



## **Democratic Elections, Laws and Tribunals in Nigeria: Problems and Prospects**

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**Abstract:** *In this study, we examined the various sections of the Electoral Act, 2010, Cap. A1103-1202, Laws of the Federation of Nigeria, more particularly, Sections 1-158. We analyzed the problems and prospects associated to elections and election tribunals and were able to identify the key players, such as the Independent National Electoral Commission (INEC), the Government, Political Parties, National Orientation Agency, Security Agents, Religious Organization, the Political Scientist, Judicial Body and Individuals. We observed that these key players usually play prominent roles in any election in Nigeria (be it local government, state, national assembly and presidential elections). Our findings are that Nigerians need political education in order to improve in their electoral system and democratic practice, as the people should learn to abhor tribalism, factionalism, election malpractice in order not to mortgage their rights and future. In order to advance an enduring democracy, the study concludes that Nigerians should follow the general pattern found in advanced democratic states and properly blended with indigenous peculiarities for an enviable political culture sustained by rule of law.*

**Key words:** *Democratic Elections, Regulatory Laws, Problems and Prospects*

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### **Introduction**

Democratic elections are usually associated with competition. In democratic elections, opposition parties and their candidates must enjoy the freedom of speech, assemble together and to voice their criticisms of the government openly and to advocate alternative policies of their candidates to the voters. Simply permitting the opposition access to the ballot is not

enough. The party in power may enjoy the advantages of incumbency, but the rules and conduct of the election must be fair. On the other hand, freedom of assembly for opposition parties does not imply mob rule or violence. It means debate.

Democratic elections are periodic. In Nigeria, for example, Sections 25 and 26 of the Electoral Act, 2011, vest powers on the Independent National Electoral Commission (INEC) to fix a date for election into various offices. Democracies do not elect dictators or presidents-for-life. Elected officials are accountable to the people, and they must return to the voters at prescribed intervals to seek their mandate to continue in office and face the risk of being voted out of office.

Democratic elections are inclusive. The definition of citizen and voter must be large enough to include the adult population. A government chosen by a small, exclusive group is not a democracy – no matter how democratic its internal workings may appear. One of the great dramas of democracy throughout history has been the struggle of excluded groups – whether racial, ethnic, or religious minorities, or women – to win full citizenship, and with it the right to vote, hold office, and participate fully in the society.

Democratic elections are definitive. They determine the leadership of the government for a set period of time. Popularly elected representatives hold the reigns of power; they are not simply figureheads or symbolic leaders. Democracies thrive on openness and accountability, with one very important exception: the act of voting itself. To minimize the opportunity for intimidation, voters in a democracy must be permitted to cast their ballots in secret. At the same time, the protection of the ballot box and tallying of vote totals must be conducted as openly as possible, so that citizens are confident that the results are accurate and that the government does, indeed, rest upon their "consent."

The Black's Law Dictionary defined Democracy as "a form of government in which the sovereign power resides in and is exercised by the whole body of free citizens directly or indirectly through a system of representation, as distinguished from a monarchy, aristocracy, or oligarchy"(1990: 432). With this, it could therefore be seen that the concept of elections or the vote and the processes associated with it are seen to lie at the heart of a system of representative democracy.

Political scientist and theorist link free, fair and credible election to democratic governance, peace and development. It can be argued that free, fair and credible election provide the basis for emergent of democratic accountability and legitimate governments with the capacity to initiate, implement and articulate clearly development programme.

In democratic state, election can be regarded as the major feature of democracy to the extent that not only, if impossible to imagine a democratic regime without election. Political analyst claimed that free, fair and credible elections empower the electorate to hold the government accountable and to demand strong credentials and feasible development agenda from the prospective government officials. In other words free, fair and credible election bestow on government, the legitimate authority to initiate and implement policies on one hand, while on other hand, they empower the citizens to hold governments accountable for their actions and inaction, however, it is via elections that citizens participate directly in the political process and are able to hold governments accountable.

### **REGULATORY LAWS, ELECTIONS AND DEMOCRATIC PRACTICE IN NIGERIA**

The laws regulating elections in Nigeria, is the Electoral Act, 2011 (as amended); and also the Independent National Electoral Commission's Law. The Electoral Act contains Sections 1-158, setting out all forms of regulations concerning election procedures, guidelines and elections petitions.

In Nigeria, since May 29, 1999 till date, the environment of democratic elections and democratic practices has been uninterrupted. The Independent National Electoral Commission has conducted five constructive general elections in 1999, 2003, 2007, 2011 and 2015. Several criticisms had been leveled against each of these elections due to some challenges initiated against them.

Despite the fact that elections are more regular in Nigeria, the quality of each of these elections are matter of grave concern to both the actors and observers. It was observed thus:

The 2003 and 2007 elections were particularly marked by dissatisfaction by candidates, voters and observers. The flaws that characterized the conduct of 2007 elections severally dented Nigeria's image and electoral integrity. The gravity of electoral offences committed during 2007 elections led to soul searching among the Nigeria leadership, and this reflected in the public acknowledgement by former president Umaru Yar'adua that the election that brought him to office, was fundamentally flawed (Okanu Emelumba, 2015).

In a similar vein, the open declaration by President Yar'Adua, shortly after the inauguration of his administration in 2007, that the process of his election was faulty and the establishment of the Uwais Electoral Reforms Commission before Yar'Adua's death also helped to confirm that the INEC did not sufficiently perform its role. However, the European Union Election Observer also witnessed many cases of election fraud inclining ballot box stuffing, multiple voting, intimidation of voters, alternative of official result form, stealing of sensitive polling materials, vote buying, under-age voting and so forth.

In this connection, it is appropriate to recall some of the activities of political godfathers and election financiers, especially in the fourth republic, cannot be overemphasized in whose electoral slates, for obvious reasons, are the most attractive. While the governorship tickets of the party in Edo and Ekiti States were, for instance, given to those who did not win the primaries before the 2007 elections, the candidacy for the same office in Rivers State was awarded to a candidate who did not participate in the exercise. In the latter case, Honourable Rotimi Amaechi, who was illegally prevented from contesting in the 2007 exercise, was declared the governor by the elections tribunal about a year after. Similarly, Senator Ifeanyi Araraume from Anambra State was also allowed to contest the senatorial elections. In 2007, only after the court intervention that returned his ticket, which he had earlier won in the primaries.

None of these activities, however, exposed the INEC's abysmal performance as much as the conduct of general elections from 1999 till date. It was also observed that:-

In the controversial 2007 general elections that were followed by the court ordered re-run exercises in such states as Kogi, Adamawa, Osun, and Ekiti, the electoral body displayed incompetence and, sometimes outright bias. Perhaps there is no better evidence for this than the open cases of ballot box snatching, falsification of results and other forms of electoral malpractices, many of which were confirmed in places like Edo and Ondo States where the initial governorship results were overturned in favour of Adams Oshiomhole and Olusegun Mimiko respectively in 2009. (The Nigerian Voice, 2015).

Similarly, the results of the governorship elections in Ekiti and Osun States were later overturned in 2010 in favour of Dr. Kayode Fayemi and Rauf Aregbesola respectively. It should also be noted that in all of these, the police as an institution was also constantly indicted for its ineffective role that compounded whatever challenges the INEC probably encountered from the exploitative acts of the political class.

Unlike previous elections, the April 2011 elections, Nigeria was adjudged by political analysts and observers as the most credible election in the series of elections organized since enrolment of fourth republic. The remedial measure taken by both the government and Independent National Electoral Commission headed by Prof. Attahiru Jega, the political scientist, could be the resultant effect of that election. However, the 2011 election has its own criticism.

The 2015 election brought its own scientific voting process that had never occurred in Nigeria, that is, the use of the card reader. The PDP presidential candidate (for President Goodluck Jonathan) conceded defeat to APC presidential flag bearer, the Nigeria's President Muhammadu Buhari. A major peaceful signal to Nigeria's election process that was devoid with any form of Election Petition.

It can be argued that elections and democratic practice in the fourth republic characterized by electoral malpractices, political intolerance, economic mismanagement, using political office as gateway to personal enrichment, political thuggery, lack of intra party democracy, insecurity, manipulation of religion and ethnicity to achieve selfish political ambitions and other countless misdemeanors were order of the day.

In another related matter, several of the reports and comments of election observers from within and outside the country supported the shoddy and controversial nature of most of these exercises. While the European Union (EU) criticized the INEC for "usurping the role of Nigerians in determining the legitimacy of the outcome of the election," others noted that the whole exercise "fell far short of basic international standards." In view of the bloody violence and rigging of monumental proportions, the reporters concluded in part that "given the lack of transparency and evidence of fraud, particularly in the result collation process, there can be no confidence in the result of these elections." Obviously, all of these and the unending squabbles over the verdicts of the various election tribunals across the country constitute great challenges for Nigeria's democratization as well as threats to national cohesion and stability.

There are divergent views regarding the independence of the electoral body, INEC as follows:-

However, in the Nigerian Fourth Republic, events have shown that the electoral body is not independent of the party in power. This has been defined in relation to the manner of which the electoral body had conducted elections in a way that advantaged the party in power through poor planning, the device of excluding electorates from voting in places considered to be the strongholds of opposition, through the inadequate supply of voting materials, or late arrival of electoral officers to polling stations (The Nigerian Voice, 2015).

Democratization in Nigeria has its own peculiar impairments which future prominently in the democratic process of the Nigerian's fourth republic. Low literacy mostly among rural dweller seriously affected the attitude of the majority of the voters and inhibited to interact with the rest of the world, particularly the political salient segments.

Poverty is one of the basic factors hindering the success of credible election and democratic practice in Nigeria. Many Nigerians see the election period as an opportunity to demand from the office seeker a slice of their wealth. Thus, their participation in the election process was only influenced by how much they could attract the contestants rather than by deliberate decision based on preventing issues and national interest.

It is not surprising that most of these political parties that suffered from a lack of internal democracy have been unable to imbibe a democratic ethos at higher levels. In addition, most of these parties do not publish their financial activities, including campaign and elections funding, as regularly as required by the electoral laws. Incidentally, elections and campaign finance has been discovered to be one of the greatest sources of abuse and impunity in Nigeria's Fourth Republic.

However, instead of this, political parties in fourth republic engage in vote buying and especially in contemporary time where political patronage is an important social factors. Voters expected material gift from parties and the amount and quality of such gift. These contemporary issues no doubt are antithetical to Nigeria's democratic practice.

### **THE PROBLEMS AND PROSPECTS**

From our experience in the 2015 general election, it was obvious that all stakeholders (be it professionals, academia and most Nigerians), the Independent National Electoral Commission, the Government, Political Parties, National Orientation Agency, Security Agents, Religious Organization, the Political Scientist, Judicial Body and Individuals played significant roles during the election. Before the 2015 election, there were spiritual and physical predictions that Nigeria would disintegrate as a result of the 2015 election. But the end result at the presidential level, was characterized by “peace” on both sides of the presidential candidates. In fact, the political parties signed peace accord before the 2015 election and all political parties were enjoined to respect, abide and obey such peace accords at all levels – be it federal, state and local

governments.

Nigerians need political education in order to improve in their electoral system and democratic practices. The people should learn to abhor tribalism, factionalism, election malpractice in order not to mortgage their rights and future. All Nigerians have their respective roles to play in conjunction with National Orientation Agency (NOA), Independent National Electoral Commission (INEC), Nigerian Security Agents and Religious Organization, so as to cultivate the political awareness at the grassroots through the well planned programme of political education. By embarking on political evangelism, it will make people to be well-informed and politically active during the election periods.

The academia and professionals should be more pro-active in providing a search light for dialogue about what must be done to elevate the level of political consciousness and activism of the Nigeria masses. They cannot remain quiescent in the extremely desperate state of democratization in which politicians are most likely to engage in undemocratic practices. The National Orientation Agency (NOA) has a lot to do - through well co-ordinated strategies for the awareness of the people's rights to be effectively utilized to promote democracy in Nigeria.

However, since the present political scenario in Nigeria is such that political parties because of their lack of focus on the masses has not been able to effectively perform the functions of political socialization, interest articulation, interest aggregation and political communication, it is the place of the academia and professionals, through their respective professional bodies, to fill this gap.

To be more pro-active, political parties have a lot to do in Nigeria's democratic settings. By this, political parties will publicize and promote their programmes. They should provide voters with substantial information about current political issues, citizen democratic right, contribute to voter's education and human development. Religious leaders should play a prominent role during election; by this religious organization need to engage in orientating their worshippers, that is, that election is not a do or die affair, because some political violence in Nigeria was rooted from religious perspective and ideology.

The establishment of the Independent National Electoral Commission (INEC), being the body saddled with the responsibility of supervising the entire electoral process, was also faulty, mainly because its members were chosen not necessarily on merit but, most probably, based on political connections or expediencies. The appointment of the Chairman of the Independent National Electoral Commission must be based on merit and such person must have foundation and in-dept knowledge of Political Science and Law. Because, INEC in Nigeria was expected to achieve this feat but has failed woefully due to the non-autonomous nature of the commission.

The Independent National Electoral Commission and security agents were to be non partisan and also expected to be impartial in their operations due to their major roles in election and democratic practice in Nigeria. INEC is expected to discharge their duties efficiently, but there are some bad eggs among them that should be fished out. The INEC should be restructured in a way that they will have absolute autonomy and independence and separate from the control of Organs of government, Executive, Legislature and Judiciary, so that they will be able to discharge their legitimate duties, such as, registration of voters, provision of electoral materials, conducting of free, fair and credible election and announcing the election

result without external influence.

There should be establishment of an Electoral Crime Commission in conjunction with Judicial Body that will serve as a watchdog of the INEC, the political parties and contesting candidates in ensuring that political campaigns and elections are conducted according to the rules of the game. The Electoral Crime Commission should also be charged with the powers to prosecute those caught in the act of electoral violence, thuggery, snatching of ballot boxes and other electoral offences in the Court of law.

The Judiciary or Election Tribunals cannot be left out in election and democratic practice in Nigeria. The Nigerian judicial system should also be strengthened and reorganized in a way that the judiciary will have independence and autonomy to discharge their judicial duty. The Electoral Act, 2011, should be reviewed in such a way as to have a reduced or abridged period of time to conclude electoral cases. The judiciary, which is the last hope of the common man, should be non-partisan so as not to give the opposition the opportunity of winning the election or being declared victorious through the Election Tribunals. Recent experience shows that election petition and their appeal cases would appear to have a definite period of completion, but such period of time should be reduced or abridged. The long delay in disposing of election cases tends to undermine the dividend of democracy and constitutes a denial of justice. Voiding election of Governors, Senators, Legislators and Councilors some two, three years or more after their assumption of office is a terrible wastage of public funds and a negation of electoral processes. It is indeed unfortunate that petitions filed in the year 2007, their appeals and interlocutory applications, are yet to be concluded and most likely will not be completed before the next election to be held in the year 2011.

Need we say that all sorts of reasons are being given for the delay in the hearing of the election cases. Some ascribe it to:

- a. Corruption at all levels,
- b. Laziness on the part of the adjudicators,
- c. Frequency of unnecessary adjournments,
- d. Improper interference by meddlesome interlopers in the affairs of the Court,
- e. Delay in settling up of panels to hear cases/appeals,
- f. Adjourning the delivery of rulings for a considerable length of time on simple applications which ought to be ruled upon *in limine* (at the very beginning),
- g. Poor time management and control of cases in court and court registry,
- h. Exploitation of defects in the Electoral Law/Act,
- i. Conflicting and acrimony arising from the exercise of power by heads of courts,
- j. Abuse or misuse of judicial powers,
- k. Conflicting decisions in cases handled by the courts (Nnodum, 1996).

There is indeed a compelling need to devise ways and means of ensuring that future election petitions are in the interest of justice and fair play, disposed off expeditiously and not delayed a day longer than necessary. Some of these identified causes of delay in hearing and completing election petitions would seem to have covered the ground sufficiently to require no additional comments. Interestingly, some of the major recommendations of the Hon. Justice Muhammed Lawal Uwais panel report seem to have proffered solutions to these problems if only the said report can be adopted as a starting point to finding solutions to our electoral problems.

The recommendation of the Uwais Panel Report on the appointment of the Chairman of the Independent National Electoral Commission by the National Judicial Council and the Council of State seems to have generated such unwholesome political debate that ended in the rejection of the recommendation by the National Assembly. However that may be, other recommendations of the Uwais Panel Report that are relevant to the topic of this study to include:

1. Reduction of the membership of Election Petition Tribunals from 5 to 3.
2. Limitation of the time for hearing election petitions and delivering judgments.
3. Punishment for filing frivolous election petitions.
4. Need to establish an Electoral offences Tribunal.
5. The role of the Judiciary.
6. Periodic updating of Voters Register

Section 285 (1) & (2) of the 1999 Constitution of the Federal Republic of Nigeria makes provision for the establishment of the National Assembly Election Tribunals as well as the Governorship and Legislative Houses Election tribunals. Their jurisdictions are spelt out. The compositions of the Tribunals are also spelt out in paragraphs A (2) and (3) as well as in B (2) and (3) for the National Assembly Election Tribunal and the Governorship and Legislative Houses Election Tribunal each with 5 members comprising of a Judge of the High Court as Chairman and 4 other members made up of Judges of the High Courts, Kadis of Sharia Court of Appeal, Judges of Customary Court of Appeal or other members of the Judiciary not below the rank of Chief Magistrate. In each case, the quorum is the Chairman and two other members.

## **CONCLUSION**

Election and Democracy are two words that are inextricably linked in common usage. While Democracy' is usually intended to include government by the people or people's government, the word 'Election' can be regarded as the major feature of democracy. In fact, this wide interest is explained by the fact that elections are a central element in theories of democracy, however, it is impossible to imagine a democratic regime without election. The Tribunal is a legal regime through which election cases are adjudicated. This study have examined Elections, Laws and Tribunals in a Democratic practice in Nigeria; and has also examined the problems and prospects associated with it. The Nigerian government and Nigerians should follow the



general pattern found in advanced democratic states and properly blended with indigenous peculiarities. This way, an enviable political culture can be sustained by rule of law

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