral Affairs symposium in Kuala Lumpur in Malaysia 3, May, 2013.

² Election Report (2007) Nigeria; Centre for Democracy and Development (CDD), Abuja, Nigeria

³ Ibid

⁴ It is also known as the Uwais Committee because of its Chairman former chief Justice Mohammed Uwais.

some of INEC's ⁵responsibilities to be moved to separate commissions, such as political party registration, constituency delineation, and the prosecution of electoral offenders.⁶ Despite the high-profile release of the report, the legislature did not take meaningful action on the recommendations for several years, and many of its recommendations were not implemented.

Nigeria faced the threat of destabilization in 2009 when President Yar'Adua was declared incapacitated, creating a potential power vacuum. To fill the void, the National Assembly named Vice President Goodluck Jonathan as acting president during President Yar'Adua's extended absence from office as a result of a medical condition. Although the Nigerian Constitution limits a president to two terms in office, there was debate over whether an informal power-sharing agreement within the ruling People's Democratic Party (PDP) left Jonathan, the former governor of Bayelsa state in the South-South geopolitical zone, ineligible to run in the 2011 elections. The agreement, popularly known as "zoning,"⁷ requires the presidency to alternate between Nigeria's northern and southern regions. Since a southern president held office from 1999 to 2007, a northern president was expected to hold office from 2007 to 2015. Jonathan ultimately won the party's ticket despite the zoning debate, after winning a majority of votes in the PDP primary election.

Upon assuming office as acting president, Jonathan declared improving the 2011 election process a priority for his administration. One of his first acts was the appointment of Professor Attahiru Jega as INEC chairman. Professor Jega, who had served as a member of the ERC, emphasized the need to restructure the commission. His appointment

⁵ INEC management of Elections in Nigeria in one of the identifiable problems this thesis is addressing.

⁶ The problem of electoral offences is one of the identifiable problems this thesis is addressing

⁷ The principle of zoning also applies to other key offices and provides for rotation between different Geopolitical zones or even between different districts within the states. In the candidates' selection process as well as in post-Election negotiations on office distribution, zoning remained a central mechanism for interest-mediation within the P.D.P.

raised expectations that INEC would be more transparent throughout the electoral process, incorporate better practices for credible polls and promote dialogue among all participants in the elections. The legislature passed two sets of amendments in July ⁸ and November 2010⁹ and a new electoral act i.e Electoral Act No.6, 2010) was passed in August 2010, the latter was further amended in January 2011.¹⁰

Most significantly, the amendments established INEC's financial independence from the executive branch, provided for nonpartisan staffing within INEC, improved regulations on electoral tribunals and set stricter punishments for electoral offenses. They also moved the elections from January to April to allow time to compile a fresh voter register.

In the 2011 general elections, there were 1,486 different electoral contests: the presidential election, 469 federal legislative elections, 990 state legislative elections and 26 gubernatorial elections.

5.2 Constitutional and Electoral Act amendments and the 2011 Elections

One of the factors that compromised the credibility of past elections, including the 2007 elections, is said to be lack of structural independence of INEC. This was one of the main issues taken up by the Electoral Reform Committee in 2007. Among the recommendation that the Committee made was the necessity for guaranteeing the independence of INEC, both through the way that the Commission is funded and through the appointment process for its members.¹¹

⁸ Constitution of the Federal Republic of Nigeria, 5285(1) as amended by constitution of the Federal Republic of Nigeria (First Alteration) Act No.1 of 2010 and the Constitution of the Federal Republic of Nigeria. (second alteration) Act No.2 of 2010.

⁹ Electoral Act 2010 laws of the Federation of Nigeria, 2004

¹⁰ Ibid (as amended)

¹¹ Op.Cit.n4

The constitutional amendments made in preparation for the 2011 elections, partially resolved the issues considered by the Electoral Reform Committee. Changes were made to the way INEC is funded; an amendment was made to the Nigerian Constitution to allow INEC to be funded from the Consolidated Fund.¹² This put INEC at a par with the way the judiciary and the National Assembly are funded.¹³

With regard to the appointment and dismissal process for the Chairperson and the twelve National Electoral Commissioners of INEC no changes were made. The chairman of INEC is appointed by the President of the Federation, subject to confirmation by the Senate.¹⁴ The removal of the chairperson is harder to accomplish; to do so, the President needs the support of a two-thirds majority of the Senate.¹⁵

However, changes have been made to tighten the appointment process of the Resident Electoral Commissioners, of whom there is one for every state and the Capital Territory and to whom INEC may delegate any of its powers. The appointment of a Resident Electoral Commissioner in the past was a presidential prerogative. Today, a presidential appointment of a Resident Electoral Commissioner requires Senate confirmation.¹⁶

A notable constitutional amendment was also made to insulate INEC from the control of the President of the federation in running its affairs. Like any other independent body created under the Constitution, INEC had the power to issue rules to regulate its own procedure or confer powers and impose duties on any officer or authority for the

¹² Constitution of the Federal Republic of Nigeria, Section 81 as amended by Constitution of the Federal Republic of Nigeria (First Alteration) Act No.1 of 2010

¹³ Ibid

¹⁴ Ibid at Section 154

¹⁵ Ibid at Section 157

¹⁶ Ibid at 153 (Third Schedule, 14).

purpose of discharging its functions.¹⁷ To do so, however, it needed presidential approval.¹⁸ The need for presidential approval was eliminated by constitutional amendment giving INEC absolute power-to regulate itself for the purpose of carrying out its functions.¹⁹

Another notable amendment to the Constitution addressed the power of INEC to postpone elections. The presidential election was initially scheduled for January 22, but was postponed more than once.²⁰ In addition, INEC had to postpone elections at the last minute, mostly due to organizational problems. This has given rise to accusations of inappropriate tampering with the process.²¹ However, the postponements by INEC appear to have been within the bounds of the law. For instance, with regard to presidential elections, the Constitution set a certain time period within which elections must be held and from which derogation was prohibited. It mandated that such elections should take place “not earlier than sixty days and no later than thirty days before the expiration of the term of office of the last holder of that office”.²² Constitutional amendment was made to expand the period in which presidential elections must be held. The Constitution now requires that such elections be held “not earlier than one hundred and fifty days and not later than one hundred and one hundred and thirty days before the expiration of the term

¹⁷ Constitution of the Federal Republic of Nigeria 1999 Section 160

¹⁸ Ibid

¹⁹ Constitution of the Federal Republic of Nigeria, (Third Schedule, 160), as Amended by Constitution of the Federal Republic of Nigeria (First Alteration) Act No. 1 of 2010.

²⁰ Peter Clotey, Most Nigerian Political Parties Agree, to Election Postponement, VOICE OF AMERICA (Sept. 23, 2010), <http://www.voanews.com/english/news/africa/Most-Nigerian-Political-Parties-Agree-to-Election-Postponement--103680089.html>,

²¹ Nigeria Parties Back Poll Delays, VOICE OF AMERICA (Apr. 4, 2011), <http://hlogs.voanews.com/breaking-news/2011/04/04/nigeria-parties-back-poll-delays/>.

²² Constitution of the Federal Republic of Nigeria 1999, Section 132.

of office of the last holder of that office.²³ Within this period of time, INEC has the power to set or postpone an election date.²⁴

The power of INEC to postpone elections within the general parameters set by the Constitution, although wide, is not unlimited. INEC may only postpone an already set election date in the following circumstances:

“If there is reason to believe that a serious breach of the peace is likely to occur if the election is proceeded with on that date or [if] it is impossible to conduct the elections as a result of natural disasters or other emergencies.²⁵”

The vagueness of the language appears to leave INEC wide discretionary powers. All that the INEC is required to do to postpone an election is have a “cogent and verifiable” reason, which could be as serious as riots or a simple logistical problem of not having sufficient voting materials in the polling station, as one of the reasons for postponing elections.²⁶

Establishing an independent body to oversee elections is not sufficient to guarantee free and fair elections without an efficient and reliable system to address election related disputes. Election petition is different from ordinary civil or criminal proceedings and therefore, is governed by specially designed rules.²⁷ The Nigerian

²³ Constitution of the Federal Republic of Nigeria, Section 132, as amended by Constitution of the Federal Republic of Nigeria (First Alteration) Act No. 1 of 2010, 98 FEDERAL REPUBLIC OF NIGERIA OFFICIAL GAZATTE No. 2 (Jan. 11, 2011) & the Constitution of the Federal Republic of Nigeria (Second Alteration) Act No. 2 of 2010, 98 FEDERAL REPUBLIC OF NIGERIA OFFICIAL GAZATTE NO. 3 (Jan. 12, 2010).

²⁴ Constitution of the Federal Republic of Nigeria, § 132, as amended by Constitution of the Federal Republic of Nigeria (First Alteration) Act No. 1 of 2010, 98 FEDERAL REPUBLIC OF NIGERIA OFFICIAL GAZATTE No. 2 (Jan. 11, 2011) & the Constitution of the Federal Republic of Nigeria (Second Alteration) Act No. 2 of 2010, 98 FEDERAL REPUBLIC OF NIGERIA OFFICIAL GAZATTENO. 3 (Jan. 12, 2010). Electoral Act, §26.

²⁵ Electoral Act, 2010 (as amended) Section 26.

²⁶ Ibid.

²⁷ Aborisade, F. (2011) Nigeria’s Electoral Legal Frame work; any need for judicial Reconstruction and legislative Reforms? Cited in Hon. Justice P.A Onamade 2010. Advocacy in Election petitions. Lagos Philade Co. Ltd, P022.

election petition system is governed by the Constitution and the Electoral Act. The Constitution mainly establishes election tribunals and allocates those tribunals and courts jurisdiction to adjudicate election disputes, whereas the Electoral Act outlines detailed rules governing the process. In preparation for the 2011 election, some changes have been made to Nigeria's election petition system. The changes mainly focused on reorganizing election tribunals and their jurisdictions.

The law that governed the 2007 elections mandated that there be at least one National Assembly Election 'Tribunal to make determinations on election issues concerning the National Assembly election.²⁸ In addition, the law mandated the establishment of at least one election tribunal in every state (known as Governorship and Legislative Houses Election Tribunals to adjudicate election petitions surrounding the elections of governors, deputy governors, and members of state Houses of Assembly.²⁹ The National Assembly, governorship, and state assembly tribunals consisted of a chairman (judge of a high court) and four other members³⁰ and a quorum was established by the presence of the chairman and two other members.³¹

In the recent amendment process, some changes were introduced to the structural arrangement of election tribunals. The amended Constitution consolidated some of the roles of the National Assembly and the Governorship and State Houses of Assembly election tribunals into one by establishing a tribunal called the National Assembly and State Houses of Assembly Election Tribunal.³² There will be at least one such Tribunal

²⁸ Constitution of the Federal Republic of Nigeria, section 285(1).

²⁹ Ibid at §285(2).

³⁰ Ibid. at §285(3) (Schedule six).

³¹ Ibid. at §285(4).

³² Constitution of the Federal Republic of Nigeria, §285 (1), as Amended by Constitution of the Federal Republic of Nigeria (First Alteration) Act No. 1 of 2010 & the Constitution of the Federal Republic of Nigeria (Second Alteration) Act No. 2 of 2010.

for the Federation.³³ The number of members of this tribunal was made smaller than that of its predecessors (the National Assembly Election Tribunal and the Governorship and Legislative Houses Election Tribunal); it is made up of only a Chairman and two other members.³⁴ A quorum can be effectively established with the chairman and one other member.³⁵

The jurisdiction of the National Assembly and State Houses of Assembly Election Tribunal is more limited than that of the previous National Assembly Election Tribunals. The National Assembly Election Tribunals, before the amendment, had jurisdiction to make determinations on whether:

- a. a person has been validly elected;
- b. the term of a person under the Constitution has ceased;
- c. a seat of a member of the National Assembly has been vacant; and
- d. a suit before an Election Tribunal has been instituted properly³⁶

Under the amended Constitution, the jurisdiction of the National Assembly and State Houses of Assembly Election Tribunals is limited to determining whether a person has been validly elected to the National Assembly or the House of Assembly of a state.³⁷ Its jurisdiction is, however, identical to that of the Governorship and Legislative Houses Election Tribunals, which had jurisdiction over election petitions arising out of races for State Houses Assembly and whose jurisdiction was limited to determining whether a person had been validly elected to such office.³⁸

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Constitution of the Federal Republic of Nigeria, Section 285.

³⁷ Constitution of the Federal Republic of Nigeria, §285 (1), as Amended by Constitution of the Federal Republic of Nigeria (First Alteration) Act No. 1 of 2010 & the Constitution of the Federal Republic of Nigeria (Second Alteration) Act No. 2 of 2010.

³⁸ Constitution of the Federal Republic of Nigeria, §285(2).

Some of the jurisdictional powers formerly enjoyed by the National Assembly Election Tribunal have been shifted to the Federal High Court. The Federal High Court now has jurisdiction to adjudicate and determine whether a term of office of a member of the National Assembly or a state House of Assembly has ceased and whether or not the seat has become vacant.³⁹

Procedural changes were also introduced to petitions concerning the offices of governors and deputy governors. Before the 2010 amendments, election petitions concerning these offices were, as indicated above, dealt with by the Governorship and Legislative Houses Election Tribunals, of which there was one in every state.⁴⁰ These Tribunals have been replaced by Governorship Election Tribunals, of which there also is one in every State of the Federation; these tribunals enjoy original jurisdiction to make determinations as to whether any person has been validly elected to the Office of the Governor or Deputy Governor.⁴¹

Determination of whether the term of office of a Governor or Deputy-Governor has ceased or the position has become vacant now lies with the Federal High Court.⁴² This the issue of whether the tenure of five governors had ended and whether their seats are open for contest in the 2011 election season was adjudicated by the Federal High Court in Abuja and was taken before the Court of Appeal in Abuja only on appeal.⁴³ At issue in that case was a constitutional provision, as it existed prior to the 2010 amendments, on tenure of governors which specifically stated:

³⁹ Constitution of the Federal Republic of Nigeria, §251 & 272, as Amended by Constitution of the Federal Republic of Nigeria (First Alteration) Act No. 1 of 2010.

⁴⁰ Constitution of the Federal Republic of Nigeria, §285(2).

⁴¹ Constitution of the Federal Republic of Nigeria, §285 (2), as Amended by Constitution of the Federal Republic of Nigeria (First Alteration) Act No. 1 of 2010 & the Constitution of the Federal Republic of Nigeria (Second Alteration) Act No. 2 of 2010.

⁴² *Ibid.* at Section 272.

⁴³ See also Constitution of the Federal Republic of Nigeria, §246, as Amended by Constitution of the Federal Republic of Nigeria (First Alteration) Act No. 1 of 2010 & the Constitution of the Federal Republic of Nigeria (Second Alteration) Act No. 2 of 2010.

The Governor shall vacate his office at the expiration of period [sic] of four years commencing from the date when

- (a) In the case of a person first elected as Governor under this Constitution, he took the Oath of Allegiance and oath of office; and
- (b) The person last elected to that office took the Oath of Allegiance and oath of office or would, but for his death, have taken such oaths.⁴⁴

Governors of three states (Adamawa, Kogi, and Sokoto) sued INEC before the Federal High Court of Abuja for the purpose of preventing it from opening their seats for election in 2011.⁴⁵ Their argument, simply put, was that their tenure could not have ended, because the regular gubernatorial elections held in the last election season (April 2007) were voided, forcing them to wait until 2008 to take the oath of office after re-run elections. INEC, in turn, argued that because the governors won the re-run elections, their tenure commenced on the day they took their first oath of office.⁴⁶ The Court ruled in favor of the petitioners and barred INEC from holding gubernatorial elections in five States (including Cross River and Bayelsa, states with situations similar to the other three) in 2011, a ruling INEC appealed to the Court of Appeal.⁴⁷ The Court of Appeal in Abuja, in the ruling issued on April 15, 2011, upheld the High Court's ruling.⁴⁸ In doing so the Court of Appeal noted that '[i]n law, there were no elections in the five states in April 2007 ... Nobody can be validly elected in an invalid election.'⁴⁹

Although INEC was not able to convince the Federal High Court and the Court of Appeal of its view on when a gubernatorial term actually starts, the legislature (both at the

⁴⁴ Constitution of the Federal Republic of Nigeria, § 180(2).

⁴⁵ Goitom, H., Nigeria: INEC Appeals court ruling exempting five states from up coming Gubernatorial Elections, Global Legal Monitor (Apr,1,2011)

http://www.oc.gov/lawweb/servlet/loc_news?disp3_1205402614 text. Retrieved 10/10/2016 at 8am.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Nigeria: Court of Appeals Upholds High Court Ruling, No Gubernatorial Elections in Five States, GLOBAL LEGAL MONITOR (Apr. 18, 2011), http://www.loc.gov/la/web/servletlocnews?disp3_1205402631 text. Accessed 10/10/2016 at 8am.

⁴⁹ Ibid.

federal and state level) has implemented at least part of INEC's position through constitutional amendment. The amended Constitution states that:

In the determination of the four year term [of a Governor], where a re-run election has taken place and the person earlier sworn in wins the re-election, the time spent in the office before the date the election was annulled, shall be taken into account [to constitute part of the term] .⁵⁰

Under the amended Constitution, if a gubernatorial election is nullified after the winner has taken the oath and commenced his/her term and if the same person wins a re-run election, the time that that person served as governor before the former election was nullified is counted as part of the four-year term. This provision reverses the Court of Appeal ruling, which retroactively cancelled any amount of time a person had served as governor if the election that the person won is later nullified, but it does not fully embrace the position of INEC in that it appears to be applicable only to the time the person serves between the first win and its nullification.

The same amendment was also introduced with regard to the tenure of a President of the Federal Republic of Nigeria.⁵¹

5.3 Electoral Act 2010 and the Management of 2011 General Elections

Credible elections are very important for the economic, social and political development of any nation. Indeed, the UN Declaration of Human Rights⁵², emphasized the importance of elections to human development and democracy:

The will of the people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures⁵³.

⁵⁰ Constitution of the Federal Republic of Nigeria, § 180 (2)(A), as Amended by Constitution of the Federal Republic of Nigeria (First Alteration) Act No. 1 of 2010.

⁵¹ Ibid. at Section 135(2)(a).

⁵² Article 21(3) UN Declaration of Human Rights.

⁵³ Ibid.

The legal framework for the conduct of the 2011 elections consists of the amended 2010 Electoral Act⁵⁴ and the 1999 Constitution (as amended). The INEC Establishment Act 1998 and the INEC (Amendment) Act 1998, and Guidelines issued by INEC. Of all these, the Constitution takes the first place in the order of precedence, in that any provision in any Act or Regulation which is contrary to its provision(s) is null, void and of no effect to the extent of such inconsistency.

This legal framework specifies the structure, role and responsibility of the electoral body, and the relationship between the electoral body and political actors, amongst others. The electoral laws addressed some of the issues raised by the Electoral Reform Committee. INEC is the administrative and election management body that is mandated to conduct elections in Nigeria. The fact that Nigeria is a party to the international instruments requires the country to deploy great efforts devoted to revising the electoral laws in order to enhance electoral credibility in its general elections.

The Independent National Electoral Commission (INEC) is Nigeria elections management body. INEC was established within the framework of the Constitution⁵⁵ as a permanent institutional body whose task is to oversee the Nigerian electoral system. INEC is headed by a chairperson and twelve national commissioners, supported by Resident Electoral Commissioners (RECs) in the 36 states of the federation and the Federal Capital Territory, Abuja.

All INEC members are directly appointed by the President, in consultation with the Council of State, and confirmed by the Senate for a five-year tenure. INECs duties include, *inter alia*, organisation of elections for political offices, excluding offices at the

⁵⁴ Hereinafter to be referred to as the Electoral Act.

⁵⁵ By Virtue of sections 153-155 of the CFRN 1999.

grassroots level⁵⁶; registration of political parties; monitoring of political parties activities, including their finances; and voters' registration and prosecution of electoral offences.

INEC's independence is an important pre-condition for the successful execution of the Commission's duties. The last review of the constitution has accorded INEC financial autonomy⁵⁷ and administrative independence.⁵⁸ The amendment also ensured that commissioners no longer have to display partisan loyalty⁵⁹. However, despite these laudable amendments, the appointment and removal of the INEC chair and his commissioners still remain the responsibility of the president. The need for an amendment on the appointment of the INEC chairman cannot be over emphasized.

INEC has been empowered to determine the sequence of election into political offices, by virtue of Section 25 of the Electoral Act; and Sections 76, 116, 132 and 178 of the Constitution. INEC is empowered under the Constitution to register political parties. Since the landmark court decision in *Balarabe Musa vs INEC*⁶⁰, the conditions for political parties' registration have been liberalized. INEC is also empowered to deregister⁶¹ political parties that fail to win a seat in national and state assembly elections.

5.4 Electoral Act 2010 and challenges of the 2011 General elections.

(a) **Political parties' finances** constitute an important component of the electoral process. The Constitution, Electoral Act and The Companies and Allied Matters Act (CAMA) are amongst the legal framework regulating campaign finance in Nigeria. The

⁵⁶ These offices are provided for under sections 76, 116, 132 and 178 of the 1999 Constitution and include the offices of president and vice president, governors and house of assembly of each state of the federation and membership of the Senate and House of representatives.

⁵⁷ By virtue of Section 81 and 84(4) of the Constitution, INEC's funding is now drawn from the Consolidated Revenue Fund.

⁵⁸ Section 160 of the constitution grants INEC powers to make its own rules and regulate its internal affairs without control, approval or interference.

⁵⁹ Amendment to section 156 and section 14 of the Third Schedule of the Constitution, 1999(as amended).

⁶⁰ Section. 228/2002,

⁶¹ See section 78 (7) of the Electoral Act

Electoral Act in sections 88-93) makes provisions for regulating campaign financing. Presidential and governorship candidates campaign spending is limited to ₦1,000,000,000 and ₦200,000,000⁶² respectively in the Electoral Act.

The main concern with political financing in the Nigerian political system is the limiting factor in the law. For instance Section 91(8h) of Electoral Act disregards “any expenditure incurred before the notification of the date fixed for the election with respect to services rendered or material supplied before such notification”. This is a legal loophole exploited by aspirants or candidates to justify their spending of considerable amounts of money prior to the official start of the election campaign.

Section 221 of the Constitution clearly provides that “No association, other than a political party, shall canvass for votes for any candidate at any election or contribute to the Funds of any political party or to the election expenses of any candidate at an election.” However in the 2011 Election, political parties made resort to third party spending.

INEC is empowered by the Constitution to monitor finances of political parties, conduct an annual examination and audit of the funds of political parties, and publish a report to inform the public, however few parties continue to comply with the provisions. Political parties are also required to make their finances open to INEC’s scrutiny and can be scrutinized if need be by the National Assembly.

Underscoring the importance of managing campaign finances, section 90 (9) of the Electoral Act empowered INEC to place limitations on the amount of money or other assets an individual or group of persons can contribute to a political party. CAMA also expressly forbids companies in Section 38 (2) from funding or donating gifts; Property or

⁶² See Section 91 (2)(3) of the Electoral Act

money to any political party or association. However, in the 2011 elections, People's Democratic Party (PDP) governors collectively donated over I billion naira to former President Jonathan Election campaign. Unnamed friends and companies donating huge amount of money publicly in flagrant disregard of CAMA and other extant legal provisions.⁶³

The electoral act for instance is clear in its provisions that not more than 1 million can be donated by individual to a candidate and contravention attracts a conviction of a maximum fine of N1 million or imprisonment of 12 months or both⁶⁴. However no record of anybody prosecuted for breaching these provisions of the law. INEC however accepted it has prosecutorial powers but lacks investigative powers to bring to book alleged culprits. INEC position was that

Only security agencies can investigate any party, person or company that violates any part of the country's Electoral Act even though the commission has got prosecutorial power, this it cannot do until clear and concrete evidence are placed before⁶⁵.

INEC' inability to monitor campaign finances, for instance in the 2011 elections was in a shocking declaration, by then INEC's Chair, Professor Attahiru Jega⁶⁶ who stated "INEC does not even have a desk that handles campaign financing for the 2011 elections".

Considering the fact that campaign financing plays a decisive role in determining electoral outcome, the need for robust legal framework and enforcement cannot be over emphasized. It is imperative that the electoral laws straighten its definition of election expenses and spending with a view to tracking expenses before election notices are given,

⁶³ Govs, Businessmen, others donate N21.27 billion to Jonathan [http://www.punchng.com/news/govs-businessmen – others – donate-n21-27bn to – jonathan/](http://www.punchng.com/news/govs-businessmen-others-donate-n21-27bn-to-jonathan/)accessed June 30th 2015 at 10.12am

⁶⁴ Section 91(9) of the electoral act(2010) as amended

⁶⁵ N21 bn donation: We can't probe donors, says INEC <http://www.punchna.com/news/n21bn-donation-e-caa-probe-donors-says-med>

⁶⁶ Daily Trust May 8, 2011, p.7.

and prevent third-party financing. There is also an urgent need for INEC to strengthen its capacity to effectively monitor political parties' finances and prosecute erring offenders.

(a) **Internal democracy;** Nigerian political parties are often criticized for their lack of internal democracy largely because they are dominated by few power elites otherwise call god fathers or godmothers who decide who gets what, selects candidates for elections, direct the planning and policy framework to suit their personal interests. Complaints arising from the party primaries showed several parties failed to open up spaces for eligible members to vie for positions.⁶⁷ There have been legislative efforts to improve Nigerian political parties' internal democracy. For example, the Electoral Act mandated INEC to monitor political parties' primaries and ensure that they conduct their activities in a democratic manner. The Act provides in section 85(2) that:

- The commission may, with or without prior notice to the political party, attend and observe and observe convention, congress, conference or meeting which is convened b a political party/or the purpose of
- a) Electing members of its executive committees or other governing bodies:
 - b) Nominating candidates for an election at any level: and
 - c) Approving a merger with any other registered political party.”

Despite this legal provision, there are notable contradictions within the Act itself. Some statutes, in particular, reduce the effectiveness and purpose of other statutes within the same Act. Section 87 of the Electoral Act that deals with internal democracy in political parties and the democratic conduct of party primary elections loses its meaning when compared with Sections 31-38, 78- 102 of the Electoral Act. More specifically, section 87(4)(c)(ii) clearly states that the aspirant with the highest number of votes shall be declared the winner of the party's primaries at the end of the voting, and that the aspirants name shall be forwarded to the Independent National Electoral Commission as

⁶⁷ Abiola's widow drags PDP to court over refusing her presidential nomination FORM Nigeria watch, November 13,2014, p.4

the party's candidate. Parallel to that, section 31(1) explicitly states that the Commission shall not reject or disqualify candidates even where the party decides to submit the names of persons that lost primaries or did not contest party primary elections in the first place.

Section 31(1):

Every political party shall, not later than 60 days before the date appointed for a general election under the provisions of this Bill, submit to the commission in the prescribed forms, the list of candidates the party proposes to sponsor at the elections, provided that the Commission shall not reject or disqualify candidates for any reason whatsoever.

These two provisions are clearly incompatible and work directly against each other. By including the phrase 'any reason whatsoever', the law stripped INEC of the ability to enforce compliance with requirements of internal party democracy.

(b) Pre-Election Petitions; A lacuna in the legal framework for conducting elections in Nigeria is the absence of specific statutory provisions for the submission and adjudication of petitions prior to the elections. This implies that pre-election matters are treated as ordinary civil litigation cases. In line with Section 87(10) of the Electoral act, Pre-election petitions are filed to the Federal and State High Courts during the actual course of the electoral process. This renders the operational aspect of the electoral process more complicated. Since judgments are often delivered few days into elections

(c) Election Petition Tribunals; (Section 285 of the Constitution established) **tribunals** for each of the 36 states of the federation and the Federal Capital Territory⁶⁸. It further provides for the creation of national and state assembly election tribunal⁶⁹ and governorship tribunal⁷⁰. The tribunal in the governorship and the federal state legislative tribunals are composed of 3 members with the quorum for each of them as the chairman

⁶⁸ The composition of these tribunals is set out in the sixth schedule of the 1999 Constitution

⁶⁹ Ibid Section 285(1).

⁷⁰ Ibid Section 285(2).

and any other member. At the appeal court, the tribunal for Presidential elections shall be composed of at least 3 Justices,⁷¹ and 5 at the Supreme Court⁷². The time for filing electoral disputes after the declaration of results is twenty one days⁷³. And the election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition, and an appeal arising from a decision of an election tribunal or court shall be heard and disposed of within 60 days from the date of the tribunal's delivery of judgment date.⁷⁴

The shortening of time in hearing electoral disputes is a step in the right direction but the filing processes of 21 days is being abused by crafty petition lawyers who wait till the last days to file their petitions thereby affording respondents little or no time to respond to the petition. A cursory look at the cases filed in the 2011 elections shows many of the cases have been thrown out based on technicalities like this without affording parties the opportunity to call evidence to prove their case.

The unspecified amount of time granted to the Supreme Court as the final arbiter in gubernatorial and presidential election cases, to deliver its judgment remains a challenge. It is important that future amendments take cognisance of the need to conclude all election litigations prior to the inauguration of the winner. Without such provision, illegitimate candidates could hold office prior to the delivery of the final verdict with respect to the petitions filed against them.

The swearing in of winners pending the determination of litigation remains a critical challenge that must be redressed in further amendments. This frustrates the hopes of candidates, leads to a waste of government resources. In a notable case in Osun State,

⁷¹ Ibid Section 239(2) 1999 Constitution (as amended).

⁷² Ibid Section 234 (as amended).

⁷³ Ibid Section 285(5) 1999 Constitution (as amended).

⁷⁴ Ibid section 285 (7).

an election petition dragged on for over three years before the incumbent governor was removed. This problem is exacerbated by the high number of filed election petitions. For example in 2003 only a total of 574 election petitions were brought before election tribunals: the number rose to 1475 in the 2007 general elections: and in 2011 .only about 400 petitions were filed mainly as a result of both the improvement in the legal framework and in the conduct of the polls.

(d) Electoral Violence; Electoral violence continues to be a recurring decimal in the polity. This is largely fuelled with the amount of money associated with elective offices. The 2011 and 2015 elections posed a different challenge considering the level of insecurity pervading the country. The Boko haram insurgency for once raised the bar as there were fears that elections will be impossible to conduct in several parts of the country while the insurgents can also exacerbate existing conflicts. The level of insecurity witnessed. The National Human Rights Commission in its Pre- election report and advisors' in Nigeria's 2015 elections reported 58 deaths resulted from 49 pre-election related violence across 22 states of the federation.⁷⁵ (The same scenario predates the 2011 elections).

While the death tolls in the 2015 elections cannot compare to the post-election violence .of 2011 that led to the death of hundred and displacement of thousands of people, the tolls in the elections still remained high.

Section 227 of the Constitution and section 81 of the Electoral Act prescribe punishment for the contravention of electoral offences⁷⁶. However, the adequacy of the

⁷⁵ Pre-election report and advisory in Nigeria's 20 5 elections issued by the National Human Rights Commission, February 13. 2015

⁷⁶ Section 94 Conduct of political rallies and processions; Section 95 — Prohibition of certain conducts etc of political campaigns: Section 96 Prohibition of use of force or violence at political campaigns : Section 19 Disorderly behavior at political meetings: Section 128 — Disorderly conduct at Election Day; Section 129 Offences on Election Day: and Section 131 — threatening conducts amongst others.

provisions to fight electoral violence remains in question. one is the sentences is very light, secondly is the trial of election offences in regular court makes prosecution ineffective as INEC is hampered by the small size of its legal department and cannot effectively prosecute.

The central problem with enforcing penalties against those who engage in electoral malpractices is the absence of an Electoral Offences Commission. A challenge associated with containing electoral violence includes the inefficiency of the security agencies in overseeing elections. Traditionally police are responsible for maintaining internal Security and policing elections but faced the inadequate staff and necessary logistics; and the level of wanton destruction of lives and property in elections. Other security agencies have in recent years been involved in the policing of elections. However, there have been many instances where the police took active part in vote rigging and voter intimidation. The last governorship elections in Ekiti State also heightened the stakes in the concluded elections. The released audio tape “Ekitigate” show how the military was used to the advantage of the ruling party.⁷⁷

These amongst other issues raised the question of the use of Nigerian Armed Forces in the security and supervision of the election. In three separate cases, the court ruled against the use of Nigerian Armed Forces in the security and supervision of the election until an enabling act of the National Assembly is passed. In a suit the petitioner argued that the military inhibited free movement, free access and intimidated voters in Oshun, Ekiti and Anambra states where they were deployed for elections. In addition, that it’s not ideal to deploy military to supervise election in a democratic setting and therefore

⁷⁷ 25 Idayat Hassan Nigeria’s election consumed by propaganda and doubt <http://africanarguments.org/2015/03/03/nigerias-election-consumed-by-propaganda-and-douht-hy-idayat-hassan>

urged that military should not be deployed for the general elections.⁷⁸ The court ruled the deployment of military constitutes a contravention of section 21 7(2) c) of the constitution and the Armed Forces Act.

(e) **Gender:** Gender does not occupy a central position in either the Electoral Act or the Constitution. Apart from the provisions of Section 51 that designate separate queues for men and women where the culture does not permit intermingling of sexes, there is no provision targeting women participation in elections. However, the electoral guidelines grant preferential treatments.

5.5 Diaspora Voting Rights;

Nigeria's Electoral Act 2010 is divided into 9 major Parts, 158 Sections and three Schedules. The Act provides for the establishment and functions of the Independent National Electoral Commission (INEC)⁷⁹, the Procedure at Elections; National Voters Register and Voters Registration; Formation, Functions and Powers of Political Parties; Electoral Offences, among other things.

The Act however, does not make provision for voting rights for Nigerians in the Diaspora during general elections. Consequently the estimated 17 million Nigerians in the diaspora did not vote in 2011 general elections. Diaspora voting is not an alien concept in most advanced and even in some developing democracies in the world, it is a response to the advance worldwide democratization agenda, as well as massive economic, social and cultural globalization. Diaspora voting is currently practiced in 115 countries around the world and indeed 28 African countries have made legal and logistical provisions in their electoral processes to ensure. Diaspora voting and this inclusion in the political and

⁷⁸ Rules against use of military for elections Nigeria pilot. March 24.2015 <http://nigerianpilot.com> rules-against-use-of-military-for-elections!sthash.p8bpdTGf.dpuf assessed on 10/10/2016 at 9pm.

⁷⁹ INEC is the statutory body saddled with the responsibility of conducting elections in Nigeria.

electoral process is perhaps even more important for African in the Diaspora than any other group anywhere else. Remittances by Nigerians living abroad contribute massively to the GDP of the country. In 2013 alone a total of \$ 21 billion was sent home, making Nigeria the fifth largest recipient of foreign remittances among developing countries and first in Africa. It is on this premise that it is on this premise that some members of the senate sponsored a bill to address this problem.

If passed into law, the outcome will empower over 17 million Nigerians in the Diaspora⁸⁰ to vote during general elections. Nevertheless, the introduction of the Bill has generated thorny debates among scholars, policy analysts, political commentators and Parliamentarians. Some have argued that the promulgation of the Bill into law is necessary given the urgent need for a legal provision that will empower Nigerians in the Diaspora to vote during general elections⁸¹. Their argument is predicated upon the premise that it has become a global practice in modern democracies for citizens in Diaspora to vote in general elections of their countries of origin⁸². Others⁸³ have however, argued against the provisions of the Bill principally from institutional and economic point of view⁸⁴. The central theme of the argument here is that passing the proposed legislation into law will bring much pressure to bear on the human and institutional capacities of the Independent National Electoral Commission (INEC) given that the electoral body as it is

⁸⁰ Charles Soludo, "Is Nigeria Losing Her 17 Million Diaspora?", *This Day*, February 2, 2013, <http://www.thisdaylive.com/articles/is-nigeria-losing-her-17-million-diaspora-/138311/>

⁸¹ Alphosus Agborh, "Group Wants Voting Rights for Nigerians in the Diaspora", *Nigerian Tribune*, September 23, 2011.

⁸² Acho Orabuchi, "Time to Reconsider Diaspora Voting Right Bill", *Daily Sun*, April 19, 2012.

⁸³ News Agency of Nigeria (NAN), "Nigerians in Diaspora Collect Signatures to Support Voting Right," *Leadership*, September 5, 2012, http://leadership.ng/nga/articles/34233/2012/09/05/nigerians_diaspora_collect_signatures_support_voting_right.html?quicktabs_1=2&quicktabs_3=1

⁸⁴ Henry Umoru, "Nigeria not Ripe for Diaspora Voting, says Andy Uba," *Vanguard Newspaper*, April 23, 2012. Retrieved June 4, 2012 from www.vanguard.com/2012/04/nigeria

currently constituted, lacks the capacity to conduct overseas elections⁸⁵. Others have also submitted that the proposed legislation will bring financial pressure on the Nigerian economy if promulgated into law⁸⁶.

The Diaspora voting rights will create a sense of belonging and will boost their interests in contributing to Nigeria's socio-economic and political development. In addition, it is believed that this proposed electoral system will enhance the integrity and credibility of the outcomes of elections in Nigeria.

From the foregoing analysis, the proposed amendment of the 2010 Electoral Act to grant voting rights for Nigerians in the Diaspora seems appropriate. Expectedly however, the passage of the Bill will throw up institutional, logistical and financial challenges, which could be overcome by providing legal framework for their timely provisions.

5.6 Electoral Fraud/ Offences

The issue of electoral fraud and the lack of credibility of the electoral process have been with the Nigerian people for some time. It has more or less become a feature of Nigerian elections. (Including the 2011 General Elections which is in focus here) It is rooted in the "do or die" politics practiced by some Nigerian politicians and political parties. Unfortunately, as a large number of those that engage in electoral fraud and irregularities get away with it, it becomes the norm rather than the exception. This sad history of electoral fraud or rigging has serious implications for our democratic future because the phenomenon is growing rather than declining. As the elections go by the principal forms of rigging and fraud are increasing and are being perfected in successive

⁸⁵ Nigerian Tribune Editorial, "Voting Rights for Nigerians in the Diaspora," *Nigerian Tribune*, December 13, 2012, <http://tribune.com.ng/news2013/index.php/en/world-news/item/1053-voting-rights-for-nigerians-in-the-diaspora/1053-voting-rights-for-nigerians-in-the-diaspora?start=75>

⁸⁶ Bennie Iferi, "No Voting Right for Nigerians in Diaspora Soon," *Daily Times*, October 21, 2011, <http://www.dailytimes.com.ng/article/no-voting-rights-nigerians-diaspora-soon>

elections since 1964, 1965, 1979, 1999, 2003, 2008 and 2011. The result is that elections have become turning points in which the outcome has been the subversion of the democratic process rather than its consolidation.

The Electoral process in Nigeria is a product of the Constitution⁸⁷, the Electoral Act⁸⁸, as well as rules, regulations and guidelines made by the Independent National Electoral Commission pursuant to the powers conferred on it by the Constitution⁸⁹ of the Federal Republic of Nigeria 1999 as amended and the Electoral Act, 2010⁹⁰ (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

⁸⁷ Constitution of the federal Republic of Nigeria 1999(as amended)

⁸⁸ Electoral Act 2010(as amended) LFN 2004.

⁸⁹ Op.cit.n. 87

⁹⁰ Op.cit.n. 88

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 effectively⁹¹. The Constitution and the law therefore regulate electoral behaviour. 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.

The electoral Act creates separate offences and prescribes penalties for these offences relating to voter registration that attracts a fine of N1, 000,000.00 or 12months imprisonment or both; offences in respect of nomination⁹², (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 N50, 000,000 or for a term of imprisonment of not less than 10years or both. Disorderly behaviour at political meetings⁹³ carries a maximum fine of N500, 000 or imprisonment for 12months or both; dereliction of duty⁹⁴ by any officer appointed under the Act or by any Polling Officer attracts a maximum fine of N500, 000 or imprisonment for six months or both; while anybody who announces⁹⁵ or

⁹¹ Amendment to the CFRN 1999 gives INEC financial autonomy

⁹² Op.cit.n

⁹³ Ibid Section 117.

⁹⁴ Ibid Section 121.

⁹⁵ Ibid Section 122.

publishes⁹⁶ an election result knowing same to be false shall be liable to 36months 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 conspiracy⁹⁷ attracts a maximum fine of N500,000 or imprisonment for 12 months or both; requirement of secrecy in voting⁹⁸ and contravention attracts a maximum fine of N100,000 or imprisonment for 6months or both; wrongful voting and false statements⁹⁹ attracts a maximum fine of N100,000 or imprisonment for six months or both; voting by unregistered person¹⁰⁰ attracts a maximum fine of N100,000 or imprisonment for six months or both; disorderly conduct at elections¹⁰¹ attracts a maximum fine of N500,000 or imprisonment for 12 months or both; offences on Election Day¹⁰² attracts a maximum fine of N100,000 or imprisonment for six months or both; while by Section 129(4) anybody who snatches or destroys any election material shall be liable on conviction to 24months imprisonment; undue influence¹⁰³ attracts a maximum fine of N100,000 or imprisonment for 12 months or both; threatening¹⁰⁴ attracts a maximum fine of N1,000,000.00 or imprisonment for 3years .

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

⁹⁶ Ibid Section 123.

⁹⁷ Ibid Section 124.

⁹⁸ Ibid Section 125.

⁹⁹ Ibid Section 126.

¹⁰⁰ Ibid Section 127.

¹⁰¹ Ibid Section 128.

¹⁰² Ibid Section 129.

¹⁰³ Ibid Section 130.

¹⁰⁴ Ibid Section 131.

Nigeria. The consequence is that the offences remain in the statute books as mere offences while candidates engage in competitive rigging.

The fundamental question is whether these sanctions are stringent enough to dissuade people from taking the laws into their hands and using subterfuge to corrupt the electoral process. Coterminous to this is whether the fundamental challenge lies with effective sanctions or the inability of the agency saddled with the prosecution of offenders to prosecute them and for the Courts to impose sanctions prescribed in the law. It is clear that some of the sanctions prescribed for most of the electoral offences in the electoral act are mild while some of them are adequate. This is considering the fact that stiff sentences do not necessarily deter people from committing offences and the goal of sentencing is to act as a deterrent and at the same time correctional. The basic challenge is that most politicians and political parties want to win elections by all means and are ready to go to any length to do so. They also recognise the weaknesses of investigating and prosecuting institutions and are ready to take the risk and commit electoral offences believing that they can exploit the said weaknesses and get away with their crimes.

The Prosecution of Electoral Offences; There has been consternation and sometimes anger at the inability of the Nigerian State to prosecute electoral offenders. This 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 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, the impunity that accompanies it and the inability to prosecute electoral offenders effectively still persists.

The Electoral Act, 2010 ¹⁰⁵(as amended) 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.

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 then Chairman of the Independent National Electoral Commission, Professor Attahiru M. Jega stated the position of the Commission on the issue, thus.

The issue of 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

- 21 suspects were charged with Snatching of Ballot Boxes
- 65 suspects were charged with Loitering after Voting
- 24 suspects were charged with Buying and Selling of Voters Cards
- 7 suspects were charged with Dereliction of Duty
- 8 suspects were charged with Multiple Registrations
- 13 suspects were charged with Impersonation
- 9 suspects were charged with Intimidation/Assault of INEC officials
- 23 suspects were charged with Falsification of results
- 7 suspects were charged with unauthorized destruction of ballot papers
- 3 suspects were charged with Hijacking of INEC Results
- 1 suspect was charged with being in Possession of Ballot Papers
- 4 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

¹⁰⁵ Ibid Section 150(1)

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.

Some of the accused persons were also tried in different courts across the federation.

1. 17 of the cases tracked were being tried or tried at the High Court
2. 271 of the cases tracked were tried or are being tried at the Magistrate Courts
3. 1 case among those tracked is being tried by the Upper Area Court
4. 5 of the cases are still under Police investigation and have not been charged to Court.

A large number of the cases tracked are still ongoing while a substantial number were struck out for lack of diligent prosecution.

1. 24 cases have been concluded and sentences passed
2. 78 of the cases were struck out for lack of diligent prosecution
3. 181 of the cases are still ongoing
4. 6 of the suspects were discharged and acquitted
5. 5 suspects have not been charged to court

On its own part, the Independent National Electoral Commission gave its own figure of arrests and prosecution which is very minimal.

INDEPENDENT NATIONAL ELECTORAL COMMISSION NUMBER OF ELECTORAL OFFENCES AND PROGRESS MADE SO FAR LIST OF ELECTORAL OFFENCES DETERMINED AND PENDING.¹⁰⁶

S/N	State	No. of Cases Filed	No. of Electoral Offences Determined/ Struck out	No of Convictions	No. of Electoral Offences Pending	Remarks
	Abia	3	3	0	0	
	Adamawa	5	4	4	1	
	Akwa ibom	0	0	0	0	
	Anambra	24	17	0	7	
	Bauchi	35	6	-	29	
	Bayelsa	2	-		2	
	Benue	16	0	0	16	
	Borno	21	-	-	21	
	Cross river	14	7	0	7	
	Delta	21	-	-	21	
	Ebonyi	0	0	0	0	
	Edo	12	-	-	12	
	Enugu	17	5	0	12	
	Ekiti	16	8	0	8	
	Gombe	3	-	-	3	
	Imo	9	8	0	1	
	Jigawa	31	6	7	25	

¹⁰⁶ INEC Nigeria.org,status of INEC's prosecution of Electoral offenders as at 30th May 2012 retrieved on 10/10/2016 at 10 am.

	Kaduna	15	15	0	0	
	Kano	25	22	4	3	
	Katsina	16	15	0	1	
	Kebbi	19	8	5	11	
	Kwara	0	0	0	0	
	Lagos	17	14	0	3	
	Kogi	4	2	0	2	
	Nasarawa	11	8	0	3	
	Niger	2	0	0	2	
	Ogun	28	2	0	26	
	Ondo	32	4	1	28	
	Oyo	30	2	0	28	
	Osun	4	1	0	3	
	Plateau	20	7	0	13	
	Rivers	12	0	0	12	
	Sokoto	2	0	0	2	
	Taraba	0	0	0	0	
	Yobe	0	0	0	0	
	Zamfara	16	3	3	13	
	FCT	0	0	0	0	
	TOTAL	482	167	24	315	

In its report¹⁰⁷ Independent National Electoral Commission it found as flows:

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 postelection 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.

The issue for determination is why candidates, voters, political parties, security agents and staff of the electoral management body will persist in committing electoral fraud and electoral offences despite the number of offences provided in the Electoral Act, 2010 (as amended) The answer is not farfetched and are multidimensional. People committed offences recklessly, with impunity, because they believed that they could do it and get away with it. ¹⁰⁸During the voters registration exercise, a head of the 2011 General Elections the Independent National Electoral Commission detected about 870, 000 cases of multiple registrations which are offences under the Electoral Act, 2010(as amended) but a negligible few were prosecuted under the law.

¹⁰⁷ Registration and Election Review Committee (2012) INEC; In the prosecution of Electoral offenders in Nigeria; challenges and possibilities, festus Okoye Discussion paper No.5 September 2013, P.24.

¹⁰⁸ Ibid

Unfortunately, there are a myriad of issues that make the prosecution of offences by legal officers of the Commission difficult. The electoral management body does not have the time, the expertise, the resources and the capacity to shoulder such a responsibility in the face of conducting elections and managing post electoral challenges. There are also challenges with the Nigerian Police Force and other security agencies relating to the arrest, investigation and prosecution of electoral offenders. In some of the elections held after the 2011 elections, soldiers and mobile police officers were sometimes deployed from contiguous states to the States conducting elections to ensure some level of neutrality. Some of these officers joined officers of the Nigeria Security and Civil Defence Corp, the Road Safety Commission, the Navy, Immigration and the Custom in maintaining security on Election Day. Some of the officers were hardly conversant with the provisions of the Electoral Act, 2010(as amended) relating to electoral offences. Some of them are not conversant with the Code of Conduct for Officers on Electoral Duty and are therefore not really in a position to determine when an offence that is not a regular offence has been committed. Moreover, some Police Officers on electoral duty have continued to deliberately misread and misinterpret the provisions of the¹⁰⁹ Electoral Act, 2010(as amended) relating to impersonation by an applicant for a ballot paper as an excuse for refusal to intervene and arrest offenders on grounds of not having been authorized by Presiding Officers to arrest offenders committing an offence at the polling station. To compound the problem, some of the police officers and other security personnel on duty on Election Day move back to their states and to their regular duties on the conclusion of elections. In some cases, they just arrest offenders without making a proper report of why they were arrested. Some of them just arrest offenders and

¹⁰⁹ section 59 of the Act

dumped in the Police Station, and such offenders are released immediately after elections, because there is no record on why they were arrested. Some of the offenders are charged to court and the cases against them struck out because the police officers and those that arrested them are nowhere to be found to give evidence. The consequence is that impunity persists as the people involved know that the State is not primed to carry out proper investigation and thereafter, prosecute electoral offenders.

The issues of electoral malpractices and the prosecution of electoral offences have also been a moot issue. This is because almost all the political parties depending on their areas of suzerainty engage in the same trade, they complain feebly against electoral offences and at the end those that breach the law are not proceeded against in which case impunity persists and recycles itself.

There are also offences relating to dereliction of duty by officers of the Commission. It is against the gains of the law for the Commission to be the complainant and the prosecutor in its own cause and it is therefore important to get a neutral body that will coordinate and control the prosecution of electoral offences.

It can be seen that there are adequate provisions in the Electoral Act for the prosecution of election offences. However, the institutions charged with the prosecution and the trials of offences are weak. These are the police, the courts, the commission and the Attorney Generals offices (federal and states). The provision in the Electoral Act, 2010(as amended) which requires the commission to prosecute election offences may lead to some problems. Some of the envisaged problems are as follows: The issue of competence of the Commission to prosecute election offences. Does the commission have the capacity to properly prosecute electoral offences? Conflict of interest may arise when an officer of the commission is the accused. There may also be clash of interests as the

office of Director of Public Prosecution at both federal and state levels are the organs responsible for prosecution of crimes. There could also be clash of interests between the Commission and the Police with regard to prosecution of election offences. Some prosecuting counsels interviewed clearly stated that it is difficult for them to prosecute electoral offences. They complained that there are no records of the offences committed by most of the suspects arrested on suspicion of having committed electoral offences. They complained that more often than not only the statements of accused persons are found in the files without any investigation report on the issue that led to the arrest of the suspects and without any statement from the complainants and the arresting officers. They also complained that the evidence against most of the accused persons is too weak and pedestrian to stand the test of cross examination and cases are won and lost on the basis of evidence. They also complained that it is difficult to compel the attendance of Police Officers and security officers that made the arrests on Election Day as most of them are not within jurisdiction and sometimes it is difficult to compel their attendance. One of them interviewed stated that:

Terminated some of the cases assigned to me for prosecution. In some of the cases in court, the files were just empty. Nobody in the Legal Department of the Police had information on most of the cases or how to trace the arresting officers. I will only be embarrassed as a lawyer to go ahead with a matter where there is no shred of evidence.¹¹⁰

¹¹⁰ Op.Cit.n.110.

CHAPTER SIX

ELECTORAL ACT 2010 AND THE 2015 GENERAL ELECTIONS

6.1 Introduction

Following the successful conduct of the 2011 general elections¹, the journey toward amending the body of laws for the conduct of elections began; the legal framework includes largely the 1999 Constitution and 2010 Electoral Act as (amended). This was premised on the need to improve the quality and credibility of future elections. The Independent National Electoral Commission (INEC), civil society organizations, foreign observer missions and other stakeholders proposed several amendments that could improve the quality of elections. After almost four years of back and forth in the legislature, these amendments never materialized, hence the conduct of the ju2015 Election under the same legal regime. On a closer look, this look daunting, considering some of the challenges observed in the 2011 general elections. However, the present commission, which is fortunate to be the first commission to conduct two elections i.e. 2011 and 2015 general elections effectively and efficiently, utilized the same legal framework to deliver an improved and inclusive election.

The 2015 general elections in Nigeria were widely acclaimed as substantially free and fair. This however does not detract from the fact that the election was also interspersed with pockets of irregularities, malpractices and violence in some parts of the country. There was palpable apprehension in the days leading up to the elections that the presidential election in particular would occasion serious violent conflicts in the country given the bitter altercations that underscored the campaigns of the two major contending

¹ For detailed analysis of the legal frame work of the 2011 General Election see Chapter Five of this work.

political parties — the Peoples’ Democratic Party (PDP) and the All Progressives Congress (APC).

The 2015 elections were historic, with the opposition winning for the first time since the transition from military rule in 1999, and with the incumbent presidential candidate, Goodluck Jonathan, conceding defeat and thus paving the way for a peaceful handover of power. However these highly competitive elections were marred by incidents of violence, abuse of incumbency at state and federal levels, and attempts at manipulation². The Independent National Electoral Commission (INEC) made commendable attempts to strengthen electoral arrangements, however systemic weaknesses leave the process vulnerable to abuse by political contenders. Procedural shortcomings were evident, in particular during collation and from analysis of polling unit results, however no centralised systemic fraud was observed. Excessive deference to judicial mechanisms for enforcement and corrective action risks protracted resolution to grievances. Media outlets gave a variety of views, however government-controlled media failed to provide legally-required equal coverage, clearly advantaging incumbents.

The security situation, the large population, infrastructure challenges, and the fierce political competition, made for an extremely challenging election environment. On 7 February 2015 INEC postponed the elections scheduled for 14 and 28 February by six weeks³. This followed the National Security Advisor and all the Armed Services and Intelligence Chiefs stating that they could not guarantee security for the proposed election days as six weeks was needed to conclude military operations against Boko Haram. An initiative for peaceful elections was launched on 14 January under the auspices of former

² ibid

³ Hassan, I, (2015) An Appraisal of the Legal Framework for the Conduct of the 2015 General Election: matters arising retrieved from www.cdd.ng.org on 10/11/2016 at 9pm.

UN Secretary-General, Kofi Annan, with the signing of the Abuja Accord by the presidential candidates and their parties. The Abuja Accord was later adapted in all 36 states.

Despite various legal reform initiatives since the 2011 elections, the legal framework has not changed except for the passing of the Freedom of Information Act in May 2011⁴. Therefore, a number of fundamental shortcomings are still to be addressed, with the legislative framework not fully in line with universal and regional standards for elections committed to by Nigeria. These include, *inter alia*, the lack of provision for independent candidacy, insufficient campaign finance regulations, an absence of provisions empowering INEC to sanction campaign violations, weak transparency requirements for the publication of results, and voters and civil society organisations unable to file petitions against the results.

INEC has gained credibility since the appointment of the new Chairperson in 2010, however it is not clear to what extent the institution has been reformed. During the 2015 elections INEC appears to have performed impartially in challenging circumstances, although criticism increased following both election days. However, given the insufficient requirements for transparency and full public accountability as well as a lack of full institutional independence, the election administration remains vulnerable to partisan operations and/or weak delivery that risks exploitation by parties. The law overly-restricts INEC's powers rendering it insufficiently effective in challenging inappropriate actions of political contenders. INEC regulatory guidelines include polling safeguards; however serious procedural weaknesses persist particularly in regards to transparency and collation

⁴ *ibid*

rigor. Shortcomings were evident, with preparations only improving after the six-week postponement⁵.

INEC's constitutional responsibility to undertake delimitation of constituencies is unregulated⁶. Although delimitation is required every 10 years, the current boundaries date back to 1996, despite a census in 2006. During the intervening period, INEC has conducted boundary reviews several times but reportedly has not finally submitted proposals to the National Assembly. There are currently profound disparities in the size of constituencies, which is not consistent with equality of the vote or constitutional requirements. However precise calculation of constituency variations is not possible due to the lack of available population data broken down by constituency⁷.

Positively INEC attempted to improve the integrity of voter registration and identification by introducing biometric measures. INEC reports registering 68.8 million voters, an estimated 78% of the total voting age population, with approximately 82% of registrants' permanent voter cards (PVCs) being collected. However in 11 states over 92% PVC collection was reported, which is implausible given that the deceased have not been removed from the list since 2010. Regrettably, up to 100,000 PVCs, which are necessary for voting, remained unproduced one day before 28 March election day⁸. While the introduction of PVCs and card readers has been effective in increasing the reliability of the voter register and reducing opportunity for fraud, their impact has been limited by the seemingly poor quality of biometric data capture and subsequently weak finger-print recognition rate during polling.

⁵ 2015 President Election Outcome: Analyses and implications' the centre for public alternatives accessed on 10/11/2016 from appa research Alternatives accessed on org at 8pm.

⁶ Ibid.

⁷ Ibid

⁸ Ibid

The constitutional preclusion of independent candidates is inconsistent with the individual right to stand for office and can be criticized for exacerbating party control, which is problematic given the extensively reported culture of corruption within parties⁹. Thus voters are left with reduced choices available on Election Day, which also weakens opportunity for the accountability function of elections. There is insufficient legal regulation of party primaries, with INEC lacking powers of enforcement, as INEC is legally barred from disqualifying candidates¹⁰.

Candidacy is also *de facto* overly-restricted by parties requiring aspirants to pay a non-refundable fee that for the two main parties went up to 27 million Naira, leaving the possibility to stand beyond the reach of the vast majority of citizens. “Zoning”, whereby elected positions rotate between different geographical areas within a constituency, is often applied, which *de facto* excludes aspirants from other localities. Various implementation problems were widely reported and also observed by EU experts, including arbitrary rejections during “screening”, corrupted election processes, and voting procedures that lack transparency and certainty. Also parallel primaries reportedly took place and parties did not always respect the results of their own primaries¹¹.

The campaign environment was extremely competitive and tense. Incidents were reported in all parts of the country resulting in more than 160 people killed in election-related violence since early January. Campaigning for the federal and state level elections took place concurrently, with large-scale rallies conducted during the first phase (before postponement) and meetings with traditional, religious and youth leaders in the second phase (after postponement). Issue-based campaigning was overshadowed by negative

⁹ Odo, UG (2015) free, fair and credible Election 2015 in Nigeria issues and challenges, international Journal of Humanities and social science invention Vol 4. No.6.June 2015 P.4.

¹⁰ Ibid

¹¹ Ibid p.6

tactics, with increasing use of inflammatory language, hate speech and religious, ethnic and sectional sentiments and appeals. Violations of campaign regulations were reported in all parts of the country with both Peoples Democratic Party (PDP) and All Progressives Congress (APC) representatives and candidates seen to misuse incumbency at federal and state levels. Mechanisms for monitoring and sanctioning non-compliance were *de facto* non-existent and violations remained unaddressed throughout the whole campaign period.

While the broadcast media sector is still dominated by the federal and state government-controlled media, which primarily serve incumbents' interest, the steady growth of private outlets and use of social media contributes to pluralistic media environment overall. Although media freedom is improving, self-censorship is exercised, and some instances of harassment and attacks against journalists during the campaign were reported.

EU election¹² Observation Mission (EOM) monitoring results of the government-owned Nigerian Television Authority (NTA) and Federal Radio Corporation of Nigeria (FRCN), the two leading media networks with the widest coverage, showed that both provided extensive exposure to the PDP and its officials (the President and Federal Government). On NTA news, coverage of PDP and its officials totaled 84%, which contrasted with APC's 11%. A similar pattern was identified in FRCN's news, and in NTA's editorial programmes. More extreme uneven coverage was identified in some state-controlled radio stations, with over 95% of airtime allocated to incumbent governors seeking re-election. Thus federal and state government controlled media gave incumbents clear advantage over their opponents. This, along with passiveness of the media regulator, the National Broadcasting Commission (NBC), to challenge such bias and effectively

¹² Araba, Akeem and Odunayo (2015) Comparative study of 2011 and 2015 presidential Elections in Nigeria, Global Journal of Human- Social science Vol 15, No.7. 2015 P.5.

regulate the broadcast media, is not fully consistent with the regulatory framework for the elections or international standards requiring the state controlled media to ensure fair and equitable access by contesting parties. Positively, some private media provided overall balanced and fair coverage of key contesting parties¹³.

In the presidential election, the opposition APC candidate General Buhari won with 53.96% of votes, while President Jonathan of the PDP came second with 44.96%. APC also secured the majority of the seats in the National Assembly with the seemingly most updated INEC results showing APC winning 60 out of 109 seats in the Senate (55%) and 212 out of 360 seats in the House of Representatives (58.9%). The remaining National Assembly members are PDP, with only eight seats won by smaller parties, all in the House of Representatives. According to INEC and media reports on the gubernatorial elections in 29 states, APC won 20 and PDP 9.

The judiciary made serious efforts to provide timely administration of justice for the high volume of pre-election suits. Nevertheless, the lack of time limits for filing and adjudicating of pre-election suits, in combination with loopholes allowing lawyers to delay cases unnecessarily, left the majority of cases pending before the courts for after the elections, thus compromising the right to a timely remedy. No post-election petitions were filed against the presidential outcome, while there were 255 petitions against National Assembly results. In addition to challenging voting, counting and collation processes, many relate to qualifications and improper nomination during party primaries¹⁴.

Despite efforts by some police departments, in many cases electoral offences appear to have not been actively investigated and therefore charges have not been

¹³ Ibid

¹⁴ Ibid

brought. INEC was not proactive in prosecuting electoral offences, with an evident lack of coordination with the police on arrests and investigations, which risks further engendering boldness by electoral crimes perpetrators¹⁵.

The 28 March National Assembly election furthered the negative 2011 trend with another decrease in the number of women elected. It appears that only 8 women won a seat in the Senate (7.3%) and 18 in the House of Representatives (5%). Thus the proportion of women elected is well below the 30% Beijing Declaration and Platform for Action¹⁶ and the 35% National Gender Policy targets. At state level, 11.4% of gubernatorial candidates and 14.36% of State Houses of Assembly contestants were female. No woman was elected as a governor.

Nigeria has ratified the UN Convention on the Rights of Persons with Disabilities¹⁷. However, the National Disability Bill, long-awaiting presidential assent, includes only general provisions on the political participation of persons with disabilities¹⁸. Positively, INEC was receptive to consultations with disability organizations and developed various innovations. Some parties included general references to disability issues in their manifestos, however reportedly only three persons with disabilities contested the 2015 general elections (none of whom won a seat).

¹⁵ This issue is discussed in chapter 5 of the work and in Paragraph of this chapter.

¹⁶ Nigeria is a signatory to various International Connections and instruments guarantees equal opportunity to women participation in the Political life of the country. See Appendix 1.

¹⁷ Ibid see Appendix 1

¹⁸ Ibid

6.2 INEC,¹⁹ Technology and the 2015 General Elections

The conduct of the 2015 general elections was far better than the previous elections held in 1999, 2003, 2007 and 2020²⁰. INEC adopted the use of Permanent Voter Card (PVC) and Smart Card Readers in order to curb electoral fraud²¹.

However the presidential and National Assembly elections on March 28, many of the card readers failed to accredit voters successfully²². As the tension grew, INEC ordered its electoral officers to do manual accreditation in the affected polling units. The development led to continuation of the exercise in some places the next day, while voters in some areas voted into the night. Despite the uproar over the hitches recorded in the presidential and National Assembly elections, INEC insisted that only its card reader would be used, again, for the governorship and state Houses of Assembly elections on April 11.²³ The general elections received positive remarks from election observers such as ECOWAS, EU, AU and the commonwealth²⁴.

The Independent National Electoral Commission (INEC)²⁵ is one of the executive bodies created under Constitution of the Federal Republic of Nigeria, 1999²⁶ (as amended). The Constitution²⁷ provides that any of such bodies may, with the approval of the President, by rules or otherwise regulate its own procedure or confer powers and impose duties on any officer or authority for the purpose of discharging its functions. Pursuant to the aforesaid powers conferred upon it by the Constitution, NEC issued ‘Approved Guidelines and Regulations for the Conduct of 2015 General Elections’,

¹⁹ For detailed discussion on INEC see Chapter 5.

²⁰ Op.Cit.n.12

²¹ Ibid

²² Ibid

²³ Punch, May 3, 2015 p.4

²⁴ Leadership, April, 24, 2015, p.7.

²⁵ Op.Cit.n.19

²⁶ Section 153 CFRN 1999 (as amended)

²⁷ Ibid Section 160

which among other things provides that “accreditation process shall comprise of verification of voters using the Card Reader; checking of the Register of voters; and inking of the cuticle of the specified finger “

The introduction of the Card Reader via the Approved Guidelines was an innovative measure by INEC aimed at improving the transparency and credibility of the electoral process. The use of the Card Reader is therefore a novel addendum to the accreditation and voting procedure specified under Electoral Act, 2010 (as amended)²⁸, which provides as follows:

A person intending to vote with his voter’s card, shall present himself to a Presiding Officer at the polling unit in the constituency in which his name is registered with his voter’s card. The Presiding Officer shall, on being satisfied that the name of the person is on the Register of Voters, issue him a ballot paper and indicate on the Register that the person has voted²⁹.

The procedure for accreditation of voters and voting adopted during the 2015 general election as outlined in the Approved Guidelines is that a voter presents himself to the Assistant Presiding Officer (APO) III of the polling unit, who upon determining that the voter is in the correct polling unit, directs the voter to APO I. The later shall request the Permanent Voters Card (PVC) from the voter and read same with the Card Reader to ascertain that the photograph on the PVC is that of the voter, and that the voter is indeed registered for that polling unit, and authenticate the finger prints of the voter using the Card Reader After this verification of a voter by the use of the Card Reader, the APO I then confirms that the details of the voter is contained in the Register of Voters, applies indelible ink on a left finger of the voter and issues him/her an accreditation tag, and requests the voter to leave the polling unit and return by 1 :30pm, which is the time for commencement of voting.

²⁸ Section 49 Electoral Act 2010 (as amended)

²⁹ Ibid

The Approved Guidelines places much emphasis on the need for voters to be verified by the Card Reader, so much so that a voter who could not be verified after a 2nd attempt would be asked to leave the polling unit. Where accreditation is successfully concluded using the Card Reader, the Presiding Officer compares the number of verified voters generated by the Card Reader with the number checked in the Register of Voters, and if they are consistent loudly announces the total number of accredited voters, if however there occurs a discrepancy, he shall take into account any incidents of failed verification and reconcile the number.

From the foregoing rigorous procedure for accreditation of voters using the Card Reader, there is no gain-saying that the introduction of the Card Reader was intended to be a bold step towards ensuring free, fair and credible elections in Nigeria. Unfortunately, experience during the 2015 general elections indicated that there was high incidence of malfunctioning of the Card Readers delaying the accreditation process for several hours beyond the 1:00pm timeline for close of accreditation, and in many cases resulting in the postponement of accreditation and election, and in other cases still INEC officials had to abandon the Card Readers and resume the manual process of accreditation using the Register of Voters alone.³⁰

The introduction of the Card Reader by INEC and the challenges it threw up during the 2015 elections therefore became an issue in several election petitions brought for determination before the various Election Petition Tribunals. The Supreme Court on 8th January, 2016 in the case of *Mahmud Aliyu Shinkafi vs Y. Abdulazeez Abubakar Yari & 2 Ors*³¹. Finally laid to rest the controversy elicited from the divergent positions taken

³⁰ Op.cit.n.3

³¹ This case started from the Election tribunal as case No. EPT/ZMS/GOV/2/15 to the court of Appeal as EPT/CA/5/GO/005/2015.

by the various election Tribunals and Court of Appeal on whether the card reader can be relied upon in seeking to nullify an election. The Court pronounced on the issue as follows:

My view on this is that the principle of law that is well established cannot be abolished simply because an appellant failed to prove his case in accordance with those principles. My understanding of the function of the Card Reader Machine is to authenticate the owner of a voter's card and to prevent multiple voting by a voter. I am not aware that the Card Reader Machine has replaced the voters register or taken the place of Statement of results.³²

In the appeal from the Abia State governorship election petition³³ *Okezie Victor Ikpeazu vs Alex Otti and Ors*- the Supreme Court in stating the reasons for its judgment on 26th February, 2016, reiterated extensively the status and function of the Card Reader in the scheme of our electoral process. Olabode Rhodes-Vivour, JSC, concurring with the lead judgment, captured the attitude of the Court on the use of the Card Reader, when he opined:

Where a petitioner seeks to prove that there was over voting in the election in which he participated, he would succeed if he is able to show that the number of votes exceeds the number of would be voters in the voter register. If the petitioner decides to rely on Card reader Reports as in this case to show that the number of votes exceeds the number of voters recorded by the card reader but less than would be voters on the voters register, he would fail That explains the plight of the petitioner in this petition/appeal The card reader may be the only authentic document if and only if the National Assembly amends the Electoral Act to provide for card readers. It is only then that card readers would be relevant for nullifying elections³⁴.

The implication of the Supreme Court decision is that the 'Approved Guidelines and Regulations for the Conduct of 2015 General Elections' made by INEC pursuant to powers conferred on it by Section 160 (1) of the Constitution of the Federal Republic of

³² Ibid.

³³ *Okezie Victor Ikpeazu U. Alex Otti* (2016) SC.

³⁴ Ibid.

Nigeria, 1999, cannot supersede the provisions of the Electoral Act, 2011 (as amended). The Court firmly placed its stamp of authority on the position that the legally recognized mode of accreditation of voters is as provided under Section 49 of the Electoral Act, and accordingly any allegation of over-voting or similar malpractices must be proved by having recourse to and tendering the Register of Voters. The Supreme Court did not really discountenance evidence of the Card Reader reports as irrelevant, neither did it designate the use of the Card Reader as amounting to electronic voting contrary section 52 (2) of the Electoral Act; instead the Court held that a Petitioner cannot rely on the Card Reader to establish such allegation up until it is legally recognized by incorporation into the Electoral Act by the National Assembly.

The Card Reader is indeed a very creative innovation that would have put paid to various species of fraud in the electoral process in Nigeria, but the use of the Card Reader during the 2015 elections was unfortunately marred by a lot of hiccups and complaints of malfunctioning resulting in undue delays, manipulations of the process, non-voting or outright cancellation of elections in many polling units, and disenfranchisement of many registered voters — all of which contributed to tense atmosphere in many States that easily degenerated into angry altercations and violence in some cases. This was the background that obviously gave rise to disparate decisions on the role and status of the Card Reader from the various Tribunals and even the Court of Appeal. Apparently constrained by the confusion foisted on our electoral jurisprudence by these conflicting decisions, the Supreme Court sought to restore sanity and consistency in the law by refusing to shift from the extant position prior to the introduction of the Card Reader.

Maybe it was the pronouncement of Kudirat Kekere-Ekun, JSC in Okezie Ikpeazu's case (supra) that ameliorated the perceived hard stance of the Supreme Court

against an innovation that was intended to sanitize and lend more credibility to the electoral process by curbing the incidence of fraud, malpractices and corruption in the process. While underscoring the overarching sentiment of the Court on the issue, the erudite justice of the Supreme Court opined:

Laudable as the innovation of the Card Reader may be, it is only a handmaiden in the accreditation process. Thus any attempt to prove over-voting or non-accreditation without reference to the voters register of the affected local government areas, as in this case, was bound to fail³⁵

Women (Gender), 2015 General Election and the (*electoral Act 2010 as amended*)

Gender does not occupy a central position in either the Electoral Act or the Constitution. Apart from the provisions of Section 51³⁶ that designate separate queues for men and women where the culture does not permit intermingling of sexes, there is no provision targeting women participation in elections. However, the electoral guidelines grant preferential treatments to pregnant women, aged and nursing mother.

Few women got elective positions during the 2015 general elections³⁷. Out of the 14 contestants for the presidency, only one was a female. At the House of Representatives, 14 women got voted in, while the remaining 346 are men, Only 7 women serve as senators in Nigeria's 8th National Assembly comprising of 109 senators. Like in other elections, no woman has broken the jinx of winning gubernatorial election in Nigeria; however, 4 women were elected as Deputy Governors in the states³⁸ such as Lagos, Rivers, Ogun and Enugu respectively.

³⁵ Ibid.

³⁶ Electoral Act (2010 as amended).

³⁷ Op.Cit.n.12.

³⁸ I.e Lagos, Rivers, Ogun and Enugu

Internally Displaced Persons (IDP) 2011 Elections and the Electoral Act 2010

Neither the constitution of the federal Republic of Nigeria nor the Electoral Act (2010) as amended expressly provides for voting by Internally Displaced Persons. The electoral Act provides that

Personal attendance

“No voter shall record his vote otherwise than by personally attending at the Polling unit and recording this vote in the manner prescribed by the Commission³⁹”

It further provides;

Voting at appropriate polling unit

“No person shall be permitted to vote at any polling unit other than the one to which he is allotted”⁴⁰.

The effect of these provisions is that any intending voter must personally attend to the polling unit which INEC had earlier allotted him or her. This allotment predates Election Day so attending to any polling unit not allotted to a person would not infrise the provisions of the Act of a new subsection at provides for the participation of displaced persons in voting at elections. It compels INEC to ensure IDPs are not disenfranchised in the event of an emergency affecting an election. Emergency in this context could be insecurity, environmental or natural disasters. This amendment creates a level playing field for the exercise of franchise by all the stakeholders. The voting right of an estimated 3 million displaced persons was a topical issue in the 2015 elections. The electoral commission was confronted with the complexity of managing this challenge vis-à-vis an extant legal framework that confines registered voters to vote in polling units where they are registered. This necessitated the reforms introduced by INEC to accommodate IDPs in

³⁹ Section 57, Electoral Act 2010 (as amended)

⁴⁰ Ibid section 58

the 2015 elections. The commission reviewed its guidelines and manual to ensure IDPs in Adamawa, Borno and Yobe states vote in the IDP camps and centers. The new amendment can be interpreted to legitimize the administrative actions taken by INEC to accommodate voting and results collation in IDP camps/centers. The new provision was drafted in a manner that gives INEC the latitude and flexibility to determine the procedure for ensuring Nigerians displaced by an emergency are not disenfranchised. The amendment provides enough legal basis for the electoral commission to undertake IDP voting.

6.3 Nigerian Diaspora 2015 General Elections and the Electoral Act 2010

The 2015 general election was perhaps the most competitive election in the Nigeria's recent political history. Invariably, that electoral process opened up the system to the exploration of more technology with the introduction of the Smart Card Reader and Permanent Voter Card (PVC).

As such, in the build up to that election, the clamour by Nigerians living abroad to get involved in the process back home became much more noticeable.

For them, besides technology conquering the geographical hindrance to voting for any citizen (as evident in even small countries in Africa), the appreciable economic contributions they make through transfers back home warrants they have a direct participation in electoral process in the country.

According to a report by World Bank's Migration and Remittances Fact book 2016, remittances from Nigerians living abroad hit \$20.77 billion in 2015, making Nigeria the sixth largest recipient of remittances in the world.⁴¹

⁴¹ Ukaibe S, C, INEC: Between Diaspora Voting and pending legislative polls, retrieved from www.pol.ng on 28/9/2016 at 9am.

It further revealed that remittances to Nigeria rose every year over the last decade from \$ 16.93 billion in 2006 to \$20.83 billion in 2014. In 2015, however, remittances fell slightly to \$20.77 billion.⁴²

According to the report, the top two sources for Nigerian diaspora remittances in 2015 were the United States (\$5.7 billion) and the United Kingdom (\$3.7 billion).

More so, the report showed that Nigeria tops the top ten remittance recipients in Africa by \$20.77bn, followed by Ghana (\$2.0bn), Senegal (\$1 .6bn), Kenya (\$1 .6bn), South Africa (\$1.0bn), Uganda (\$0.9bn), Mali (\$0.9bn), Ethiopia (\$0.6bn), Liberia (\$0.5bn), and Sudan (\$0.5bn).⁴³

Despite the major leaps recorded by the immediate past leadership of INEC, diaspora voting wasn't feasible for the 2015 election. With federal lawmakers fixated on returning to office, amending the constitution to accommodate Nigerians abroad was not a priority.⁴⁴

In December 2013, INEC had called for an amendment of sections 77(2) and 117(2) of the 1999 Constitution to allow Nigerians in the diaspora of voting age to participate in the 2015 elections. A similar call was made in 2012 by Honourable Abike Dabiri, then Chair of the House of Representatives Committee on Nigerians in the Diaspora, when she and six others sponsored a Bill seeking to amend Nigeria's Electoral Act 2010 in order to grant Nigerians in the diaspora the right to vote during 2015 general elections. Sadly these efforts did not materialise in time for the elections and 17 million Nigerians living abroad were disenfranchised.

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

Diaspora voting is not an alien concept in most advanced, and even some developing, democracies of the world. It is a response to the advancing worldwide democratisation agenda, as well as massive economic, social and cultural globalisation. Diaspora voting is currently practised in 115 countries around the world, and indeed 28 African countries have made legal and logistical provisions in their electoral processes to ensure their citizens abroad have a say during elections. And this inclusion in the political and electoral process is perhaps even more important for Africans in the diaspora than any other group anywhere else. Remittances by Nigerians living abroad contribute massively to the GDP of the country. In 2013 alone a total of \$21 billion was sent home, making Nigeria the fifth largest recipient of foreign remittances among developing countries and first in Africa⁴⁵.

While the legal frameworks of many countries in Africa (and throughout the world) permit the right to vote for all citizens, in reality, diaspora citizens are disenfranchised. This is because of a lack of willingness on the part of the authorities that organise elections and procedures that will ensure the fulfillment of that right. Because Nigerians in the diaspora bring in substantial foreign exchange through remittances, affording these citizens the right to vote symbolically integrates a key economic group into the public affairs of the nation. When Nigerians abroad are allowed to vote, they feel they belong; it is, after all, an exercise of citizenship and civil duty. It is also a way to make sure that such citizens, especially students and professionals, who are assets to the wellbeing of the country, are not lost to other countries).⁴⁶

The right to vote, as universal suffrage, has been constitutionalised in many new societies, born from political agitation. The fact that, at some point in history, a particular

⁴⁵ Akpom, B, 2019 Election. The Nigeria Diaspora and the right to vote accessed on 28/9/2016 at 10am.

⁴⁶ Ibid

racial group or class was not permitted to vote, does not nullify the fact that such a community had a right to vote then: rather, the right was not being fulfilled. Rights do not cease to be rights simply because they have not yet been confirmed by legal processes. Following the same line of argument, if every citizen of a country has a right to vote, and therefore self-determination, should that right be revoked simply because that citizen now resides in another country? If Nigerians in the diaspora still continue to engage in the socio-economic well-being of their country, they should enjoy all rights owed to the country's citizens.

Some have argued that amending the Electoral Act will bring much pressure to bear on the human and institutional capacities of INEC given that the electoral body as it is currently constituted lacks the capacity to conduct elections overseas⁴⁷. But there is no reason, for example, why Nigerians living abroad should not be able to go to the country's embassies or consulates, and cast their votes in person. This method is already being practiced in Botswana, Cape Verde, Central African Republic, Ghana, Mozambique, Namibia, Senegal and South Africa. Also there is postal voting in which diaspora votes are transmitted by diplomatic mail to the country for counting, as is being done in Lesotho and Zimbabwe⁴⁸.

INEC together with the Nigeria Population Commission, the Foreign Affairs Ministry and other relevant agencies can start with a comprehensive census of Nigerians living abroad. This gives insight into the geographic spread of this important group, after which a special voter's registration exercise can be conducted to ensure their data is captured and included in the voters

⁴⁷ Ibid

⁴⁸ Ibid

2019 register to be used for the 2019 elections. In 2019 a 20-year old democracy, Africa's largest at that, will have no excuse to shut its door against citizens living abroad on Election Day.

As the country inches towards the 2019 general elections, questions are still being asked by Nigerians living abroad on how long they would have to wait to realize their dreams of exercising their voting rights in their far-flung locations during such exercises back home. About 15million Nigerians currently live in the Diaspora but, for decades, they have remained disenfranchised during elections in the country. In spite of their contributions to the growth and economic development, of Nigeria, the country's laws forbid this class of citizens from partaking in the electoral process.

According to the provision of Sections 13 (1) (c) of the Electoral Act 2006, as amended and Sections 77(2) and 117 (2) of the 1999 Constitution of the Federal Republic of Nigeria, only the citizens physically present in Nigeria at the time of registration of voters can register to vote in any election.

But Diaspora Nigerians have continued to agitate for participation in the country's electoral process, hinging their argument on the provision of the Universal Declaration of Human Rights. The voices of the Diaspora in this regard became so strident and loud that it got attention at the last National Constitutional Conference, The Confab's Committee on Foreign Policy and Diaspora Matters, accordingly, recommended that the Electoral Act and the constitution be amended to provide for Diaspora Voting Right so that Nigerians living abroad, who are not qualified by law and who are at least 18 years old by the time of voters' registration, can vote during elections in Nigeria.

It is hoped that as our electoral process is evolving and as greater confidence is built in the institution and processes associated with in, we may then create voting opportunities for our citizens abroad in the not too distant future.

Electoral Fraud⁴⁹ and Violence— Electoral violence in Nigeria is caused by electoral fraud and manipulation of figures and data to deny the rightful winners their popular mandates given to them and certified by the electoral process. It is an attempt to willfully compromise the integrity of the electoral process or system to achieve unmerited individual win for a political party candidate through the falsification of the electoral figures, numbers, data or process. Electoral fraud is the organized strategy or programs of individuals and or political parties to get desired results of an electoral process either by hook (or) crook.

⁴⁹ For a detail, discussion on Electoral Fraud see chapter 5 of this work.

CHAPTER SEVEN

SUMMARY, CONCLUSION AND RECOMMENDATIONS

7.1 Summary

The 2011 and 2015 General Elections in Nigeria were held in 2011 and 2015 respectively under the legal regime of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act 2010 (as amended), and guidelines regulating the conduct of institutions and agencies involved in elections. The National Assembly did a commendable job in 2010 in its amendment of the 1999 Constitution and the Electoral Act 2010 among which were: making the Independent National Electoral Commission (INEC) financially independent when it made its expenditure derivable directly from the Consolidated Revenue Fund; inclusion of time limitation for the hearing of election petition, appointment of secretary to INEC, IDP enfranchisement etc. The Electoral Act 2010 now contains provisions to address delayed hearing of election petition unlike the position under the repealed Electoral Act 2006. However, there is the need to further amend the Constitution as well as the extant Electoral Act to further guarantee and strengthen the independence of INEC by making the Commission not subject to the direction and control of any person or authority in the exercise of all its operation. Additionally, the constitution as well as the Electoral Act should be further amended to accommodate other recommendations of the Electoral Reform Committee such as independent candidacy, giving greater weight to the substance of the petition rather than mere technicalities among others. This is imperative to restore credibility in the electoral process in Nigeria and ensure the conduct of free, fair and credible elections in the country.

The need to enfranchise Nigerian Diaspora in subsequent elections is necessary giving their economic contribution thus the amendment of the Electoral Act 2010, to grant Voting rights for Nigerians in the Diaspora contravenes neither the Nigerian constitution nor any other known law in Nigeria. Rather, it revolves around and seeks to strengthen the following constitutional issues as provided for in the 1999 Constitution of the Federal Republic of Nigeria as amended;

- i. Franchise: Right to vote and be voted for;
- ii. Rights of representation;
- iii. Right to choose a candidate in an election;
- iv. Right to be informed of what representatives are doing with your mandate
- v. Right to ascertain the level of constituency development; and
- vi. Right of recall.

The reports of various independent observers of the 2011 general elections shows that Nigeria has made a major leap in its democratic development with the organization of elections that was rated as being credible, free, fair and conclusive. Massive political education of the citizenry and the political class, will to a large extent correct some of the identified anomalies, through discouragement of involvement in electoral irregularities. The post-presidential election violence of 2011 revealed the major shortcoming of the National security system of the country, which despite reports of electoral violence in previous elections could not proactively work to avert such a very unfortunate occurrence, which led to loss of innocent lives and countless property. The Nigerian government needs to train and equip its security agencies to be able to forestall violent breakdown of law and order, either before, during and after elections, utilizing the instrumentality of community policing; with the enlightened participation of the citizenry.

The litmus test for democracy in Nigeria will be the extent to which the electoral process through the electoral law instituted is able to engender fair, participatory, and inclusive electoral participation by the people. If the electoral law is weak, deficient, or poorly enforced, the electoral process will be easily subverted. There is need, therefore, to reform and strengthen the electoral law to ensure full adherence to those laws.

Unfortunately, electoral process has always been faulty, skewed and manipulated in favour of one party or candidate at the expense of the others. This has been the practice from one election to the other, thereby making electoral management a daunting task since independence in Nigeria. In most cases, election results have been rejected by the electorates and followed up by violence. This has led to the collapse of the first and second republics as well as the aborted third republic in Nigeria. This is a great lesson to Independent National Electoral Commission (INEC). Any attempt to skew or manipulate election results either in favour of a political party or candidate at the expense of others may spell a great doom for the fourth republic in Nigeria. Therefore, INEC must be truly independent, transparent and impartial in the performance of its functions as stipulated by the 1999 constitution and the 2010 electoral laws. It must carry out its operational activities in such a manner to be perceived in reality by all actors in the electoral process, to be neutral, objective and above board. Apart from this, INEC must be able to exhibit high-level of competence in the discharge of its constitutional assigned duties with minimal or no institutional, structural or financial hindrances. INEC must be seen to be truly independent in every sense of the world. It will be stressed here that without vibrant and competent people being appointed into INEC to strengthen it and manage elections there will be no strong INEC and the conduct of elections will be seriously flawed and the whole democratization process will be thrown into disrepute or grounded to a halt.

Electoral violence continues to be a recurring decimal in the polity. This is largely fuelled with the amount of money associated with elective offices. The just concluded elections in 2015 posed a different challenge considering the level of insecurity pervading the country. The Boko haram insurgency for once raised the bar as there were fears that elections will be impossible to conduct in several parts of the country while the insurgents can also exacerbate existing conflicts.

While the death tolls in the 2015 elections cannot compare to the post-election violence of 2011 that led to the death of hundred and displacement of thousands of people, the tolls in the elections still remained high.

Section 227 of the Constitution and section 81 of the Electoral Act prescribe punishment for the contravention of electoral offences. However, the adequacy of the provisions to fight electoral violence, remains in question, one is that the sentences is very light, secondly is the trial of election offences in regular court makes prosecution highly ineffective as INEC is hampered by the small size of its legal department and cannot effectively prosecute.

Elections are seen as the hallmark of democracy because it provides the legal framework through which the change in political office holders and legitimate government is established. For any government to be legitimate, the Electoral process must be in line with the dictates of the electoral laws as enshrined in the regulatory framework. There were gross violations of the 2010 Electoral Act by the ruling elite which has adversely affected the electoral process and democratic consolidation in Nigeria's Fourth Republic. Several sections of the Electoral Act 2010 (as amended) were violated e.g. Section 91(2); 95(2); 99(1-3) etc also Section 221 etc of the 1999 Constitution of the Federal Republic of Nigeria (as amended). The need to implement the

Justice Uwais commission's recommendation of the setting up of an Electoral Offences Court in order to punish offenders; and for INEC to be strengthened and given the autonomy in order to enforce the laws as enshrined in the Act.

7.2 Findings

The Following findings were made in this work

7.2.1 Inadequacy of Constitutional and Electoral Act provisions in guaranteeing free, fair and credible Elections. The various amendments to the Constitution of the Federal Republic of Nigeria 1999 and the Electoral Act 2010 (see appendix B) contributed very little in enhancing the electoral process towards free and fair elections both in the 2011 and 2015 General Elections. Violations of the Act in several ways in the 2011 and 2015 were made. Consequently, the total number of elections annulled or upturned in the 2015 general elections surpass the number of such cases recorded in 2007 and 2011 elections combined. The main reason for this was INEC lack of capacity to investigate and prosecute Electoral offenders. No tangible investigation or prosecution took place in the 2011 and especially 2015 general election.

7.2.2 Diaspora Disenfranchisement;

Nigerians in the Diaspora currently have no voting rights in Nigeria. This is in view of the provisions of the Electoral Act in Part 4 particularly Sections 57 and 58. Accordingly, Nigerians in the Diaspora did not vote in both 2011 and 2015 elections. The situation is becoming unusual in the light of current global developments.

7.2.3 Use of Technology in the Elections:

INEC relying on its power to make guideline introduce technology i.e Permanent Voters Card (PVC) and Smart Card Reader (SCR). This is inline with Part 3 of the

electoral Act. However, the distribution of this was adjudged to be poor in many places particularly in the South-Eastern parts of the country.

7.2.4 Independent candidacy

Both the Constitution of the Federal Republic of Nigeria 1999 Chapter IV Part 3_D Sections 221-229 (as amended) and the Electoral Act Part 5 Sections 78-88 (as amended) prohibit independent candidacy to vie for electoral office. This has limited the electoral space in terms for persons to contest other than through political party platform.

7.2.5 Multi Responsibilities of INEC

INEC as presently constituted in Chapter IV B Sections 153 and the Electoral Act Part III Sections 9-23, Part IV Sections 25-77, Part V Sections 78-102, Part VI Sections 103-116 and Part VII Sections 117-132 is saddled with numerous tasks and responsibilities. These include registration of political parties, conduct of elections, voter registration, prosecution of electoral offenses among other sundry and equally important tasks that have direct bearing to the credibility of the elections. These numerous tasks and responsibilities have impeded the smooth conduct of its main constitutional responsibilities of conducting free, fair and credible election. This was evident in both the 2011 and 2015 General Election.

7.3 Recommendations

7.3.1 Further to the above findings, the following recommendations are hereby proposed:

For the prompt prosecution of electoral offenses, the Electoral Act should be amended to accommodate the establishment of an Electoral Offences Tribunal to be composed and inaugurated on the year of elections to handle all pre-election and Election Day Offences ranging from registration of voters, buying and selling of voter's cards,

violation of time of commencement of campaign, financial inducement of voters on Election Day, corruption of *ad hoc* election officials etc. The proposed tribunal should be manned by both serving judges and retired judicial officers that are still active to handle strictly electoral offence throughout all stages of elections in an election year and six months after the election.

In addition to the above, the Electoral Act should equally be amended to provide for an autonomous Electoral Offences Commission with the capacity to investigate all electoral fraud and related offences, coordinate enforcement and prosecution of all electoral offences. The Commission should have the capacity and legal instrument to set up Mobile Courts to try election offences on election days and adopt measures to prevent and eradicate the commission of electoral malpractices.

7.3.2 Diaspora Enfranchisement

The Electoral Act should be amended to enfranchise Nigerians in the Diaspora considering their economic contribution to the country and that their electoral significance in terms of numerical strength i.e numbers. This can be done by amendment of the relevant provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act 2010 (as amended).

7.3.3 INEC should be technically and logistically empowered through adequate funding to ensure that PVC and SCR are distributed all over the country without having some areas disenfranchise due to poor distribution network.

7.3.4 The Electoral Act should be amended to allow for independent candidates to run for elective positions in the country apart from those contesting on political party platforms.

7.3.5 INEC should be unbundled and some of its function be divested from it and transferred to separate bodies in order to allow INEC face conduct of elections.

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Universal Declaration on Human Rights (UDHR)

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African Charter on Democracy, Elections and Governance (ACDEG)

ECOWAS Protocol on Democracy and Good Governance

Protocol to the African Charter on the Rights of Women in Africa (2000)

Constitution of the Federal Republic of Nigeria (as amended)

Court of Appeal Rule

Electoral Act 2006 (as amended)

Electoral Act 2010 (as amended)

Freedom of Information Act 2011

APPENDIX A

Table 1: Table of Treaties, Conventions and Protocols

S/No	Name of Instrument	Date Ratified
	Convention Relating to the Status of Refugee 1951	2nd May, 1968
	International Convention on the Elimination of All Forms Racial Discrimination, New York	16 Oct, 1967
	International Convention on Civil and Political Rights, New York	29 th Jul. 1993
	Protocol Relating to the Status of Refugees	23 Oct, 1967
	Convention on Political Rights of Women	7 Nov. 1980
	Convention on the Elimination of All Forms of Discrimination against Women, New York	13 th June, 1985
	Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, New York	22 Feb, 2004

Table of Signed Treaties, Conventions (111(1 Protocols))

S/No	Name of Instrument	Date Signed
	Convention on the Rights of Persons with Disabilities, New York	30 th March, 2007
	Optional Protocol to the Convention on the Rights of Persons with Disabilities, New York	30 th March, 2007

Table of Treaties, Conventions and Protocols Yet to be Ratified

S/No	Name of Instrument	Date Signed
	Instrument of Ratification of the Convention on the Rights of Persons with Disabilities, (South Africa, 16 Nov, 2001)	28 May, 2007
	Instrument of Ratification of the African Charter on Democracy, Elections and Good Governance	April, 2012

Instrument of Ratification of the African Union Convention for April, 2012 the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) Uganda, 221(1 Sept, 2009

APPENDIX B

Table I: Electoral (Amendment) Act, 2010

Arrangement of Sections

Section:

1.	Amendment of Electoral Act No. 6, 2010
2.	Amendment of Section 3 of the Principal Act
3.	Amendment of Section 3 of the Principal Act
4.	Amendment of Section 10 of the Principal Act
5.	Amendment of Section 15 of the Principal Act
6.	Amendment of Section 19 of the Principal Act
7.	Amendment of Section 23 of the Principal Act
8.	Substitution for Section 25 of the Principal Act
9.	Amendment of Section 27 of the Principal Act
10.	Amendment of Section 31 of the Principal Act
11.	Substitution for Section 33 of the Principal Act
12.	Amendment of Section 43 of the Principal Act
13.	Substitution for Section 47 of the Principal Act
14.	Amendment of Section 77 of the Principal Act
15.	Amendment of Section 78 of the Principal Act
16.	Amendment of Section 82 of the Principal Act
17.	Amendment of Section 85 of the Principal Act
18.	Amendment of Section 86 of the Principal Act
19	Substitution for Section 87 of the Principal Act

20.	Substitution for Section 88 of the Principal Act
21.	Amendment of Section 90 of the Principal Act
22.	Amendment of Section 91 of the Principal Act
23.	Amendment of Section 94 of the Principal Act
24.	Amendment of Section 99 of the Principal Act
25.	Amendment of Section 102 of the Principal Act
26.	Amendment of Section 108 of the Principal Act
27.	Amendment of Section 121 of the Principal Act
28.	Amendment of Section 122 of the Principal Act
29.	Amendment of Section 124 of the Principal Act
30.	Amendment of Section 131 of the Principal Act
31.	Amendment of Section 133 of the Principal Act

Source: National Assembly of Nigeria.