

**THE CHALLENGES OF FREE AND FAIR ELECTION IN NIGERIA: A CALL FOR  
IMPERATIVE REFORMS**

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**ABSTRACT**

The objective of this paper is to examine the challenges of free and fair election in Nigeria. In other words, this paper aims at studying the voters' right to freely go to the polling booths and cast their votes unmolested. Free and fair election therefore, cannot tolerate thuggery or violence of any kind, corrupt practice, impersonation, threatening, undue influence, intimidation, disorderly conduct and any act which may have the effect of violating the free exercise by the voter of his franchise. However, in the course of this research the finding of the writer is that all these are common features of the Nigerian election and all together, they constitute a statement of research problem to this paper. This is because such features operate as major stumbling blocks militating against the smooth operation of a free and fair election in Nigeria. In this regard therefore, the writer concluded by recommending (among others) that government at all levels should make provision for relevant machinery which will enhance an atmosphere of freedom, fairness and impartiality (for example an assurance of equal voting power, access to facts and freedom of criticism to competing ideas). The sources of information relied upon here are relevant statutes, judicial authorities, text materials, journals and internet materials

**1.1 Introduction**

The right to free and fair election is a right which is well defined, supported by various legal regimes (particularly the Electoral Act) and also legally enforceable by aggrieved persons where there are breaches of electoral rules by any person (including government agents). Thus, in the case of *Ararumevs INEC*<sup>1</sup>, the Supreme Court held inter-alia that the purpose and intension of the Electoral Act at any time in point is to achieve a free and fair election; hence the 2006 Electoral Act cannot be an exception.<sup>2</sup> Yet, in the course of this research the finding of the writer is that many scenarios in Nigeria have shown that elections are hardly conducted in a free and fair manner which is in contravention of the purpose and intension of the Electoral Act. For example, voting by corruption, intimidation, disorderly conducts and other acts of undue influence which have the effect of violating the free exercise by the voter of his franchise are all common features of the Nigerian election.

In view of above prevalent challenges therefore, the objective of this paper is to proffer viable measures needed to addressing the situations as a way forward for a better democracy in Nigeria. However, in an attempt to achieve this objective, this paper is set to examine issues such as, conceptual clarifications, challenges of free and fair election in Nigeria, imperative reforms and a conclusion.

## **1.2 Conceptual Clarifications**

The aim here is to examine the meaning of the relevant key term of the title of the paper such as the word ‘election’ and the phrase ‘free and fair election’.

### **1.2.1 Meaning and Nature of Election**

In the recent case of Muhammadu Buhari and All Nigeria Peoples Party (ANPP) vs. Chief Olusegun Obasanjo and 267 others,<sup>8</sup> the Nigeria Court of Appeal defines the word “election” in the context of section 137 (1)(b)<sup>9</sup> as meaning the process of choosing by popular votes a candidate for a political office in a democratic system of government.

In a similar tone to the above, the Black’s Law Dictionary<sup>10</sup> defines the word “election” as meaning “the act of choosing or selecting one or more from a greater number of persons, things, courses, or rights or the choice of voters to a public office or as a means by which choice is made by the electors”<sup>11</sup>. This is simply summarized as the process of selecting a person to occupy a position or office usually a public office. And it suffices to add that all activities connected with this process fall within the definition of an election.

The word “election” has also been defined as a “formal act of collective decision that occurs in a stream of connected antecedent and sub sequent behaviour”<sup>12</sup>. This definition is, however, complex and lacks precision and focus. Perhaps that is why Festus Okoye, after citing this definition, went further to explain that it involves the participation of the people in the act of electing their leaders and their own participation in governance. He also said that elections are not necessarily about Election Day activities, although it forms an important component. To him, election encompasses activities before, during and after elections.<sup>13</sup>

However, for the avoidance of doubt, the word “electoral” is the adjectival form of the word “election” and has been defined as “an act of election or relating to elections or electors”<sup>14</sup>. In any case, a distinction has been made between the phrases “election laws” and “electoral laws”. Douglas W.Rae<sup>15</sup> defined electoral law per gems et differentiate against the background of the larger class of law. To him, election laws are those authoritative rules of conduct enacted and enforced by the holders of government authority, which pertain to the conduct of elections. These include laws of suffrage, eligibility, and laws, which apportion

seats and districts among provinces, regions or population groups. As a result of the complexities of elections, election laws are multiple and multi-purposive. Rae distinguishes the broader concept of election laws from the narrower concept of electoral laws. To him, electoral laws are those, which govern the process by which electoral preferences are articulated as votes and which these votes are translated into distributions of governmental authority among competing political parties. Thus, in this view electoral laws are those that relate to the actual conduct of elections<sup>16</sup>.

It is submitted, however, that it will be difficult to know where electoral laws, as opposed to election laws start or stops. In the circumstance, the word “electoral” in the context of this work will retain its dictionary meaning as the adjective of election qualifying such concepts as laws, votes, candidates, violence, malpractice, irregularity and fraud<sup>17</sup>.

An election is not a poll aimed at giving the most accurate representation of all the various opinions or interests at play in a given society. In that case, there being no fixed limit to the possible divisions in a society, the most democratic assembly would be one where each member represented a sharply defined interest or particular ideological nuance. Such an assembly would present an absurd caricature of democratic government<sup>18</sup>.

An election therefore, is intended to give citizens the power to decide who shall rule and according to what electoral policy. It should produce an efficient government, supported by the bulk of the citizens. In this wise, election is the major determinant of democracy. But then, democracy should not be subjected to regular holding of elections. Elections occur intermittently so long as in any meaningful democracy, there is freedom, equality and justice. To this end, Honourable Chukwudifu Oputa, JSC (as he then was) submits that:

Democracy is thus, a form of government in which the supreme power of the state is vested in the people collectively and is by them or by officers appointed by them. The distinguishing badge of democracy is the acceptance and recognition of the essential equality of all, before the law. This in turn dictates equality of rights and privileges, be they social, political or religious. There cannot therefore, be any meaningful democracy without justice, liberty and freedoms<sup>19</sup>.

Evidently, democracy is underpinned by election, but then, a democratic government could not be said to be meaningful without freedom, equality and justice.

Election therefore, is the major determinant of democracy because it reflects the consensus opinion of the citizens and by so doing, it constitutes a medium for the exercise of the right to freedom of expression, including freedom to hold opinions and to receive and impart ideas

and information without interference guaranteed internationally and by various constitutions. Thus the right to election is the citizens' right which must not be denied for the purpose of determining what is their choice in accordance with electoral laws provided that; the registration of such persons qualified to vote have been carried out by the Independent National Electoral Commission<sup>20</sup>, he is a citizen of Nigeria<sup>21</sup>, he is resident in Nigeria<sup>22</sup>, and he has attained the age of 18 years<sup>23</sup>.

The satisfaction of the above conditions makes election a right, which is enforceable by the citizen upon its violation by the government (or officials in charge). This right is not only domestically enforceable in Nigeria but also internationally supported by various constitutive instruments on the subject matter which are not the concern of this paper; rather, the concept of free and fair election is examined below.

### **1.2.2 The Concept of "Free and Fair Election"**

For all intents and purposes, the provisions guaranteeing the promotion and protection and, even the enforcement of the right to election requires that an election must pass the test of being "free and fair" before it could be called an election as noted in the case of *Ararume vs. INEC* (supra). This is because free and fair election is an indispensable attribute of election in any democracy, and anything contrary to that could not be said to be an election in the eyes of the enabling provisions for not being free and fair.

The concept of free and fair election according to Professor Ben Nwabueze requires that an election must be unimpeded by official interference, discrimination on the ground of sex, race, colour, wealth and so on, by physical restraint, intimidation, bribery, threatening, undue influence or otherwise obstruct freedom of action. Furthermore, every adult citizen shall be free to contest and to campaign for votes, to register as a voter, to choose the candidate for whom to cast his vote and to vote accordingly, that there is equality between the voters, not being allowed to cast more than one vote or to vote on behalf of another person or otherwise to impersonate another voter, that political parties are free to sponsor candidates and canvass for votes in a truly competitive sense, that the territorial units of representation (the federal or state constituencies) are so demarcated as to be nearly equal in population as possible and so as not to favour political party against the others, that the contest is conducted according to laid down rules accepted by all as binding, that those entrusted with its conduct are not agents of or are not subject to direction by any of the contestants; that the contest is in fact conducted impartially, giving no advantage to one candidate against another, that the result shall be based on and truly reflect the votes lawfully cast at the election by voters and free

from falsification, inflation or other fraudulent manipulation of figures, and that the winner shall be determined by a majority or the highest number of such lawful votes, each vote counting equal with another<sup>24</sup>.

Thus, in the estimation of Professor Nwabueze, the freeness and of an election extends to the liberty to choose whether to contest an election or not. It also extends to such pre-election activities as delimitation of constituencies and ends with declaration of a result that truly reflects the lawful votes cast at the election<sup>25</sup>.

Dr. Edwin Madunagu<sup>26</sup> in describing the phrase “free and fair election” adopted a stage by stage approach. He broke the stages into the following categories, the registration of voters exercise, the registration of parties and their candidates the campaign, the voting process and declaration of results.

According to Dr. Madunagu, firstly, the voter registration exercise clearly spells out the eligibility to vote and to be voted for. This must be followed by adequate voter education. The registration centers must be easily accessible to eligible voters. There must be adequate registration materials and the registration period (hours and days) must be long enough to accommodate all those who which to register. The register of voters compiled at the end of the exercise must reflect what actually took place. In other words, there must be no multiple registrations, no disenfranchisement, deliberate or accidental.

Secondly, as regards registration of parties and their candidates, Dr. Madunagu, explains that a multi-party system is assumed. The qualification for eligibility to contest an election should be clearly spelt out and adequately publicized. The political parties should be free to select their candidates without interference, in accordance with their constitutions.

Thirdly, according Dr. Madunagu, campaigns must be conducted under an atmosphere free from intimidation, threat, violence, fear or other forms of terrorism. All competing political parties and candidates must be allowed equal access to public owned media. Both policy-owed and private media and their practitioners must enjoy full freedom except as limited by a pre-existing law permits for rallies or meetings, where required must solely for the purpose of ensuring police protection, and must be granted as a matter of course without condition.

Fourthly and lastly, as regards voting process and declaration of result, there should be as many voting centers as there were voter registration centers, there should be no

multiple voting, no purchase of votes, of voters of election officers, of security agents, of rival polling agents. The voting procedure should be simple.

Dr. Madugu's paradigm of a free and fair election above is thus similar to Prof. Nwabueze's conception of a free and fair election above, though the former is more elaborate. However, while Prof. Nwabueze was silent on such issues as freedom to form political and free access to the media, Dr. Madunagu was silent on the issue of delimitation of constituencies. There is however, an important variable missing in the two conceptions. This is the issue of legal regulation of campaign financing, an issue that touches seriously on the evenness of the competition ground. Dr. Madunagu's paradigm of a free and fair election is hereby adopted subject to the incorporation of the missing variables that is proper delimitation of constituencies and legal regulation of campaign financing<sup>27</sup>.

Free, fair and open election to some jurist, is seen as the crucial mechanism in all genuinely popular governments. To them, there are variants of democratic governments, but democratic elections have at least four essential elements, to wit, all citizens should have equal voting power; voters should have access to facts, to criticisms, to competing ideas, to the views of all candidates, citizens must be free to organize for political purposes, elections are decided by majorities (or at least pluralities)<sup>28</sup>.

### **1.3 Challenges of Free and Fair in Nigeria**

After several years of independence, the Nigerian challenges still centres on the issues of democracy via free and fair election. The failure of democracy via free and fair election to live up to its ideals, because, glaring inequalities in the system, became evident. The glorification of competition and the maximization of the satisfaction of the needs of the many intended in democracy have also collapsed. The reasons for all these constitute the challenges of democracy which need to be precisely understood and reverted. These challenges are outlined below.

#### **1.3.1 Insecurity**

Security means the state of being secured. It may be a protection from the possibility of future financial difficulty; protection from physical harm especially assassination; protection from theft.<sup>3</sup> In other words, security may be something given as a guarantee especially to a creditor giving him the right to recover a debt<sup>4</sup>.

However, the security relevant to this paper is the protection from physical harm such as assassinations, grievous bodily harm, arson, intimidation and kidnapping; all of which are crimes peculiar to election crisis in Nigeria. For example, in the case of Dr.ChineduIwuvs

Greg Nwugo and 10 others<sup>5</sup>, the appellant who was not nominated by his former Peoples Democratic Party {PDP}, but ran the governorship election on platform of Justice Party (JP), filed an election petition at the National Assembly Governorship and Legislative House Election Tribunal sitting at Owerri, Imo State<sup>6</sup>.

The appellants petition contain wide ranging allegations of malpractices, abuse of electoral processes, thuggery, wanton attacks on the party agents, shooting into the air and snatching of ballot boxes<sup>7</sup>. The second to the tenth respondent objected to the petition on the ground that the parties were not joined<sup>8</sup>. In their view, the presiding officers were also guilty and they should be joined. The lower tribunal on third July, 2003, upheld the objection and struck out the petition<sup>9</sup>.

The appellant, being dissatisfied with the ruling of the tribunal, appealed to the court of Appeal. At the court of Appeal, the appellant contended that in spite of non-joinder of some presiding officers, the petition contained enough facts on which it could go to trial; and that the tribunal hinged its decisions on issues not placed before it<sup>10</sup>.

The respondent held a contrary view that since proper parties had not been joined and most of the grounds in the petition having been struck out, there was nothing to be sustained; and that the tribunal was not obliged to limit itself to issues raised by the parties but could inquire into other apparent issues in the proper determination of the petition<sup>11</sup>.

However, the court of appeal held inter-alia that in the instance case, the appellant regarded the electoral officers as victims of the various allegations contained in the petition and not offending parties, hence, he was right not to have joined them<sup>12</sup>. The court further held that, where there is a controversy on the joinder of necessary parties, especially in election petition, the best way of resolving such a controversy should be via a full trial<sup>13</sup>. In view of this therefore, the Court of Appeal in a unanimous decision, allowed the appeal and ordered a trial.

Similarly, there was an allegation of insecurity in the case of Chief Olusegun Obasanjo, General Muhammadu Buhari and Others vs Alhaji Mohammadu Dikko Yusuf and Movement for Democracy and Justice (MDJ)<sup>14</sup>, where the first appellant (Chief Olusegun Obasanjo) was alleged to have continued to deploy police and army personnel not only to supervise the conduct of the election but also to intimidate voters as well. This case involved an appeal and a cross appeal against the ruling of the Presidential Election Petition Tribunal which refused to strike out the first and second respondent's petition but only struck out certain paragraphs thereof. The Supreme Court in a unanimous decision allowed the appeal in part and demised

the crossed appeal<sup>15</sup>. A similar allegation of insecurity (among others) based on intimidation was made in the case of People Redemption Party (PRP) vs Independence National Electoral Commission (INEC) and four Others<sup>16</sup>, where the Supreme Court finally dismissed the appeal<sup>17</sup> on the ground that, the petition was tainted with some defects and the party concerned is not willing or ready to cure the defects, the option open to the tribunal is to put an end to the petition at the stage it deems fit (that is, a dismissal).<sup>18</sup>

Kidnapping is also a major security challenge confronting the country. Prominent Nigerians, law makers, traditional rulers, judges, magistrate and lawyers have fallen victim<sup>19</sup>. Examples here include chief Mike Ezekhome (SAN), Mrs Doyin Rhodes- Vivour (wife of former justice of the Supreme Court) and Doctor Ngozi Okonjo-Iweala's mother.<sup>20</sup> The kidnappings in the east which have now concentrated in the Benin axis, means no part of the country feel secure and safe. People are generally afraid. The drum beats being sounded by the political protagonists ahead of 2015 has not helped the matters.<sup>21</sup>

In addition, bombing is another security challenge that cannot be left out of this discourse. For example the Christmas day bombing in Abuja, Federal Capital Territory (FCT). Since then, the emergency of Boko Haram sect and their terrorist attacks in the Northern part of the country has heightened the sense of insecurity<sup>22</sup>. Unfortunately after the Christmas Day bombing in Abuja the president allegedly said that the spate of bombing in the country was 'a burden Nigerians must live with until it fizzles out'<sup>23</sup>; and with such a statement( even by the President), a sense of helplessness pervades the air.

### **1.3.2 The Inelegant Provision of the Electoral Act**

One of the challenges of a free and fair election in Nigeria is principally centred on the determination of when an election should be nullified based on the Electoral Act' which provides that the grounds recognized for nullification of an election are:<sup>24</sup>

- (a) That a person whose election is questioned was at the time of the election not qualified to contest the election;
- (b) That the election was invalid by reason of corrupt practices or non-compliance with the provision of the Electoral Act;
- (c) That the respondent was not duly elected by majority of lawful votes cast at the election, or
- (d) That the petitioner or his candidate was validly nominated but was unlawfully excluded from the election.



Compliance with the foregoing provisions in a free and fair election is so fundamental to the extent that failure to comply with any of them in an electoral process, denies that election the qualification of being free or fair. An election that is not free and fair cannot justify itself as being the correct expression of the citizen's choice which is the major determinant of democratic governance. This is because the guaranteed citizen's right<sup>25</sup> to participate in governance either directly or through chosen representatives is perfected by having a free and fair election in an electoral process that requires compliance of all the above precision of the Act.

**The same Electoral Act further provides that:**

An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election.<sup>26</sup>

A clear study of many cases decided by the courts and electoral tribunals has revealed that the last provision above weakened the strength of the application of the 1<sup>st</sup> provision above. Consequently, a breach of the rules of the Electoral Act, does not ipso-facto invalidates an election unless the non-compliance affects substantially the result of the election; and that can only be successfully challenged in accordance with the provisions of section 145(1) of the then Electoral Act 2006 as amended (cited above).

In *Alliance for Democracy (AD) vs Fayose and 4 others*,<sup>27</sup> one of the issues before the Court was to determine the status of an unqualified candidate which is a ground for nullification of an election under paragraph (a) of the first electoral provision above.<sup>5</sup> The appellant, the Alliance for Democracy (AD), one of the registered political parties, was the petitioner before the National Assembly/Governorship and Legislative Houses Election Tribunal for Ekiti State, sitting at Ado-Ekiti. The appellant sponsored Otumba Adeniyi Adedayo as its Governorship in Ekiti State in the election held on 19<sup>th</sup> April, 2003. The 3<sup>rd</sup> respondent, which conducted the election, with the 4<sup>th</sup> and 5<sup>th</sup> respondent as its officers, returned the 1<sup>st</sup> and 2<sup>nd</sup> respondents sponsored by the Peoples Democratic Party (PDP) as elected Governor and Deputy Governor respectively by majority of lawful votes cast at the election.<sup>28</sup> Not satisfied with the result declared, the appellant challenged the election at the aforesaid on the ground that the 1<sup>st</sup> Respondent was not qualified to contest the gubernatorial office in Ekiti State for lack of educational qualification as required by constitution;<sup>29</sup> and on other grounds<sup>30</sup> In the instant case, the Appellant has alleged that the 1<sup>st</sup> respondent employed

certificates that belong to another person to induce the INEC to regard them as his at the end of the trial, tribunal held that the allegation constitutes the offence of the uttering and therefore requires the petitioner to establish his claim beyond reasonable doubt to show that the respondent possesses the requisite educational qualifications, and dismissed the petition. The petitioner further appeared to Court of Appeal.

In the determination of the appeal, the Court of Appeal unanimously dismissing the appeal held inter-alia, that it is clearly an allegation that the 1<sup>st</sup> respondent uttered those certificates for what act he is liable to punishment under section 486 of the Criminal Code, and it is also clearly an allegation that the 1<sup>st</sup> Respondent acted contrary to the provision of S. 115(i)(k) of the then Electoral Act, 2002 (now 2006 as amended) which is punishable under subsection (2) thereof;<sup>31</sup> Section 486 of Criminal Code thus provides:

Any person who alters any document which has been issue by lawful authority to another person, and whereby that other person is certified to be a person possessed of any of any qualification recognized by law for any purpose, or to be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right or privilege or to enjoy any rank or status, and falsely by represents to be the other person named in the document, is guilty of any offence of the same kind and is liable to the same punishment as if he had forged the document.

And Section 115 of the then Electoral Act, 2002 (now 2006 as amended) states:

“(1) A person commits an offence if he- signs a nomination paper consenting to be a candidate at an election knowing that he is ineligible to be a candidate at that election;  
(2) A person who commits an offence under subsection (1) of this section is liable on conviction to a fine of N200, 000.00 or to imprisonment for 2 years of both.”<sup>10</sup> Thus by virtue of the above provisions both allegations being crimes required proof beyond reasonable doubt that which the appellant has failed to do.

Accordingly, Per ONNO GHEN, J.C.A., observed that, “having gone through the record of proceedings and briefs of argument, I am of the firm view that the tribunal is right in holding that the allegations against the 1<sup>st</sup> respondent amounted to commission of crime and that the standard of proof is that of beyond reasonable doubt which the appellant failed to discharge.”<sup>32</sup>

The fact that the Oluwayose who owns the certificate is said to be one from Oyo State as contained in a form filled in 1985 is not conclusive of the fact that he is not the 1<sup>st</sup> respondent in view of the that other information supplied in that form equally point to the 1<sup>st</sup>

respondent, such as his permanent home address, name or his sponsor; first and middle names, date of birth etcetera. So, granted that the fact that the owner of the certificates comes from Oyo State is plead by the appellants which is denied the other facts revealed in the said form and in evidence which equally point to the 1<sup>st</sup> respondent as the owner of the certificate show clearly that there are doubts as the identity of the owner of those certificates and by operation of law, such doubts are to be in favour of the respondent. With such doubts it cannot be said that the appellant has proved the allegations beyond reasonable doubt as required by law.”<sup>33</sup>

In the above case, it is clear that, the court resort to the provision of S.135 of the then Electoral Act 2002 (now S.146 of the Electoral Act 2006 as amended) above in resolving the complaint to the effect that the act of non-compliance with the requirement of qualification in the Electoral Act did not affect substantially the result of the election and therefore dismissed the petition. But, indeed, the fact that the court itself confirmed that the allegation is criminal in nature requiring proof beyond reasonable doubt which though the appellant has not established calls for further evidence by the court itself because this is matter of public interest as it relates to qualification to governance. Therefore, the court should not restrict it to individuals’ interest in procuring an office. The courts themselves have stated in many cases that electoral cases are special in nature,<sup>34</sup> therefore specialty of such cases should reflect in their adjudications where the provision of S. 135 will be used to perpetrate fraud. Similarly in, Alh. Mohammed Dikko Yusuf and Movement for Democracy and Justice vs Chief OlusegunObasanjo and others<sup>35</sup> where the application of the provisions of S.134 and S.135 of the then Electoral Act 2002 (now S.145 & 146 respectively of the Electoral Act 2006 as amended) also came into play, the Court of Appeal, in the considering of allegations of intimidation thuggery and violent disruption of election, held (unanimously dismissing the petitions) that:

With respect to election matters, the non-observance of the rules or norms which will render an election invalid must be such as to amount to a conduct of the election in a manner contrary to the principle of an election by ballot and must be so great and grave as to satisfy the court that it did affect our indeed might have affected the majority of the votes in other words, the result of the election. In the instant case, the petitioner failed to lead any credible evidence to connect the 1<sup>st</sup> respondent with direct or indirect deployment of soldiers.<sup>36</sup>

The Court further held:

A noncompliance with the provisions of the electoral Act, 2002, deemed to be substantial if the victory of the respondent winner would be reversed when the scores or credited to him through non – compliance are deducted from his score from his score. To drive home the point, it must be shown that the outcome of the election would have been otherwise without the votes arising from non-compliance or corrupt practices.<sup>37</sup>

But then in the above case, the mere presence of soldiers at election scene who indeed disrupted the election is substantial enough to affect the result of an election. Whether or not there was a direct or indirect evidence to connect the 1<sup>st</sup> Respondent with the deployment of such soldiers, the fact remains that the election was indeed disrupted by certain soldiers. This act of disruption itself contaminates a free and fair election, because that must have affected the election result as the turn-up for the voting was put to a stop by the violence occasioned by the soldiers. That indeed is great enough to fall within the ambit of section 135 of the then Electoral Act 2002 (now S.146 of the Electoral Act 2006 as amended) for the nullification of an election.

Indeed, the courts themselves have discovered that section 135 of the then Electoral Act 2002 (now S.146 of the Electoral Act 2006 as amended) is inelegantly drafted and consequently, it makes the application a task for adjudications. For example, the Supreme Court in the case of MuhammaduBuhari and ANPP vs Chief OlusegunObasanjo and 264 others<sup>38</sup> observed that,“..... There is no doubt that this provision is inelegantly drafted but the court must make a meaning out of it to give it sense, proper understanding and relevance. It seems to me that the construction given to that section by the lower Court accords with rationality.”<sup>39</sup>

The above cases and many others (even before this period) such as Akinfosile vs. Ijose;<sup>40</sup> Sudem vs Dzungwe<sup>41</sup>; Awolowo vs Shagari; supra; Ibrahim vs. Shagari<sup>42</sup> show that the success of cases of allegations of non compliance with Electoral Laws based on the provision S. 134 of the then Electoral Act 2002 above (now S.145 of the Electoral Act 2006 as amended) which even if established is impeded by the provision of this section 135 of the Electoral Act. Therefore, in most cases, the court’s decision in this area, are unsatisfactory to the public. To the public, the belief is that, the success of electoral cases depends on the ruling party and as such loses confidence on the judiciary and the electoral tribunals.

### **1.3.3 Corruption**

This is an obstacle to free and fair election in Nigeria. It has recently been defined to include bribery, fraud and other related offences<sup>43</sup>. In this country, high profile corruption cases begin

and end with publications in the media. The big men are taking to court and charges are read. They are kept in detention outside the prison walls for less than a week, and then they get bail. From that time, it is adjournment after adjournment with some accusing the EFCC of lacking in diligence, and the EFCC in turn accusing the judges of stalling those cases<sup>44</sup> Corruption by the means of privatization of public power and resources by the rulers inevitably means the absence of higher goals for the polity. Corrupt regimes tend to seek ways of co-opting the articulate citizenry, with wide spread poverty, and low wages for even the most highly qualified persons. Hence, the decision to resist corruption becomes almost one of life and death because an impoverished civil society would lack the capacity to fight for its liberties; meaning that they cannot make a choice and as such lacks participation in governance as required in a free and fair election. In other words, corruption conduces to poverty, underdevelopment, paralysis of social services, failure of the expectations and ideals of a free and fair election, and prevalent of other societal vices. On that score, the necessary factors needed for the empowerment of civil society are drained. Evidently, corruption stands as threat to a free and fair election as it destabilises democratic consolidation anywhere including Nigeria as it is presently.

Thus, in the case of People Redemption Party vs INEC (supra) there were (among others) allegations of bribery of voters who were hired to vote for the third respondent by the agents of the fourth respondent who also thumb printed ballots papers. The appellant allege wide discrepancies between the result shown on the summary and the statement of results made available to party agents and those relied upon by the second respondent (that is, the Resident Electoral Commissioner, Kaduna State) to declare the third respondent (that is, Alhaji Ahmad Mohammed Malaria) as the winner as there were major errors and omissions of calculation of votes occasioned by bribery<sup>45</sup>. This petition was stroke out by the Governorship and Legislative Election Tribunal sittings at Kaduna. Also the Court of Appeal in a unanimous decision dismissed the appeal. Be it as it may, it is crystal clear that this case and many others<sup>46</sup> in Nigeria revealed that there are corrupt practices in the conduct of elections in Nigeria and such prevalence cripple the intent and purposes of free and fair election in any jurisdiction including Nigeria.

#### **1.3.4 Societal Threats**

Certain societal factors operate as a threat to free and fair election in Nigeria. Such factors include ethnic rivalry, regional disparities, and gender in-equalities. Evidently, the struggle for supremacy within these groups, or in other words the domination of one against the other

within these groups cannot be reconciled with the triumph of free and fair election which has as its basic tenets as respect for human rights, respect for the rule of law, accountability and equality of opportunities and leadership by choice. On this note, these factors, which contravene the basic tenets of a free and fair election, also go to the root of weakening the national political culture of democratic governance in Nigeria.

Issues of ethnic rivalry and regional disparities have been repeatedly demonstrated in many instances of election in Nigeria. For example in the case of chief OlusegunObasanjovs Yusuf (supra), the first and second respondent ( that is Alhaji Mohammed Dikko Yusuf and Movement for Democracy and Justice-MDJ, respectively) averred that the 40th respondent failed to exercise independence of action and judgement in the conduct of the election in the sense that after the date the election was announced, the 40<sup>th</sup> respondent failed to disqualified the first appellant (that is, chief OlusegunObansanjo), for using or conniving with the use of ethnic and tribal affiliation to canvass for vote for him, and permitting and procuring on registered associations such as the “Afenifere” and “Yoruba” Council of Elder to canvass for votes for him in the predominantly Yoruba states of Lagos, Ogun, Ondo, Oyo Osun, Ekiti and Kwara under the guise of 38th respondent on the bases of ethnicity<sup>47</sup> contrary to section 221 of the Constitution.<sup>48</sup> Section 221 of the Constitution provides that, “no association, other than a political party, shall canvass for vote for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at any election”<sup>49</sup>.

The above case was an appeal against the ruling of the Presidential Election Petition Tribunal which refuse to strike out the first and second respondents’ petition but only stroke out certain paragraphs thereof. The appellants further appeal to the Supreme Court. The Supreme Court in unanimous decision allowed the appeal in part and dismissed the cross appeal. Never the less, this case revealed the existence of societal threat (in the form of religious, ethnic and tribal sentiments) which contravenes the basic tenets of free and fair election in Nigeria. All these go to the root of weakening National political Culture of democratic consolidation in any jurisdiction including Nigeria.

### **1.3.5 System Threats**

Mazuri, A.M<sup>50</sup>, system threats include the following, the pull towards presidential contraction of powers, the pull towards single party monopoly of powers, the shadow of military on the political process with a serious risk of military take-over and the ideological void at the national level.

The above factors have one common feature, which is exclusiveness. Meanwhile, one of the ideals and imperatives of a free and fair election in democratic governance is the participation of everyone in governance directly or indirectly periodic elections without monopoly from any quarters. In other words, democracy preaches inclusiveness and not exclusiveness as portrayed by the ideologies of the above factors which are prevalent in Nigerian. For example an average Nigerian wants presidential concentration of power in his region without regard to democratic ideals and imperatives; presently, the Peoples Democratic Party (PDP, the self – acclaimed largest political party in Africa) pull towards single party monopoly of powers by all means, and void at the national level such as third- term proposal for holding political office all in an effort to power which contravenes democratic ideals. All these pose serious threat to a free and fair election in Nigeria and this in turn affects democratic consolidation in Nigeria.

### **1.3.6 Global Threats**

Mazuri A.M<sup>51</sup> has generally identified certain factors as global threats to African democracy, of which Nigeria is inclusive. Such factors include, excessive external penetration on African Economics; the impact of the arms trade on the balance of power within African countries and the readiness of external powers to consolidate, defend or bail out African tyrants unpopular with their own people.

The above factors will occur as a threat where the ruling elites effect the greedy dictates of external powers, such dictates in most cases are base on self-centred interest which will conflict with the interest of the citizens and, invariably, destabilize democracy. Certainly a government that is corrupt will yield more to such dictates.

### **1.3.7 The Worsening Economic Situation**

The worsening economic situation of Nigeria has made it more and more difficult for individuals to participate fully in public affairs. To realize the notion of free and fair election in Nigeria, the rising cost of living, coupled with rising levels of unemployment must be addressed.

Even the sympathetic interpreter of American socio-political system, R. Dalh, had to concede there was exclusion of the many due to economic and socio constraints. He writes on the basis of imperial voting studies:

At the present time we know that political activity at least in the United States, is positively associated to a significant extent with such variables as income, socio-economic status and education... we know that members of the ignorant and appropriate masses.... are less active

politically than the less educated and well to do. By their prosperity for political passivity the poor and uneducated disenfranchise themselves. Since they have less access to wealth, to the organisation, financial and propaganda resources that weigh heavily on campaigns, election, legislative and executive decisions, anything like equal control over governmental policy is triply barred by their relatively greater inactivity, by their relatively limited access to resources and by Madison nicely contrived system of constitutional checks<sup>52</sup>.

The foregoing shows that the participation in public affairs is seriously hindered by poor economic situation which is prevalent in Nigeria today.

### **1.3.8 Appointment of Members of Independent National Electoral Commission (INEC) and State Independence Electoral Commission (SIECs)**

There is also the problem of the constitution of members of INEC and SIECs. Section 154 of the Constitution<sup>53</sup> clearly provides that the appointment of chairmen and members of some federal commission and councils (as mentioned in section 153 of which INEC is inclusive) shall be done by the president subject to confirmation (and not approval by the senate). Also section 198 of the same constitution provides that the appointment of chairmen and members of some state commissions (mentioned in section 197 of which the SIEC is inclusive) shall be done by the Governor of the state subject to confirmation by a resolution (and not an approval) of the House of Assembly of the State

By virtue of the foregoing, it is expected that all or at least a greater percentage of such members of the electoral commissions will be loyal and answerable to the president and his ruling party or the state governor and his ruling party. On this note, the President or the State Governor may not allow them to reveal to the tribunals facts which will not benefit him or his candidate or his ruling party in general. By so doing, the President or the Governor concerned will influence the tribunal's decision and ultimately this will be unfair to a free and fair election.

### **1.3.9 Swearing in of Candidates with Pending Election Petition**

Swearing in of candidate with pending election petition cases before tribunals gives so much room for them to tamper with a free and fair election. In this country, many politicians after been sworn in to an office use the government machineries including resources at their disposal to influence decisions in petitions against them before tribunals as revealed by the cases cited above. In several instances members of such tribunals give up to the unjust demands of such politicians having been pushed to the extreme end particularly with the fear of insecurity in Nigeria added to the fact that, the tribunals are operating within the



jurisdiction of the politicians. For example, imagine an election tribunal sitting in Kano and hearing a petition against the governor of Kano state. Ultimately, the aim and purpose of a free and fair election will be defeated.

#### **1.4 Imperative Reforms**

As sine qua non to the attainment of free and fair election in Nigeria, the following identified areas of reforms are discussed below.

##### **1.4.1 Refurbishing Certain Provisions of the Electoral Act**

For the purpose of meeting the standard of a free and fair election, it is desirable that the provision of the Electorate Act be refurbished so that those that have been inelegantly drafted be modified. The need for this modification has been shown by the Supreme Court in the case of Attorney General of Abia State vs. Attorney General of the Federation<sup>54</sup> on the determination of the scope of legislative Power of National Assembly over conduct of Local Government election, where the court made the following observations, per KUTIGI, J.S.C.:

As a result of this, the Electoral Act as a whole was a mix-up, a confusion, because the National Assembly seemed to have treated its legislative powers with respect to Federal elections as if they were co-extensive with its powers over local Government elections. They were wrong. I have shown above that a few provisions of the Act are good but quite a large number of them are bad and had been striking out. For the foregoing reasons the plaintiffs claim (v) succeeds in part only and declare as follows: - The provisions contained in sections 15 to 73 and 110 to 122 except sections 16, 26 to 41, 43 to 73, 116,117 and 118 (1) – (17), of the Electoral Act are from date of commencement of the Act inconsistent with the provisions of the 1999 Constitutional and are accordingly null and void.<sup>55</sup>.

From the foregoing, it is clear that not only the provision of section 135 of the Electoral Act relating to nullification of an election is unsatisfactory. Inevitably, where the election is not free and fair, the result must be affected, as required by S.135 of the Electoral Act. The cases of Yusuf vs. Obasanjo and Alliance for Democracy vs. Fayose above are examples of these genuine instances. In the former, the fact that the court indeed ascertained that there was violence, is enough for the court to know that such violence will automatically affect the result of the election as there was a disruption which put an end to the voting process. Instead, the court relied solely on the establishment of proof beyond reasonable doubt to link either directly or indirectly the respondent to the soldier who occasioned the violence. This is unfair to democracy as it contravenes the concept of free and fair election similarly, in the latter, the court knows very well that issue of qualification” to that office(gubernatorial) is a

constitutional requirement as such it becomes fundamental to nullify an election, in that sense, the court ought to have left that point solely to the calling of evidence by the Appellant the particular point in the interest of justice for the Nation.

#### **1.4.2 Establishment of Democratic Institutions**

Democracy, being in its infancy in Nigeria, requires that government establishes certain institutions for the enlightenment of citizens as to what is democracy and its legality thereof, the need for a citizen to participate in the governance of his country directly or indirectly through electoral processes, the validity of election as a medium of expression, and the exercise of that guaranteed freedom of expression without prejudice and undue influence. By so doing the citizens will be well informed to the advantage of democratic consolidation in this Nigeria of ours where is a high degree of illiteracy and ignorance (even among the elites). Such education will change certain beliefs and fortify mass turnout of the citizens in elections for people to exercise their freedom of election and; it will also go along to reduce cases of electoral violence; most of which are caused generally as a result of lack of information due to illiteracy and ignorance. For this purposes, the media may be of immense importance by organizing certain programmes with the aim of aiding democratic consolidation in Nigeria by alerting the public on the legal principles of a free and fair election.

#### **1.4.3 Prevention of Abuse of Powers**

Principally the Military Coup or the growth of single party hegemony makes abuse of power possible. On this score, a democratic society needs an electoral system; that foster conciliation and government systems that include rather than exclude. This is because sovereignty resides with the citizens, who delegate power only to solve problems of common concern. A free and fair election of a good democracy must above all respect the distinction between the private and public spheres with a view to making sure that public interest prevails over private interests.

Also, as part of prevention of abuse of powers, election tribunal sitting in a ruling party state's jurisdiction hearing petition against the same ruling party, should not be allowed to take its hearing in that particular state's jurisdiction. For example, if there was a petition against a PDP gubernatorial candidate that has been declared winner of an election. Then today, in view of various electoral frauds it is suggested that the tribunal sitting to hear and determine the same petition should not sit within the same jurisdiction of the PDP declared winner. Such tribunal should be taken to another state's jurisdiction of a different party (for

example, a PDP petition should be heard in an ANPP state jurisdiction). This is necessary so that a declared winner with a pending case before a tribunal will not take advantage of exercising undue influence on the tribunal.

On the same note, it is suggested that, state governments should not be allowed to provide buildings and other relevant facilities needed for the sitting of electoral tribunals hearing cases in their jurisdiction. More so elected candidates, whose elections are challenge in any capacity before an election tribunal, should not be sworn in unless their cases are completely determined by the tribunal. Finally, still in an attempt to prevent abuse of powers it is suggested that a serving candidate should resign at least three months before the conduct of another election.

#### **1.4.4 The Promotion and Protection of the Right to Freedom of Information**

There is an urgent need for the recognition, promotion and protection of the right to freedom of information on (sometimes referred to as the right to know) as an efficient tool for free and fair election via democratic consolidation. The right to know is not just a right guaranteed under international law,<sup>56</sup> but also guaranteed under most national constitutions. For example, the Constitution Federal Republic of Nigeria (CFRN) provides that “that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.”<sup>57</sup>

In view of the above provision therefore, the absence of the respect for the right to know, which includes, the right to freedom of expression, the right to seek, receive and impact information and ideas, it is not possible to exercise the right to vote which lies at the heart of democracy. This is because, a fundamental value underpinning the right to know is the principle of maximum disclosure, which establishes a presumption that all information public bodies should be subject to disclosure unless there is an overriding public interest justification for non-disclosure of effective mechanisms through which the public can access information, including request driven systems as well as proactive publication and dissemination of key materials.<sup>58</sup> Thus information is essential to democracy for the purpose of a free and fair election which requires effective participation at all levels. In other words, effective participation at all levels will fail and make nonsense of democracy without the public right to know being upheld in the absence of an overriding public interest in secrecy, because, for example, voting is not simply a technical function. The electorate must have access to information for elections to fulfil their proper functions as described under international law and national constitutions in order to ensure that the will of the people shall

be the basis of the authority of the government.”<sup>59</sup> The same is true of participation at all levels, it is not possible for example, to provide useful input to a policy process without access to the policy itself as well as for the reasons it is being proposed. Nevertheless, based on the significance of the right to know as an efficient tool for a free and fair election in any democratic consolidation, the international Human Rights NGO, Article 19, Global Campaign for free Expression, has described information as “the oxygen of democracy”<sup>60</sup>

#### **1.4.5 The Enhancement of Human Right Protection**

It is evident that free and fair election itself belongs to the human rights family; therefore, the two must go together because the success of anyone of them leads to the achievement of the other. Evidently too, the success of any free and fair election is no doubt measured by the level of the respect for human dignity and protection of human rights in their civil, political, economic cultural, environmental and developmental and developmental contents in the country. The point should be made here that human rights thrive well and grow only a culture of democracy via a free and fair election. To buttress this assertion, the Honourable Justice C.A. Oputa observed that:<sup>61</sup>

The ideal political climate and culture necessary for the recognition and enforcement of human rights anywhere must be a government and a political system that respects popular opinion. Absolutism and totalitarianism had never been the climate or culture for the growth of human rights. The political climate and culture for the recognition and enforcement of human rights must be a democratic society.<sup>62</sup>

Therefore, the sooner the Nigerian governing elites recognise the significance of the protection of human rights, the better chances for the establishment of social justice and development of a free and fair election for a better democratic consolidation in Nigeria. Ultimately, the society will enjoy good governance which will erase crisis and violence arising out of people’s dissatisfaction with a particular election result.

#### **1.4.6 Poverty Alleviation**

The government must be ready to deal with substantial issues of Nigerian development so as to raise the standard of living of the citizens in order to improve citizen’s chances of participation in public affairs. The fact here is that no amount of World Bank and IMF assisted democracy would address the situation. Neither would the World Bank’s poverty alleviation programme address such problems. For example one may ask, in a democracy, where a citizen is given N50.00 to go and cast a vote for a particular person or party, where then is the exercise of the right of free choice lies?

In the light of the above happenings, concerted efforts should be made by the government at all levels (possibly assisted by well meaning Nigerians) to improve the standard of living of an average Nigerian. Although, of recent the Federal Government is cautious of this fact by establishing the National Directorate of Employment (NDE) which aims at addressing the problems of unemployment in Nigeria. Yet, this is not enough and more as to be done because today in Nigeria there is a considerable number of unemployed graduates. In line with this, it is suggested that the Federal Government instead of establishing more universities, it should focus more on the establishment of institutions which will absorb graduate for employment. For example, there are lots of abandoned projects in Nigeriawhich could be revived for youth employment or; establishment of a large mechanised farming in notable zones of Nigeria which will not only produce farm product but will also absorb various fields discipline for employment, for example, graduate of agricultural planning, veterinary medicine, human anatomy, accounting, business management and lawyers for the legal unit.

#### **1.4.7 Review of Bail Condition and State Pardon for Politicians**

The principles of the Nigerian Criminal Justice system include the administration of bail pending the final decision of the court and the administration of state pardon for persons convicted of a crime in Nigeria.<sup>63</sup> The practice of these two principles over the years constitutes institutional negligence in the fight against criminal and other related offences in Nigeria. For example, on the administration of bail, once an accused person (particularly big politicians such as governors) is granted bail, in most cases that ends the matter.<sup>64</sup> In most cases, the next thing is to leave Nigeria and seek shelter in another country where he starts negotiation with the Nigerian Government. Consequently, after few years, a state pardon which is worse than the bail itself is granted. In view of this situation, there is a need to review both the bail condition and state pardon to be enjoyed by politicians. As far as bail condition is concerned, it should be made more stringent by adopting the bail regime under the original failed banks Act where accused persons standing trial were required to deposit half of the money involved in the offence and produce an acceptable surety for the other half. This will be much better than the present bail condition as it will go a long way to take care of situation where the accused runs away<sup>65</sup>.

On the issue of state pardon in Nigeria, it has become a practice that is perceived to be a soft state variable. A soft state variable is one, which is steeped in a moral politics; crippled by serious problems of credibility. It is one that is generally not able to enforce its will

especially in matters that have ethical and moral consideration. In this regard therefore, the continuous administration of state pardon in serious cases like electoral malpractices and other related offences such as corruption dictates nothing serious to the polity where accountability is needed. Rather it constitutes an obstacle in the fight against such offences in Nigeria. On this note therefore, therefore, state pardon too, should be reviewed practically not to be enjoyed by politicians and criminals of other related crimes such as corruption. By so doing, politicians will have respect for the states and ensure that sovereignty belongs to the people who exercise their rights of governance through a free and fair election and, that the choice must not be tampered with as a constitutional right<sup>66</sup>

### **1.5 Conclusion**

The citizens need to know that the right to free and fair election is a right which is well defined, supported by the law and legally enforceable by aggrieved persons (even against government agents). This is necessary in order to ensure effective participation in decision making which is particularly sought for in this era of democratic consolidation in Nigeria. Also, there is a need for government at all levels to assist in creating awareness in this area through the mass-media, the National Orientation Policy and other government organized programmes particularly at the rural levels on the principles of free and fair election in order to broaden the citizens' knowledge towards a better understanding of the concept. For example, such knowledge will make them appreciate what it takes to merit an appellation of a free and fair election as opposed to the situation where a citizen is given N2.00 to cast a vote for a particular political party or that a citizen is voting merely because the election candidate is his tribal person that they come from the same region. It is high time the citizens knew that free and fair election goes beyond these levels in Nigeria and that in fact, it includes their rights to decide whether or not to vote right from the word "go".

Above all, concerted efforts should be made by the government at all levels to generate adequate political commitment to fully enforce the provisions of Electoral Act without fear or favour and in accordance the rule of law. By so doing, the conduct of a free and fair election in Nigeria will be improved to at least a minimum acceptable international standard. A starting point of this is to educate Nigerians towards imbibing some degree of consciousness which will elevate national values above self or group interests and sentiments. All these if taken into consideration along with other suggestions from others quarters will facilitate the achievement of the goals of a free and fair election in Nigeria.

## References

- <sup>1</sup> (2007) 9NWLR, pt1098, p133  
<sup>22</sup> ibid  
<sup>8</sup> (2005) 2 N.W.L.R. (pt 910) 241 at 479 See also Ojukwu v. Obasanjo (2004) 12 N.W.L.R (pt 886\_ 169 to 227 were Edozie JSC defines the word “election” as rightly quoted in this instance case of Buhari v. Obasanjo.  
<sup>9</sup> A provision of the Constitution of Federal Republic of Nigeria (CFRN), 1999 as it means to be elected to an office (although with particular reference to the president at the instance of his disqualification).  
<sup>10</sup> BLACK, H.C. Black’s Law Dictionary 6<sup>th</sup> Ed., West publishing Co. Minnesota, U.S.A, (1990), p.517.  
<sup>11</sup> Ibid, p. 517  
<sup>12</sup> Per Festus Okoye quoting Key, V.O, Do the Votes Count? Final Report of the 2003 General Elections in Nigeria; Transition Monitoring Group, Abuja 2003, p. viii.  
<sup>13</sup> LADAN, M.T. (Edited), Election Violence in Nigeria, A.B.U., Press, Zaria, 2006, Chapter one pp. 1 to 31 at p. 6.  
<sup>14</sup> HORNBY A.S., Oxford Advanced Learner’s Dictionary of Current English, 5<sup>th</sup> Edition by Jonathan Crowder, Oxford University Press, Oxford 2000, p. 372  
<sup>15</sup> RAE, Douglas W., The Political Consequences of Electoral Law, Revised Edition, Vale University Press, New Haven, 1971, p. 14  
<sup>16</sup> LADAN, M.T., (Edited), Election Violence in Nigeria, op. cit., p. 7  
<sup>17</sup> Ibid  
<sup>18</sup> LARDEYRET, Guy, The Problem with PR” in Democracy, Theory and Practice, Vol. 2, Summer 1991, The Johns Hopkins University Press, Moscow, Russian Federation 1991, p. 88  
<sup>19</sup> KUNLE A., SUBERU R., ADIGUN A. and GEORGES H., (Edited) Federalism and Political Restructuring in Nigeria, Spectrum Books Limited, Ibadan, 1998, at 3-4.  
<sup>20</sup> Section 1 (1) Election (Registration, ETC of Voters) Act Caps E5, Volumes, LFN, 2004  
<sup>21</sup> Section 1 (2) (a) Election (Registration, ETC of Voters) Act Caps E5, Volumes, LFN, 2004  
<sup>22</sup> Section 1(2) (b), Ibid  
<sup>23</sup> Section 1(2) (c), Ibid  
<sup>24</sup> NWABUEZE, B.O., Nigeria’s Presidential Constitution 1979-83: The Second Experiment in Constitutional Democracy, Longman Group Limited, New York, 1985 p. 388  
<sup>25</sup> LADAN, M.T., (EDITED) Election Violence in Nigeria, op cit, pp. 1-31 at p. 10  
<sup>26</sup> “What is free and fair Election?” The Guardian, April 11, 2002, p. 51.  
<sup>27</sup> LADAN, M.T., (EDITED) Election Violence in Nigeria, op. cit. pp. 11-12  
<sup>28</sup> BURN ET-AL, J.M., Government By The People, 10 Edition, Prentice Hall Incorporation, New Jersey, 1978, pp. 8-9.  
<sup>3</sup> Chambers, 21<sup>st</sup> Century Dictionary, Chambers Harrap Publishers limited (2007), p.1269  
<sup>4</sup> Ibid  
<sup>5</sup> (2004) 9NWLR Part 877, p.54  
<sup>6</sup> Ibid  
<sup>7</sup> ibid  
<sup>8</sup> p.55, ibid  
<sup>9</sup> p.56, ibid  
<sup>10</sup> ibid  
<sup>11</sup> ibid  
<sup>12</sup> ibid  
<sup>13</sup> p.60, ibid  
<sup>14</sup> (2004) 9 NWLR, pt 877, p144. see also Alhaji Mohammad Dikko and Movement for Democracy and Justice (MDJ), (2005), 18 NWLR, pt 956, C/A  
<sup>15</sup> p.174, ibid  
<sup>16</sup> (2004) 9 NWNR pt 877 p.24  
<sup>17</sup> p.53, ibid  
<sup>18</sup> p.31, ibid  
<sup>19</sup> See This Day’, Newspaper, volume 18, No.6720 (17th. September, 2013), p.7  
<sup>20</sup> ibid  
<sup>21</sup> p.6, ibid  
<sup>22</sup> ibid  
<sup>23</sup> ibid  
<sup>24</sup> See section 145 of the Electoral Act, 2006 as amended  
<sup>25</sup> S. 39, CFRN 1999 as amended.

- <sup>26</sup>S. 146 Electoral Act, 2006 as amended.
- <sup>27</sup>2005 NWLR pt.932. CA, p.151.
- <sup>28</sup>AD vs. Fayose and 4 others op. cit. p.156.
- <sup>29</sup>S.177(d) & S.182 (1)(j), CFRN, 1999 as amended.
- <sup>30</sup>For example, that he did not score the majority of the lawful votes cast at the election.
- <sup>31</sup>AD vs. Fayose and 4 others op. cit. p.161.
- <sup>32</sup>Ibid.
- <sup>33</sup>pp.161-162, Ibid.
- <sup>34</sup>See generally Muhammadu Buhari and ANPP vs Chief Olusegun Obasanjo & 264 Others, (2005) 13 NWLR,pt.941, SC, p.1.; Atiku Abubakar vs. INEC (2004) 1 NWLR pt.854, p.207; Samanu vs. Anka (2000) 1 NWLR pt.640, p.283.
- <sup>35</sup>(2005)18 NWLR pt.956, C.A. p.96.
- <sup>36</sup>p.110, Ibid.
- <sup>37</sup>p.111, Ibid.
- <sup>38</sup>Per PATS-ACHOLONU JSC, (2005) 13N.W.L.R, Pt. 941, S.C. p.1 at 44
- <sup>39</sup>ibid
- <sup>40</sup>(1960) SC N.L.R.L p447
- <sup>41</sup>(1966) 1SC N.L.R p11
- <sup>42</sup>(1983) 2 SC NLR p176; referred to and explained in Mu'hdBuharivvsObasanjoop.Cit, pp45-46
- <sup>43</sup>S.2, Corrupt Practices and other Related Offences Act, 2000
- <sup>44</sup>The Nigerian Tribune News paper, No.15,317, Wednesday, 26 October, 2011, p56
- <sup>45</sup>(2004), 9 NWLR, pt. 877,p.26
- <sup>46</sup>Such as the cases of obansonjovsyusuf (2004), 9 NWLR, pt, 877, p.144; and Muhammadu Buhari and ANPP vs Chief Olusegun Obasanjo and 264 Others (2005)13 NWLR (pt.941), S.C., p1 at 51
- <sup>47</sup>(2004), 9 NWLR, pt.s77, p.151
- <sup>48</sup>ConstitutionFederalRepublic of Nigeria (CFRN), 1999 as amended
- <sup>49</sup>ibid
- <sup>50</sup>Mazuri, A.M., Agenda for East Africa, Sustainment on Democratization, Proceedings of the 37<sup>th</sup> Annual Conference of the Nigerian Association of Law of Teachers (NALT),2000 pp.90-91
- <sup>51</sup>Ibid
- <sup>52</sup>Bande, Tijjani, M., Human Rights and Democracy: an Exploration of Social Economic to the Realization of Social Justice in Nigeria, Human Rights Democracy Development in Nigeria, Legal Research and Resource Development Center, Abuja, 1999 p20
- <sup>53</sup>Constitution Federal Republic of Nigeria,1999 as amended
- <sup>54</sup>(2002)NWLR, pt 763, p264 S.C.
- <sup>55</sup>Ibid, pp.321-322
- <sup>56</sup>Article 19, Universal Declaration of Human Rights (UDHR), 1948; Article 19 ICCPR, 1966 and Article 9, ACHPR(Ratification and Enforcement) Acts, cap A 9, volume 1, LFN, 2004
- <sup>57</sup>S. 39 of the CFRN, 1999 as amended.
- <sup>58</sup>See generally sections 4, 5 and 6 of Freedom of Information Act, 2011.
- <sup>59</sup>Article 20 (3) UDHR; see also Article 25 ICCPR and Article 13 of ACHPR which postulate the same limit with S. 14 (2) (a) CFRN, 1999 as amended
- <sup>60</sup>LADAN M.T. The Right of Public to Know, op. cit., p10
- <sup>61</sup>OBE, A.I and YERIMA, T.F., (Edited) Law, Justice and Good Governance, Faculty of Law, University of Ado-Ekiti, Nigeria, 2003,p.221
- <sup>62</sup>ibid
- <sup>63</sup>Examples are the recent state pardon granted to Alamiesegha and Bulama by President Jonathan
- <sup>64</sup>Late Chief Sunday Afolabi, Minister of the Interior in 1999 his successor Mr. Mohammed Shata, former Labour Minister, HussainAkwanga and others were implicated in National ID Card bribery scandal. They were charged to court and granted bail on 31<sup>st</sup> December, 2003. Nothing is heard of the case again.
- <sup>65</sup>CHUKKOL,K.S., Some Issues in the Administration of Criminal Justice in Nigeria, Being a paper delivered at the NBA Continuing Education Workshop, September 27<sup>th</sup> 2012, Minna,p. 12
- <sup>66</sup>Section 14 (2), CFRN, 1999 as amended.