

Credible Elections in Nigeria: Imperatives and Requirements

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Abstract

Credible elections are vital for economic, socio and political development of any nation practicing democracy. Some of the requirements for free, fair and credible elections are the legal frame work which regulates generally administration of election including the establishments of an electoral management body. Fundamental freedoms party structures, judiciary etc. This chapter identifies key requirements both legal and institutional for credible elections in Nigeria including, the provisions of the 1999 Constitution (as amended), which is the grundnorm of all the laws in Nigeria, relating to electoral matters in Nigeria. It examines the electoral Act 2010 (as amended) as well as the electoral guidelines and other issues that are necessary to credible elections in Nigeria. It identifies some of the lapses in the legal framework as it is presently and recommends measures to addressing them. This chapter adopts the doctrinal research methodology which is a legal research approach which analyses texts, cases statutes, instruments etc. The chapter concludes by highlighting key issues and challenges which need to be addressed if Nigeria elections are to be free, fair and credible.

Keyword: Elections, Imperatives, Requirements, Nigeria, Credible

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Background to the Study

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

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

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

Democracy is a republican phenomenon founded on the principles of egalitarianism, liberty and accountability.⁴ It may be analyzed as consisting of six major presuppositions:

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

Strict and absolute, democracy demands all the above presuppositions of all practitioners. Democracy sharply contrasts from monarchy, autocracy, feudalism or oligarchy all of which divest power or sovereignty from the people and transfer same to some king, Lords or few Nobles who rule as of right and not necessarily on behalf of the people.⁵ Invented in Athens, attempted in Rome and refined and fully developed in the United States of America, democracy has met and undergone several transformations and transmutations across time to the present day.

Appositely defined as a government of the people, by the people and for the people,⁶ democracy describes a system of government in which the constituent people of the state, determine who rules or leads them and by extension the policies of their nation, in equality and freedom, thus, collectively determining their collective destiny. While the origin of democracy is usually traced to the Greek City state of Athens,⁷ its modern form of

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

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

Thus, the key element in election is “choice” it is ultimately organized to enable the people of a determinate *polis* express their choice by voting for the candidate of their choice. Election is the soul of democracy, for it is the singular activity that distinguishes democracy from the rest. Election is the means by which the people in their mass choose their leader and express their views of government policies in modern times. The key function of election is to avail the people an opportunity to choose between contending ideologies and methods of public administration. As Eric Bjornlund¹² stated.

Elections provide a peaceful democratic means for societies to channel competition for political power and make collective decisions. By casting votes to select who will represent them in public offices, citizens express preferences about the policies those representatives will pursue. Citizens may also make decisions on issues through special elections called referenda.¹³

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

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

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

Credible Elections: Concept and Dimension

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

The 1994 Inter Parliamentary Union¹⁸ declaration on criteria for free and fair elections, unanimously adopted by the council at its 154th session in Paris. In any state, the authority of the government can only derive from the will of people as expressed in genuine, free and fair elections held at regular intervals on the basis of universal, equal and secret suffrage.¹⁹ The USA Department of state has captured these requirements in the publication *Principles of Democracy*.²⁰

Identifying the fact that free and fair elections allow people living in a representative democracy to determine the political make- up and future direction of their nation's government; that free and fair elections increase the likelihood of a peaceful transfer of power as it helps to ensure that losing candidates will accept the validity of the election's results and cede power to the new government, as well as realizing that otherwise, dictators can use the resources of the state to tamper with the election process.

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

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

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

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

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

Accordingly, when all the conditions germane to the four variables as defined above are observed in the process, conduct and outcome of an election, that election could be considered to be free and fair; hence, credible. However, It is common knowledge that the above outlined conditions are hardly possible in any election particularly in Nigeria. The activities of such bodies or group like the Electoral management body, the behaviour of politicians and security agents, often determine how far, such conditions as highlighted can be possibly determine the extent to which it has contributed to credible election or otherwise, in Nigeria.²⁴

International Instruments for Credible Elections

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

- (a) Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). All appropriate measures shall be taken to ensure that women are on equal terms with men without any discrimination:
 - (a) The right to vote in all elections and be eligible for election to all publicly elected bodies;
 - (b) The right to vote in all public referenda;
 - (c) The right to hold public office and to exercise all public functions. Such rights shall be guaranteed by legislation.²⁵

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

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of Government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.²⁶

The Universal Declaration of Human Rights

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

In addition to the above,

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

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination.²⁹ Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination.³⁰ Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.³¹

(b) African Commission on Human and Peoples' Rights

- (1) Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.
- (c) Every citizen shall have the right of equal access to the public service of the country.
- (3) Every individual shall have the right of access to public property and services in strict equality of all persons before the law.³²

International Covenant on Civil and Political Rights

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

- (1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
- (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of

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

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

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

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

Legal Requirement for Credible Elections in Nigeria

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

a. The 1999 Constitution (as amended)

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

The Constitution is the supreme and most important law of the country. Section 1 (3) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) makes it clear that if any other law is inconsistent with the provisions of the Constitution that other law shall be void to the extent of the inconsistency. The courts have upheld that section in countless decisions.³⁶ For this reason alone any law dealing with elections that contradicts the provision of the Constitution will be of no effect, The Constitution also states clearly that the Government of Nigeria or any part thereof shall not be governed or controlled by any person or group of persons except in accordance with the provisions of the Constitution. In other words, no one can occupy elective offices at the local, state or federal level unless he or she has been elected in accordance with the provision of the Constitution or any law made in accordance with the Constitution.

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

With respect to electoral matters, the relevant items of the Second Schedule dealing with legislative powers are items 22 of Part 1.³⁸ Item 22 of the Exclusive Legislative List is 'election to the offices of President and Vice President or Governor and Deputy Governor and any, other office to which a person may be elected under this Constitution, excluding election to a local government council or any office in such council. Items 11 and 12 of the Concurrent List are respectively as follows;

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

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

b. Electoral Act 2010 (as amended)

In line with its constitutional power to make laws for the peace, order and good government of the Federation or any part thereof with respect to item 22 under the Exclusive Legislative List,³⁹ the National Assembly enacted the Electoral Act 2010.⁴⁰ The Electoral Act 2010 is not the first of its kind. It was built on the provisions of the Electoral Act 2006, which it repealed. But not sufficient enough to bring about an overhaul of the electoral system in the terms recommended by the Uwais panel.⁴¹

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

There are uniquely novel provisions however. Of note in this regard is the provision of the Electoral Act 2010 which prohibits substitution of candidates by political parties except in cases of death or self-withdrawal.⁴² The bulk of the provisions of the Electoral Act 2010 relates to procedural issues that were already covered by the Electoral Act 2006, which was repealed by the new Act. The current Act is arranged in nine parts, with 152 sections and three schedules. The Act repeals both the Electoral Act 2006 and the INEC Act. The functions, powers, revenue base and other matters connected with INEC and its staff remain essentially the same as in the repealed 2006 Act. The provisions of the 2010 Act in respect of

the registration of voters, the provisions of registration officials and the creation of offences were more or less repetitions of the 2006 Act with some juggling of figures.

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

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

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

The 2010 Act like the repealed 2006 Act, stipulates a continuous voters' registration system. In section 710(2), an applicant for registration under the continuous registration system shall appear in person at the registration venue with proof of identity, age and nationality. Apart from preventing registration by proxy, the innovation helps to establish the true identity of voters and prevent voting by non-human objects etc. Other adjustments to the contents of the repealed Act were designed to prevent frustration associated with litigations arising from the conduct of elections, as well as enforcement of internal democracy in selecting party candidates for election. Essentially, these changes were meant to ensure more credibility and reduce acrimonious intra-party crises often associated with the choice of party's flag bearers. Aside from this, the Act imposes stiffer punishments for culprits engaged in the buying and selling of voters' cards.

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

c. Case Law

Case law refers to that body of principles and rules of law which, over the years, have been formulated or pronounced upon by the courts as governing specific legal situations. This assertion seems to run contrary to the general impression that judges do not make laws but simply apply them as and when the need arises. The primary duty of making laws is that of the

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

At present, the decisions of the Nigerian courts cannot but constitute the least creative source of law in the country. The reason why that should be so is that the enactments which create the courts and give them their powers restrict them to applying only two types of law apart from rules contained in local statutes.⁴⁹ The first is the received law, which is expressly declared to be the law of England.⁵⁰ That, of course, does not prevent a body of Nigerian case law growing up around this received law. This has indeed occurred, and Nigerian decisions upon the rules of English law are cited by the courts almost as frequently as those of the English judges. But it does prevent Nigerian common law and equity striking off on their own, and in places departing from the pattern of development in England.⁵¹

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

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

d. Electoral Guidelines

Section 153 of the Electoral Act, 2010 (as amended) gives power to Independent National Electoral Commission (INEC) to issue regulations, guidelines or manuals for the purpose of giving effect to the provisions of the Electoral Act and for its administration thereof.

Consequently, the Commission usually issues guidelines and regulations for general elections.⁵³ An example of this is Guidelines and Regulations for the 2015 General Elections. In the case of *Okechukwu vs Onyegbu*,⁵⁴ the Court of Appeal referring on the purport of the Manual for Election Officials, 2007 made pursuant to section 161 of the Electoral Act 2006 (now section 153 of the Electoral Act, 2010 as amended) stated as follows:

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

e. Electoral Management Bodies/Electoral Commissions in Nigeria

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

A flash back at the political history of Nigeria since independence will reveal that past efforts at democratization collapsed due to failure of electoral bodies known as electoral commissions to conduct credible elections. It is also unfortunate to note that electoral commissions in Nigeria have failed to learn from history. The problem faced by past commissions continues to recur and beset present electoral management body while past shortcomings continue to manifest. The process of transition or transfer of power after each successive military regime becomes process of rebuilding, recreating and bringing into being, institutions that have been dissolved or kept in abeyance. Therefore, the history of hitherto electoral management bodies or commissions in Nigeria has been a history of dissolutions, constitutions and reconstitutions. To illustrate this, a table is hereby presented on Electoral Commission in Nigeria.

Table 1: Electoral Commissions and Their chairmen in Nigeria:

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

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

Electoral Processes and Credibility of Elections

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

Pre-Election

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

f. Election⁶¹

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

- iv. Accessible polling places that do not discriminate against voters' preference, preferably not in private quarters, with receive and transparent ballot boxes and ballot papers, preferably with the pictures of contestants to be thumb printed, marked with pen or punched through.
- v. Secret ballot to ensure private voting space, this ensures that a voter's choice at elections is not subsequently used to discriminate against him or her.
- vi. Adoption of a transparent polling station votes counting and recounting procedures, before party agents and the voting public preferably with on the spot declaration of poll results.
- vi. Availability of absentee ballot, which will enable legitimate voters who would unavoidably absents, vote before the elections date.

Post-Election

- i. There must be clear rules for challenging the outcome of vote counts and contestations at appellate levels.
- ii. The proceedings at Electoral tribunals or courts must be speedy fair and⁶² transparent.
- iii. There must be mechanisms for punishing electoral offenders as a deterrent measure.⁶³
- iv. All contestations should be exhausted before a candidate is sworn in as winner. This will ensure that the apparatus of state is not deployed towards bending the outcome of the process.⁶⁴

These standards have been endorsed as standards globally understood as the process for attaining a credible free and fair election. The outcome of which will be representative of the people's truly expressed will and acceptable to all parties, winners and losers alike. Such a process will in the end, engender reduced post-election contestations and imbue the product government with true and adequate credibility.

Conclusion

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

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

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

a. Pre-elections Issues and Challenges:

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

i. Voters Registration:

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

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

ii. Freedom of Expression

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

In the case of *ANPP & others vs Inspector General of Police*,⁶⁹ the Court of Appeal deprecated the forceful and illegal dispersal of a campaign meeting by the police and the government of the day on the grounds that the eminent persons assembled there did not have police permit to convene the rally. This case may appear as an extreme situation, but by a combined use of police and thugs, contestants and parties have in many constituencies, been prevented from successfully conducting their campaigns on the basis of equality of parties and candidates.

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

iii. Election Materials

This is an important indicant of free and fair elections, because unless fool-proof materials such as ballot boxes and especially ballot papers and result declaration forms etc are ready and secured, the election itself will be marred by the use and production of defective or out

rightly fraudulent ballot papers and results.⁷⁰ The case of the Ekiti rerun election of 2009 is a case in point on falsification of results, while the very disturbing decision in *Mohammadu Buhari vs INEC and Others*,⁷¹ where the apex tribunal confounding held that non-serialization of ballot papers among others, did not substantially affect the outcome of the election.⁷² This means that it did not matter that the ballot papers in issue were fake as they did not have INEC serial number which fundamentally indicates the originality of voting ballots.

iv. Enforcement of Regulations

An uncompromised enforcement of enforcement of electoral guidelines and the regulations contained in the parent law are major requirements of a free and fair election. In 2007, regulations were largely observed in breach and till date, nobody, not even those explicitly implicated in the decided cases⁷³ has been arraigned let alone, successfully prosecuted for the violation of the electoral law and guidelines.⁷⁴ This will be a major test for subsequent elections in Nigeria as the non-prosecution has already sent the wrong signal to culprits that they can continue with business as usual.⁷⁵

b. Election Day Concerns

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

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

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

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

c. Post-Election Measures

At present, there are no indications of sufficient change or reform of the Electoral Appeals system, to warrant the expectation that things can be different in future elections. The American election in 2000⁷⁷ which was the closest to contestable elections in recent American history was disposed admirably expeditiously and judiciously. it would appear

that the present endless delays are therefore politically contrived, and designed to buy time for sworn- in candidates with bad cases, especially as there is no legal consequence or penalty for occupying public offices and stealing from public coffers through criminal violation and rape of the will of the people. The recent post-2011 elections decisions of the Supreme Court on the 180 days rule has further worsened this reality as all the Respondent now has to do is, find ways to delay the process beyond 180 days and be rewarded with a full tenure in office.

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

An election petition tribunal must mandatorily deliver its judgment within 180 days from the date of filing of the petition, failing which; the tribunal becomes automatically stripped of its jurisdiction to continue further hearing of the petition.

By practical implication, where an order for retrial is given by an Appellate Court, such order can only be valid if it is given before the expiration of the originally stipulated 180 days from the date the petition was filed. Even at that, such retrial order becomes absolutely ineffectual, and a nullity, the moment the originally allotted 180 days expires.

This judgment clearly departs from the Supreme Courts position 30 years earlier when in considering the same question In *Paul Unongo vs Aper Aku*⁷⁸ the court, per Justice Uwais, JSC (as he then was), held in the opposite direction, stating that:

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

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

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

An examination of the legal regime for election credibility of election administration in Nigeria i.e. the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act 2010 (as amended), case law and guidelines regulating the conduct of institutions and agencies involved in elections are key for the credibility of elections. The National Assembly did a commendable job in 2010 in its amendment of the 1999 Constitution among which are: making the Independent National Electoral Commission (INEC) financially independent when it made its expenditure derivable directly from the Consolidated Revenue Fund;⁸⁰ conclusion of time limitation for the hearing of election petition in the constitution to address the problem of delay in the hearing of election petition.⁸¹ The Electoral Act 2010 also contains provisions to address delayed hearing of election petition unlike the position under the repealed Electoral Act 2006.⁸² However, there is the need to further amend the Constitution as well as the extant Electoral Act to further guarantee and strengthen the independence of INEC by making the Commission not subject to the direction and control of any person or authority in the exercise of all its operation.⁸³ Additionally, the constitution as well as the Electoral Act should be further amended to accommodate other plausible recommendations of the Electoral Reform Committee such as independent candidacy, giving greater weight to the substance of the petition rather than mere technicalities among others. This is imperative to restore credibility in the electoral process in Nigeria and ensure the conduct of free, fair and credible elections in the country.

References

1. Aduche Wokocha, (2015) Dimensions of Free and Fair Election: 2015 Nigerians Elections: Issues and Challenges, RSUT, Nkpolu, P/ Court. Retrieved on 6/11/2016 at 11am from www@ust.edu.ng
2. By the late 18th Century when USA emerged most other nations operated monarchy and the idea of peoples Government was an-athema as it meant end of the Kings realm dominant and discretionary rule.
3. Monarchs were absolute or near absolute.
4. Op. Cit Note 1.
5. Unlike in democracy where the elected official governs at the instance of the electorate in accordance with preexisting rules made for the interest of the people.
6. In the Gettysburg speech made by President Abraham Lincoln of U.S.A on 19/Nov/1863.
7. Introduced by Solon who was the ruler (Archon) of Athens in 594 Bc. Available online @ <http://www.constitution.org> retrieved on 7/11/2016.
8. Locke, J. Second Treatise to Civil Government Chapter 12, P.415
9. Rosseau J.J. The Social Contract. Available on line @ <http://www.constitution.org> retrieved on 7/11/2016
10. Burke E. Reflection on the French Revolution available online @ <http://www.constitution.org> retrieved on 7/11/2016.
11. OP. Cit, Note 4
12. Bjornland, E @ www.democracyInternational.Com/downloads/Bjornland
13. Ibid.

14. In Nigeria the CFRN 1999 stipulates a 4 year term for elected officials e.g. section 135(2) stipulates a 4 year term for the President.
15. See http://en.wikipedia.org/wiki/Liberian_General_Election_1927. Retrieved 20/10/2016.
16. In 1939 Adolf Hitler was democratically elected to lead Germany, he would eventually later turnout to be the most heinous Government ever known to the modern man.
17. The 2003, 2007 and 2011 General Elections are Clear examples
18. The Inter Parliamentary Union is a Union of National Legislatures see <http://www.ipu-Accessed> on 20/10/2016
19. Ibid.
20. @http://www.america.gov/st/democracy-english/2008_0609215618_eaifas_9156436 accessed on 20/10/2016 at 9pm.
21. Op.Cit Note 15
22. Ibid.
23. Ibid.
24. i.e. INEC
25. Art.4, "Convention on the Elimination of All forms of Discrimination against Women available online at; <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> accessed on 4 September 2015
26. Art. 7, Ibid
27. Art. 20 'The Universal Declaration of Human Rights' available online at <http://www.un.org/en/documents/udh> accessed on 4 September, 2015.
28. See Art. 21, *ibid*.
29. Art. 1'Convention on the Political Rights of Women, 193 U.N.T.S. 135, *entered into force* July 7, 1954'
30. Available online at <http://www1.umn.edu/humanrts/instreet/e2cprw.htm> accessed on 4 September, 2015.
31. *Ibid*.
32. *Ibid*.
33. Art. 13 'African Commission on Human and Peoples' Rights' available online at <http://www.achpr.org/instrument/achpr/> accessed on 4 September, 2015.
34. Art. 21, 'International Covenant on Civil and Political Rights' available online at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> accessed on 4 September, 2015.
35. Art. 22, *ibid*
36. Ese, Malemi (2006), *The Nigerian Constitutional Law*, Princeton Publishing Co, Lagos pp.12 & 15. In *I. G. P. vs A.N.P.P.* (2007) 18 NWLR (pt 1066) 457 at 495- 496, the Court of Appeal held as follows: "The Constitution of any country is the embodiment of what the people desire to be their guiding light in governance, their supreme law, the grundnorm of all their laws. All actions of the government in Nigeria are governed by the Constitution and it is the Constitution as the organic law of a country that declares in a formal, emphatic and binding principles the rights, liberties, powers and responsibilities of the people both the governed and the government." See *F.R.N. vs Ifeogwu* (2003) 15 NWLR (pt 842) 113; *AG Abia State vs AG Federation* (2002) 6 NWLR (pt 763) 264; *Abacha vs Fawehinmi* (2000) 6 NWLR (pt 660) 228

37. See *NPA v. Eyamba* (2005) 12 NWLR (Pt. 939) 409 at p. 443. In the case of *Merwa & Ors vs Nyako & Ors* SC. 141/2011, the Supreme Court held as follows: “The Supremacy of the Constitution of the Federal Republic of Nigeria 1999 is captioned by sections one and three, part 1 of chapter 1 under general provisions which state that – Section one of this Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.” Section 3 “if any other law is inconsistent with the provisions of this constitution this constitution shall prevail and that other law shall to the extent of the inconsistency be void.” This court had given recognition to this supremacy and had expatiated on the Constitution through various judgements in its interpretative jurisdiction. The Constitution is described as the grundnorm and the fundamental law of the land. All other legislations in this country take their hierarchy from the provisions of the Constitution. It is not a mere common legal document. It is an organic instrument which confers powers and also creates rights and limitations. It regulates the affairs of the nation state and defines the powers of the different components of government as well as regulating the relationship between the citizens and the state. Once the powers, rights and limitations under the Constitution are identified as having been created, their existence cannot be disputed in a court of law. But the extent and implications may be sought to be interpreted and explained by the court. The provisions of the Constitution take precedence over any law enacted by the National Assembly even though the National Assembly has power to amend the Constitution itself. Per Adekeye J.S.C. pp 123-124, paras. E - G. See *A-G Ondo State vs A-G Federation* (2002) 1 NWLR (pt. 772) 222.
38. See sections 106 & 107 for membership of House of Assembly; Sections 65 & 66 for membership of National Assembly; Sections 177 & 182 for qualifications and disqualifications for election to the office of Governor of a State and sections 131 and 137 for qualifications and disqualifications for election to the office of President of the Federation.
39. Exclusive Legislative List and 11 & 12 of Part II Concurrent Legislative List Item 22 is on election to the offices of President and Vice-President or Governor and Deputy Governor and any other office to which a person may be elected under the 1999 Constitution (as amended), excluding election to a local government council or any office in such council. See Second Schedule, Part 1 of 1999 Constitution (as amended) Laws of Federation of Nigeria 2011
40. Alabi, M. O. A & Omololu, O. T. (2012), ' Uwais Report, Electoral Act 2010, and the Future of Democratic
41. Elections in Nigeria' in Layonu, A. I. & Adekunbi, A. A. O. (eds.) *Reflections on the Nigerian Electoral System* First Law Concept, Ibadan pp. 207-236
42. See Section 33 which provides that a political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to section 31 of this Act, except in the case of death or withdrawal by the candidate
43. *Op cit* n. 18 above
44. See section 46
45. See section 117-132

46. Asein, J. O. (1998), *Introduction to Nigerian Legal System*, Sam Bookman Publishers, Ibadan p. 67
47. See e.g. the strict liability principle developed in *Rylands vs Fletcher* (1886) L.R. 3. H.L. 330
48. The doctrine of judicial precedent (otherwise called *stare decisis*) requires all subordinate courts to follow decisions of superior courts even where these decisions are obviously wrong having been based upon a false premise. This is the foundation on which the consistency of our judicial decision is based: See *Ngwo vs Monye* (1970) 1 All NLR 91 at 100. It is however, the principle of law upon which a particular case is decided that is binding. Such a principle is called *ratio decidendi*. A statement made in passing by a judge which is not necessary to the determination of the case in hand is not a *ratio decidendi* of the case but an *obiter dictum* and it has no binding effect for the purpose of the doctrine of judicial precedent. See *Dalhatu vs Twiaki & Ors* (2003) LPELR 917. Also *N.A.B Ltd v. Barri Eng. (Nig) Ltd* (1995) 8 NWLR (pt 413) 257 pp. 289 - 290.
49. Except where under the rules of Private International Law a foreign law is applicable
50. Ibid
51. Park, A.E.W. *The Sources of Nigerian Law* (Sweet & Maxwell 1963) 54
52. See Popoola, A.O. 'Election Petitions and the Challenge of Speedy Dispensation of Justice in Nigeria' being a paper commissioned for presentation at the Induction Course for newly appointed Judges and Kadis of the Sharia Court of Appeal by the National Judicial Institute, Abuja 4-15 June, 2007.
53. Available online at www.inecnigeria.org/wp-content/uploads/2015/01/FINAL accessed on 10 February 2015
54. (2010) All FWLR (pt. 524) p. 117 at 136-137.
55. CFRN 1999 sections 77 (2), 117(2), 132(5) and 178(5) gives every Nigeria citizen who has attained the age of 18 years right vote.
56. Section 12(1-3) of the Electoral Act 2010 (as amended).
57. CFRN 1999, section 65(2), 106, 131, 177 stipulates qualification to run.
58. OP. Cit Note 29, Section 9.
59. Op. Cit Note 30 Section 39.
60. Ibid.
61. This is covered by section 25-77 of the Electoral Act 2010 (as amended)
62. The CFRN 1999 stipulates 180 days maximum for any electoral case to be determined.
63. The Act provides for electoral offences and penalties. However the efficiency of these provisions is the focus of this thesis.
64. In Nigeria this has given undue advantage to the incumbent.
65. Op. Cit.
66. This follows from the widespread annulment and reconduct of elections all through the federation.
67. In many cases results were even returned where there had been no voting at all. This was the Crux of the matter in *INEC and others vs Comrade Adams Oshomole* (Unreported decision of the court of Appeal in Benin) in suit No CA/B/179B/2007.
68. (2007)10 NWLR (pt1040) P.177.

69. (2007).
70. INEC V. Adams Oshornole (Supra)
71. (2008) ISCNJ P.1
72. Ibid
73. Such exhibition of lack of political will to enforce laws encourages electoral criminality.
74. This among others is the stated problem this thesis seek to address.
75. Ibid.
76. This practice privatizes the ballot boxes as supporters of the opponents of the host candidates cannot freely enter the premises to vote.
77. In this election, the on tested issues between Vice President AlGore and then Govenor George Bush were disposed of y the courts within days of the appeals.
78. (1983) 2 SCNLR 332, the supreme court while considering sections 129(3) and 140(2) of the 1982 Electoral Act (i.e provisions in pari material with sections 285(6) of the 1999 Constitution as amended and 134(2) of the Electoral Act 2010)
79. Ibid at P.340 Paras H-B.
80. See section 84 of the 1999 Constitution of the Federal Republic of Nigeria (as amended)
81. *Ibid.* See section 285(5) and (6).
82. See section 134 (1) and (2) of the Electoral Act 2010 (as amended)
83. Under section 158(1) of the constitution. INEC shall not be subject to the direction or control of any other authority or person in exercising its power to make appointments or to exercise disciplinary control over persons.