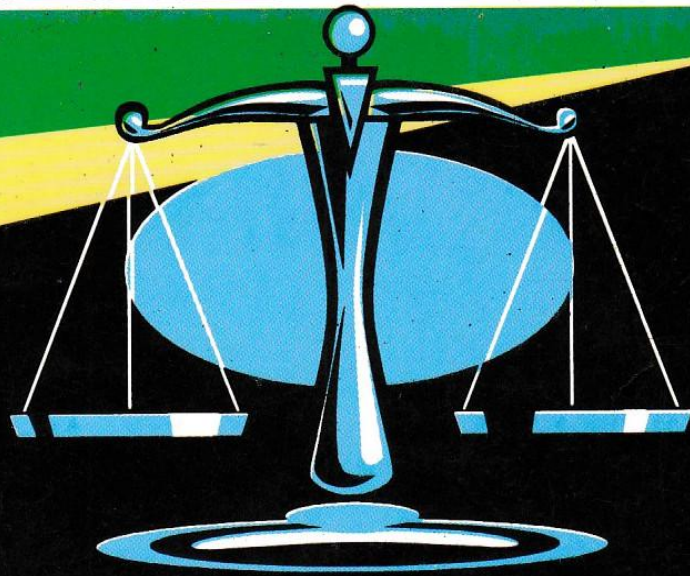


PERSPECTIVES ON DEMOCRACY, RULE OF LAW & GLOBALISATION



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CHAPTER ONE

CREDIBLE ELECTORAL PROCESS AND PARTICIPATORY DEMOCRACY IN NIGERIA

By

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1.1 Abstract

The view is generally held that Nigeria presently operates a democratic system of Government. This view is based mainly on the presumed existence of government officials who are put in place by the popular will of the majority of the people through periodic elections. This chapter argues that for there to be a democracy in Nigeria, a level playing field must be provided for all those who are constitutionally eligible to participate either by voting or being voted for in an election. Very importantly too, elections must not merely be symbolic: votes must count, otherwise what exists in Nigeria presently may just be a civilian Government, not a democratic Government. Reforms are suggested to the electoral law, so as to sensitize the electorate, sanitize the electoral process, and enhance participatory democracy. The chapter concludes that credible electoral process will not only promote participatory democracy but will produce effective leaders – leaders who feel accountable to the people because they know that power truly belongs to the people as will be shown on election day.

1.2 Introduction

The form of Government we have today in Nigeria is referred to as a democracy, i.e., a form of Government where ballots are the rightful and peaceful successors of bullets.¹ It is a form of Government which as far back as 1850, Daniel Webster eulogised as “the peoples

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¹ Abraham Lincoln, Messages to Congress, July 4, 1861, in David Shrager and Elizabeth Frost (eds.): *The Quotable Lawyer*, page 85.

Government, made for the people, made by the people, and answerable to the people,"² and in 1863 Abraham Lincoln re-echoed it as "...Government of the people, by the people, for the people."³ It should be pointed out right away that some have questioned the continued relevance of Lincoln's much-used definition particularly in the Nigerian, nay African, situation due to the imperfections observable in the practice of democracy.⁴

For example, in present-day Africa, selection is prevalent instead of election and, in most cases, citizens' votes do not count, as more elaborately discussed below. It may however be said that Lincoln's definition still holds true as a statement of what democracy ought to be, and what it probably is in the western world.

When we talk of *participatory democracy* then, we are merely describing a kind of democracy which strives to create opportunities for all members of a political group to make meaningful contributions to decision-making, and seeks to broaden the range of people who have access to such opportunities. In essence, participatory democracy is a system of direct popular rule in all areas of public life.

This, however, does not mean that in a participatory democracy citizens must be consulted on every issue, as was the case in the Athenian democracy which was direct: all citizens were expected to participate, and the attendance at the sovereign assembly may have been as high as 6,000. When decision-taking bodies had to be smaller, their members were selected by lot rather than by election. Every citizen of Athens had a reasonably high probability of being chief executive for a day.

But the participatory democracy in Nigeria today is not direct; it is indirect, otherwise known as representative democracy: voters elect representatives who take decisions on behalf of the people, for which they are accountable at the next election. Thus, in a representative participatory democracy, an essential element in the process is *competitive elections*, that are fair both substantively and procedurally.

Substantive fairness means equality among all citizens in all respects, i.e. equality of chances, in starting point, etc. Procedural fairness

² Daniel Webster, 1782-1852, Franklin Pierce Adams, *FPA Book of Quotations*, 1952.

³ Abraham Lincoln, Gettysburg Address, November 19, 1863.

⁴ Dr Okon Eminue, "Democracy, Leadership and Accountability under the 1999 Constitution of Nigeria", a paper presented at the 2009 (Third) Annual Summit of Ibiono Ibom Youths for Democracy and Development, at Ikpa Pavilion, Ibiono Ibom LGA on October 30, 2009.

means that the rules of the elections are clear and set in advance. By the election process, the wishes of the people are honoured at least occasionally, typically at election time. Between elections, the wishes of the people are filtered and refined through “responsible” representatives.

In a sense, all democracies are participatory, i.e. if one goes to the etymological roots of the word democracy, which is formed from the Greek words *demos* (meaning “people”) and *kratos* (meaning “power”). This implies that the people are in power. In practice, representative democracy tends to limit citizens’ participation to *voting*, leaving actual *governance* to politicians. Even at that, dissenting individuals are normally oppressed by the “tyranny of the majority.” This is because the “rule by the people” which democracy typifies actually refers to “majority rule,” since the people are rarely unanimous. Democracy therefore because synonymous with majority rule, rather than unanimity rule.

Citizens’ direct participation in democracy is most obvious in the case of voting. By voting, the citizens can critically influence Government and governmental decision-making; citizens are enabled to express their preference for a candidate through periodic, free elections. The exercise of the citizens’ right to vote and be voted for is therefore pivotal to participatory democracy and to credible electoral process. If the people do not exercise their right to vote, or if their votes do not count, then the electoral process cannot be credible and this would greatly detract from the effectiveness of the leaders that emerge from such election.

1.3 The right to participate by voting

“Electoral process” includes the selection of candidates, registration of voters, and the voting procedures. In order to enhance democracy in Nigeria, the electoral process has to be sanitized and made more credible. Participatory democracy requires the protection of citizens’ right to vote and be voted for. Credible electoral process, on the other hand, demands some electoral reforms, all geared towards enhancing democracy and effective leadership.

The **right to vote** is a constitutionally recognized right. It is commonly referred to as suffrage,⁵ which is the civil right to vote, or the exercise of that right. In this context, it is also called political

⁵ From the Latin *Suffragium*, meaning “voting tablet”, and figuratively “right to vote”.

franchise or simply, franchise. All modern democracies require voters to meet age qualifications to vote. Worldwide, voting ages are not consistent, fluctuating between countries, usually between 18 and 21. In the United Kingdom, the Representation of the People Act 1969 extended suffrage to those over 18. In the United States of America, the 26th Amendment 1971 provided that no law may restrict those 18 years of age or older from voting. In Nigeria the voting age is 18 years. According to Section 77(2) of the 1999 Constitution which governs the voting age for National Assembly elections:

Every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election.

Section 117(2) provides similarly for the voting age for State Assembly Elections. The same voting age applies for election of the President⁶ and the State governor⁷. Age may therefore be seen both as a qualification to vote, for those who are up to 18 years and above, and as an excluding condition for those who are below 18 years of age.

The right to vote is also adversely affected by non-residence in Nigeria at the time of registration of voters for purposes of the election, notwithstanding that the person is a citizen of Nigeria, even by birth, and is resident in Nigeria at the time of the actual election. Unless there is an update of the register of voters such a person cannot vote.

This is implicit in Sections 77(2) and 117(2) of the Constitution. Also, the right to vote is restricted to citizens of Nigeria. Again, both sections 77(2) and 117(2) start by saying, "Every citizen of Nigeria..." In most countries, suffrage is limited to citizens and, in many cases, permanent residents of that country. In some countries, naturalized citizens do not enjoy the right of vote.

For instance, in France the 1889 Nationality Law barred those who had acquired the French nationality by naturalization or marriage from voting. This discrimination was gradually abolished in 1973 and 1983. In Morocco, a former French protectorate, and in Guinea, a

⁶ See S.132 (5) of the Constitution.

⁷ See S.178 (5) of the Constitution

former French colony, naturalised citizens are prohibited to vote during 5 years after their naturalization. In Nigeria there is no discrimination as to the voting rights of all the three categories of citizens. All Nigerian citizens therefore have full and equal voting right.

1.4 Right to participate by being voted for

The **right to be voted for** is an area where some controversy might arise. Before a person is eligible to be voted for in an election he must meet the constitutional requirements. Section 65(1) stipulates that a person shall be qualified for election as a member of-

- (a) The Senate, if he is a citizen of Nigeria and has attained the age of thirty-five years; and
- (b) The House of Representatives, if he is a citizen of Nigeria and has attained the age of thirty years.

Section 65(2) Provides as to academic qualification and political party affiliation. It states:

65(2) A person shall be qualified for election under subsection (1) of this section if –

- (a) He has been educated up to at least School Certificate level or its equivalent; and
- (b) He is a member of a political party and is sponsored by that party.

The qualifications for election into the State House of Assembly are contained in Section 106 of the Constitution and are identical to the qualifications for election into the House of Representatives. There is however a marked departure when it comes to the right to be voted for as the President of the country or as governor of a State.

First, the candidate⁸ must not be below forty and thirty five years of respectively⁹. This is not the remarkable aspect; what is remarkable is that the candidate must not just be a citizen of Nigeria, but must be so by birth.¹⁰ This again shows the supremacy of citizenship by birth over all others. It shows that some citizens are more equal than others.

Some of the constitutional qualifications deserve comment. The first is the requirement of “education up to at least School Certificate level or its equivalent.” It may be rightly argued that this requirement is

⁸ A candidate is a person who seeks or is nominated for a political office.

⁹ See S.131 (b) and 177 respectively of the Constitution.

¹⁰ S.131 (a) and 177(a), *ibid.*

obsolete because in today's Nigeria, "education up to School Certificate level or its equivalent" does not really mean much. There are a lot more Nigerians today with much higher formal education than School Certificate, to occupy political offices. This is perhaps one area of the constitution that needs amendment so as to conform with reality.

In any case, the requirement of "education up to at least school certificate level or its equivalent" has quite often attracted judicial attention. In *Alliance for Democracy v. Fayose & Ors.*,¹¹ it was a major contention that the 1st respondent was disqualified from contesting (i.e. being voted for) the Ekiti State gubernatorial election because he did not possess the basic educational qualification to qualify him to contest the election.

The court held¹² that a person who intends to contest an election to the office of Governor of a State is not qualified to do so if he has not been educated up to school certificate level or its equivalent and is disqualified where he presents forged certificate to the Independent National Electoral Commission (INEC) purporting to have been educated to the level. Very significantly, the court added that "it must be noted that section 177(d) does not require that the person must obtain a School Certificate but that he should be educated up to school certificate level or its equivalent"¹³. In other words, passing of School Certificate Examination or obtaining a School Certificate is not one of the constitutional requirements in order to contest for the post of governor of a State, President of the country or member of the State and National Assembly. All that is required is to show education up to at least School Certificate level or its equivalent. The candidate may not necessarily pass the School Certificate.

Thus, a mere statement of result of an examination is an eloquent evidence of an attempt at the particular examination concerned and it is also a good evidence that he had been educated to that level.¹⁴ This emphasis is important because instances abound where candidates have been challenged for non-acquisition of School Certificate or its equivalent.

¹¹ (2005) 10 NWLR (Pt. 932) 151.

¹² *Ibid*, held No. 2.

¹³ *Ibid*, at page 223 lines A-B.

¹⁴ *Alhaji Iman v. Sheriff & Ors.* (2005) 4 NWLR (Pt. 914) 80, at pages 196, 2004. On the constitutional requirement of education up to school certificate level or its equivalent, see further: *Bayo v. Njidda & 59 Ors* (2004) 8 NWLR (Pt. 876) 544 pp. 592-630.

As far as the Presidential, Governorship and National/State Assembly positions are concerned there is no constitutional requirement for School Certificate or its equivalent. In fact even if one were to insist on actual acquisition of “School Certificate or its equivalent”, that would still be fluid enough to admit a candidate who has only Primary Six School Leaving Certificate, or “any other qualification acceptable by the Independent National Electoral Commission”.

This is by virtue of Section 318 of the 1999 Constitution which provides that the “equivalent” of a School Certificate means:

- (a) A Secondary School Certificate or its equivalent, or Grade II Teacher’s Certificate, the City and Guilds Certificate,
- (b) Education up to Secondary Certificate level,
- (c) Primary Six School Leaving Certificate or its equivalent and –
 - (i) Service in the public or private sector in the Federation in any capacity acceptable to the Independent National Electoral Commission for a minimum of ten years,
 - (ii) Attendance at courses and training in such institutions as may be acceptable to the Independent National Electoral Commission for periods totaling up to a minimum of one year,
 - (iii) The ability to read, write, understand and communicate in the English language to the satisfaction of the Independent National Electoral Commission; and
- (d) Any other qualification acceptable by the Independent National Electoral Commission.

The conditions in C (i) – (iii) are cumulative, so that a candidate who has only the First School Leaving Certificate must also fulfill (i), (ii) and (iii) before the First School Leaving Certificate becomes an equivalent of a School Certificate. This is the conjunctive effect of the “and” used repeatedly in the enumeration.

In *Alhaji Iman v. Shariff & Ors*,¹⁵ the Court of Appeal, Jos, upheld the Tribunal’s decision that the 2nd respondent having shown a statement of result showing that he sat for the Grade II Teachers’ Certificate, had the equivalent of education up to Secondary School Certificate level and therefore was academically qualified to stand election into the office of Deputy Governor of Borno State.

¹⁵ (2005) 4 NWLR (Pt.914) 80.

To have a right to be voted for, the candidate must belong to a registered political party. Again, this is manifest on the face of Section 65(2)(b) of the constitution which has been reproduced above *in extenso*. The Election Tribunal, sitting in Uyo, Akwa Ibom State, on the 8th of April 2008 voided the election the 1st respondent on the sole basis that he did not belong to any political party and our constitution does not allow independent candidacy,¹⁶ which is why the Court of Appeal held that a candidate cannot nominate himself.¹⁷

The constitution also requires that a candidate must be “sponsored” by a political party. Literally, the word “sponsor” means to support somebody by paying for his training or education, or, a person who makes a promise or gives security for another.¹⁸ Quite often the word “nominate” and “sponsor” are used interchangeably, as if they are synonymous. Literally, the word “nominate” means to formally suggest that somebody should be chosen for an important role, prize, position, etc. However, nomination for an election is an act of suggesting or proposing a person by name to an electoral body as a candidate for an elective office.¹⁹

Though a candidate must be nominated and sponsored by the party for an election, the law remains that no party member has a legal right to the nomination. There is no corresponding obligation on the political party so as to pave way for the powers of the court to be invoked under Section 6 of the 1999 Constitution.²⁰

The nomination and sponsorship of a candidate for an election are purely preliminary matters before the actual election is conducted. Therefore, a person wishing to contest election must first clear the preliminary hurdle of getting nominated and then sponsored by his political party before being presented to the electoral body. The issue of nomination or sponsorship of an election candidate is within the domestic affairs of the political parties²¹ and the courts have no jurisdiction to determine who should be sponsored by any political party as its candidate for any election. The attitude of the court is to

¹⁶ See the unreported case *Hon. Emmanuel Obot v. Hon. Bassey Etim*; where the Election Tribunal voided the respondents’ election into the House of Representatives and at the same time held that the petitioner did not contest under any party.

¹⁷ *Osakwe v. INEC & Ors.* (2005) 13 NWLR (Pt. 942) 442, held I.

¹⁸ *Rimi v. Independent National Electoral Commission (INEC)* (2005) 6 NWLR (Pt. 920) 56, p. 70.

¹⁹ *Ibid.* See also: *Tsoho v. Ahaya* (1999) 4 NWLR (Pt. 600) 657.

²⁰ *Amaechi v. INEC & Ors.* (2007) 9 NWLR (Pt. 1040) 504 at 538.

²¹ Often referred to as intra-party political matter-i.e. matters or a dispute between members of the party *inter se*, or between a member or members on the one hand and the party on the other. See: *Peoples Democratic Party v. Kwara State Independent Electoral Commission* (2006) 3 NWLR (Pt. 968) 565, held 7.

refrain itself from imposing an election candidate on a party because the choice of an election candidate of a political party is purely within the internal or domestic affairs of the party.

Though a political party nomination and sponsorship have been described as internal, domestic, and therefore judicially unchallengeable, the Electoral Act 2006 has now put the whole procedure of nomination and sponsorship of a candidate by a political party directly under the supervision and monitoring of the Electoral Body charged with the conduct of election affairs.²² This body is the Independent Electoral Commission, INEC.

Under the Electoral Act 2002 a political party had the liberty to change a nominee for election (whether by substitution or replacement) not later than 30 days to the election date. Section 23 of the Electoral Act 2002 provides:

Section 23. Any political party which wishes to change any of its candidates for any election under this Act may signify its intention in writing to the Commission not later than 30 days to the date of election

The above provision apparently left the issue of nomination of candidates for election to political offices entirely in the hands of the political party. Equally, the political party had unfettered power in exercising its discretion at will, to change any of its candidates for any election under the Act. The only conditions placed were: (a) that the Electoral Commission had to be informed of the change in writing and (b) that the proposed change must be done not later than 30 days to the date of election. Thus, no body had the power, including INEC and the courts, to inquire into whether there were reasons for the change and whether such reasons (if any) were acceptable reasons or not. Many candidates became victims of such unwieldy exercise of discretion by the political parties.

Section 34(1) of the Electoral Act 2006 now provides:

A political party intending to change any of its candidates for any election shall inform the Commission of such change in writing not later than 60 days to the election.

²² *Ugwu v. Ararume* (2007) 12 NWLR (Pt. 1048) 367 at 482. Also: *Onuoha v. Okafor* (1983) 2 SCNLR 244; *Dalhatu v. Turaki* (2003) 15 NWLR (Pt. 843) 310.

Subsection 2 goes on to provide:

Any application made pursuant to subsection (1) of this section shall give cogent and verifiable reasons.

Under the Electoral Act 2006 the circumstances and facts leading to either qualification or disqualification or substitution of any candidate for any election are clearly spelt out and candidate is supposed to meet the conditions for qualification to contest any election before being nominated by his party. For our present purpose, the main difference between Section 23 of the Electoral Act 2002 and Section 34 of the Electoral Act 2006 is that the phrase “cogent and verifiable reasons” in Section 34 of the 2006 Act is not contained in Section 23 of the 2002 Act. Also, the word “may” was used as operative in Section 23 of the 2002 Act while the word “shall” is used as operative in Section 34 of the 2006 Act. For other differences between the two statutes, see the case of *Ugwu v. Ararume*.²³

The use of the word “shall” has been held to be compulsory and mandatory rather than permissive and directory both in the Electoral Act 2002²⁴ and Electoral Act 2006.²⁵ This is buttressed by the reasoning that since it is the same lawmakers who changed from “may” in the 2002 statute to “shall” in the 2006 statute, clearly a change in meaning from directory to mandatory is intended. This means that it is mandatory that 60 days notice of any change be given to the Commission, and it is mandatory that “cogent and verifiable reasons” be given. It is certainly not the intention of the 2006 Act to gamble with an important aspect of the electoral process, such as primaries, in the hands of a political party to dictate the pace in anyway it likes, without any corresponding exercise of due process on the part of an aggrieved person. The intention of section 34(2) is to curb the arbitrariness of political parties in the act of substitution.

Thus the requirement of cogent and verifiable reasons.

When is a reason cogent and verifiable? “Cogent” means convincing, compelling, persuasive. It is a forcible presentation of facts which produces satisfaction and belief. “Verifiable” means that the facts can be checked and found to be true, accurate or real.

The expression “cogent and verifiable reasons” in Section 34(2) thus means “a reason self-demonstrating of its truth and which can be

²³ (2007) 12 NWLR (Pt. 1048) 367 at pp. 443, 508.

²⁴ *Emeka v. Emodi* (2004) 16 NWLR (Pt. 900) 433 at pp. 450, 454.

²⁵ *Ugwu v. Ararume*, (2007) 12 NWLR (Pt. 1048) 367 at pp. 443-444, 499-510.

checked and found to be true. The truth in the reason must be self-evident and without any suggestion of untruth.”²⁶ Where no cogent and verifiable reasons are given, then the Commission has no power to allow the substitution. Where the party fails to give any reasons or gives reasons which are not cogent and verifiable, an aggrieved party has the legal right to seek redress in a competent court of law by virtue of section 6 of the Constitution.²⁷

By thus codifying and stating exhaustively the whole of the law on the subject of change or substitution of a candidate who had earlier been nominated by the party, the Act has further enhanced the candidate's chances to remain in contention and his right to be voted for. The Act thereby promotes participatory democracy and credible electoral process. It is somehow curious that though a candidate must belong to and be sponsored by a political party before his right to be voted for would arise, yet if he is expelled from the party he is left without any legal remedy. This is because expulsion of a member of a political party is regarded as a disciplinary measure which remains truly intra-party. Such a member having subscribed to the party's constitution is bound by its provisions.²⁸

Party supremacy does not end there: even the votes cast in an election are not for the candidate but for the sponsoring political party. The inclusion of the name and photograph of the candidate is of no moment.²⁹ This has enabled a political party to use/sponsor a popular candidate to win the election and thereafter dump/substitute him for the party's preferred dark horse. This is part of what Section 34(2) (3) of the Electoral Act 2006 is meant to check. It may come as a surprise to many to be told that a public or civil servant can legitimately belong to a political party, as part of the constitutionally guaranteed freedom of association and assembly under Section 40 of the Constitution.³⁰

However, if he wants to stand election and be voted for, he has to resign, withdraw or retire from such employment thirty days before the date of election.³¹ Cases abound where candidates' elections have been voided for failure to resign from employment thirty days to the

²⁶ Tobi, JSC in *Ugwu v. Ararume*, *op.cit.*,

²⁷ *Ibid.*, at pp. 510-511, 520.

²⁸ *Amaechi v. INEC* (2007) 9 NWLR (Pt. 1040) 504 held 12.

²⁹ *Buhari v. INEC* (2008) 4 NWLR (Pt. 1078) 546 at 659-660.

³⁰ *INEC v. Musa* (2003) 3 NWLR (Pt. 806) 72 (S.C.). In this case the Supreme Court declared S.79(2)(c) of the Electoral Act 2001 and Guideline 5(b) of INEC Guidelines of 17th May 2001 invalid because they were inconsistent with S.40 of the Constitution.

³¹ S.66(1) (f) of the 1999 Constitution.

election. In such cases the votes cast for such candidates are wasted, because the candidate had no right to be voted for. The right to be voted for is also lost if the candidate has been indicted for embezzlement or fraud by a Judicial Commission of Inquiry or an Administrative Panel of Inquiry or a Tribunal set up under the Tribunals of Inquiry Act, a Tribunals of Inquiry Law or any other law by the Federal or State Government which indictment has been accepted by the Federal or State Government respectively.³²

The candidate must not only be proved to have been indicted, it must also be shown that the indictment was accepted by the Government, whether State or Federal. What is required to prove an allegation that a person was indicted for fraud and embezzlement by a panel of inquiry set up by the Government of a State is sufficient cogent and credible evidence but not a particular document. The may be the report of the inquiry or may be any other credible documentary evidence,³³ such as a White Paper.³⁴

For election into the offices of the President and State governor in particular, a candidate cannot be voted for (i.e. is ineligible) if has been elected to such office at any two previous elections.³⁵ This point fell for judicial interpretation in *Buhari v. Obasanjo*³⁶ where the Supreme Court held that the 1st respondent was first elected to the office of President only on one previous occasion in 1999, and that his appointment to the office of Head of the Federal Military Government of Nigeria in 1976 did not amount to election to the office of President of Nigeria. In the circumstance, he was qualified to contest and had a right to be voted for in the Presidential election in 2003.³⁷

1.5 Other cases of loss of right to vote and be voted for

Apart from the exceptions listed above, other conditions exist which lead to a loss of the right to vote or be voted for. These include being a lunatic or of unsound mind, being under a sentence of death or imprisonment or fine, being an ex-convict, and being a member of secret society. The question of being an ex-convict arose in the *Ibori Case* but the court held that the James Ibori who was earlier convicted was not shown to be one and the same person as the one

³² S. 66 (1)(h), *ibid.*

³³ *Alhaji Daggash v. Bulama & 6 ors* (2004) 14 NWLR (Pt. 892) 144, held 14.

³⁴ *Buhari v. INEC* (2008) 4 NWLR (Pt. 1078) 546 at 613.

³⁵ See Ss. 137(1)(b) and 182(1)(b) respectively of the 1999 Constitution.

³⁶ (2005) 13 NWLR (Pt. 941) 1 (SC)

³⁷ See also: *Ojukwu v. Obasanjo* (2004) 12 NWLR (Pt. 886) 169

who contested and won election for Governorship of Delta State. If a Nigerian citizen other than by birth voluntarily acquires the citizenship of another country he loses a right to be voted into the Nigerian legislative houses.³⁸

1.6 Exercise of the right to participate in an election

So far, it has been demonstrated that Nigerian citizens have the right to vote and, to a large extent, be voted for in periodic elections. The volume of cases on virtually every constitutional issue suggests that the participatory rights are actually exercised in practice. To what extent has the practice been facilitated or frustrated?

To start with, there has been widespread discontent, as published in both print and electronic media, about the “consensus” system which has become the vogue in political party nomination/ sponsorship of candidates. Some may say that there is not much that can be done despite the hue and cry by losers; that actually it is only those who lose out that complain; that it is an entirely intra-party affair over which the court has no jurisdiction. More is said on this below.³⁹

For now, mention may be made of another aspect of the complaint: where a person who had actually been nominated by the party is subsequently excluded because things have fallen apart between him and the party or the party has found a new bride. This point was appreciated by Fabiyi, JCA in *Buhari v. INEC*⁴⁰ when he said:

It appears that from the date of nomination until 16th of April, 2007 the 4th respondent attempted to exclude the 1st petitioner from participating in the election. Certainly, some *hurdles* were placed on his way which ordinarily should not be so.⁴¹

The complaint about exclusion in this case was made against INEC, but quite often it is made against the political party. It is our view that exclusion of candidate from the electoral process is a derogation from the citizens’ right to vote and be voted for. Civil ignorance is rampant. Not a few public and civil servant are ignorant of their right or freedom to belong to a political party of their choice and become active players instead of lookers-on in politics. It is reasoned that if

³⁸ S. 66 (1)(a), 107(1)(a). In the case of offices of President and Governor those are already restricted to citizens by birth.

³⁹ Under *Intra-party democracy and limitation of party supremacy*, below.

⁴⁰ (2008) 4 NWLR (Pt. 1078) 546.

⁴¹ At p. 724.

this class of people join politics they will play politics with less desperation and without bitterness, since they have a job to fall back on. This appears to be the view of even the Supreme Court, as expressed by Pats-Acholonu JSC, when he said in the case of *Buhari v. Obasanjo*:⁴²

Politics in Nigeria should not be a do or die affair. Anyone without a profession except politics must have nothing to do with politics in whatever form. Above all, let budding politicians leave jobless people who now turn into thugs as supporters alone, so that more harm will not be done to electoral processes.⁴³

This leads to the issue of thuggery and violence as inhibiting the citizen's right to vote and be voted for. Quite a number of those in politics do not see it as the science and art of Government, nor as just a factional scheming for power. They see it as "a do or die affair." To them, even the most heinous act is seen as politically correct. To them, the end justifies the means and nothing must stand in the way of achieving that end. If participatory democracy and credible electoral process are to be promoted, politicians must abandon the "win-at-all-cost" mindset.

It is true that to politicians, winning remains the aim of the game. Unfortunately, in the process people are prepared to play favourites; they are prepared to ignore people; they are prepared to put down others, and argue about the most minor details, and do whatever it takes to win and be acknowledged as a winner. With this kind of mindset one can only expect violence, intimidation, murder, thuggery and electoral malpractices. Electoral officers and security agents are not left out, as they are routinely accused of taking sides and exacerbating crisis and voters' disenfranchisement. This angle was particularly appalling to the Supreme Court when it said:

That in this day and age in this country that has been independent for 45 years we can still witness horrendous acts by security officers who ought to dutifully ensure peace and tranquility in the election process suddenly turning themselves into agents of

⁴² (2005) 13 NWLR (Pt. 941) 1 (SC).

⁴³ At page 301. On the hurdles in proving thuggery and election malpractice, see: *Nnachi v. Ibom* (2004) 16 NWLR (Pt. 900) 614 at 635.

destruction, and introduced mayhem to what ordinarily would have been a civilized way of exercising franchise by the people who are sovereign, is regrettable.⁴⁴

As if looking for the cause of the problem, the court added:

I ascribe the nefarious activities of thugs and the few security officers and party men to lack of understanding of the philosophy and ethics behind election in a democratic state and lack of understanding of the dynamics of election processes.⁴⁵

1.7 Credible electoral process

Election is the starting point to develop democracy and to implement the political, economic and social agenda of Government. In a democracy, election is to determine the wishes of the people as to who should represent them in the legislative and executive set up.⁴⁶ This accords with Article 21 of the Universal Declaration of Human Rights which states:

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

At the individual level, election also pushes new faces in the political life of the people. As a country infamous for a culture of violence and rigging, not a few politicians see election as a time to get a gun. That is why for us in Nigeria, the whole idea about credible electoral process is about guaranteeing a free, fair and violence-free election. Election therefore is not an event but a process, i.e. a process of choosing by popular votes, a candidate for a political office in a democratic system of Government.⁴⁷ Election is among the most important pillars of democracy.

⁴⁴ *Ibid.*, at page 300.

⁴⁵ *Ibid.*

⁴⁶ *All Progressive Grand Alliance v. Ohakim & 2ors* (2009) 4 NWLR (Pt. 1130) 116. See also: *Idris v. All Nigeria Peoples Party (ANPP) & Ors* (2008) 8 NWLR (Pt. 1088) 1, held no. 11.

⁴⁷ *Idris v. All Nigeria Peoples Party (ANPP)* (2008) 8 NWLR (Pt. 1088) 1, held 11; *Ojukwu v. Yar'adua* (2009) 12 NWLR (Pt.1154) 50, held 29.

For emphasis, election is not restricted to what happens on the day of the polls. It entails the process constituting accreditation, voting, collation, recording on all Independent National Electoral Commission (INEC) forms and declaration of results.⁴⁸ It may be said that election is both the cause and the result of electoral reforms: Reforms are geared at bettering flawed elections, and flawed elections trigger off reforms. A credible electoral has much to commend itself.

1.8 Advantages of a credible electoral process

A credible electoral process is one which is free and fair. The advantages of free and fair elections are sundry. First, free periodic elections create regular avenues for political competition by aspirants and also create opportunity for voters to evaluate and change leaders. This is a cornerstone of democracy and distinguishes democracy from other forms of government. Routine elections involve regular cycle of campaigns, voting, and turnover of government by ballots rather than bullets, thus giving affirmation of democracy as “the peoples government, made for the people, made by the people, and answerable to the people”⁴⁹ or, as more popularly defined, “...Government of the people, by the people, for the people.”⁵⁰

Competitive elections also offer the citizens⁵¹ with political choice; they offer the citizens political alternatives and allow them to make decisions that express their preferences: they are enabled to weigh the parties, ideas, and candidates, and select among them. Where legitimacy of a Government would have been in doubt because of flawed elections, a credible electoral process provides the essential validation for democracy. Seeing that their votes count, the citizens have an increased confidence that they have a stake in politics and the ability to participate directly or indirectly in national life or at the state or local government level, as the case may be.

Where election is free and fair, even the “loser” in a contentious election may come away with a basic regard for democracy if he feels that the contest was fairly fought and won. It is only in that case that he will resign as a good sportsman. If, on the other hand, he feels that

⁴⁸ *Ibid.* See also: *Ojukwu v. Obasanjo* (2004) 12 NWLR. (Pt. 886) 169; *PPA v. Saraki* (2007) NWLR (Pt. 1064) 453.

⁴⁹ Daniel Webster, 1782-1852, Franklin Pierce Adams, *FPA Book of Quotations*, 1952.

⁵⁰ Abraham Lincoln, Gettysburg Address, November 19, 1863.

⁵¹ The right to vote is restricted to citizens of Nigeria. See Sections 77(2) and 117(2) of the 1999 Constitution, which both start with “Every citizen of Nigeria...”. Section 25 recognizes three categories of Nigerian citizens: by birth, by registration, and by naturalization.

the electoral process has been subverted against him, he will definitely not listen to the Supreme Court that "politics in Nigeria should not be a do or die affair."⁵²

Free and fair elections can compensate for disappointments in Government performance: it gives citizens the periodic opportunities to do away with bad, non-performing or corrupt leaders. This stabilizes the polity and strengthens democracy because, rather than resort to democratic alternatives, which are clearly undemocratic, the citizens bid their time, waiting for the next election to vent their anger through the ballot box.

Where election is not free and fair these advantages are reversed. Where there is political violence, rigging, closed political process, electoral fraud, poisoned political climate, antagonism and polarization, the citizens become politically apathetic. Where there are election irregularities it has led to installation of criminals, thugs, clueless hairdressers, erstwhile cattle rearers, untrained and unqualified people into office and the circus continues but with different clowns.

That is why you have some honourable national and state assembly men and women who have never sponsored, and can never sponsor any bill even if they remain there for donkey years. We have heard of some honourable members who fight at the slightest provocation. Those, really, are honourable men. In sum, where the electoral process is subverted, so that election results are pre-ordained, the citizens lose confidence in their political influence because they perceive that their votes no longer count; they perceive that they no longer have their say, let alone their way.

Their apathy and cynicism may turn to frustration, which may aggravate to militancy. The only way to close the stable before the horse bolts is to take another look at the rules of the game by way of electoral reform which will sanitize the electoral process. This indeed is an abridged background to Nigeria's current attempt at electoral reform.

1.9 Enhancing credibility of the electoral process

To enhance the credibility of the electoral process, three areas may be identified for reform.

⁵² *Buhari v Obasanjo* (2005) 13 NWLR (Pt. 941) 1 at 301.

The first is legal – which involves the amendment of the constitution, the Electoral Act, or related subsidiary regulations and rules to enhance the integrity, relevance, and adequacy of the legal framework. This may include a reform or reorganization of the INEC.

The second is administrative, i.e., the introduction within INEC of new strategies, structures, policies, procedures, and technical innovations that will enable it to implement its legal responsibilities and deliver its services more efficiently and effectively.

These could include: policies and practices on issues such as procurement, financial integrity, and appointment, introduction of new technology for services such as voting, voter registration or electoral logistics.

The third is political, and includes giving more autonomy or independence to INEC or creating a more effective and transparent framework for its funding and accountability. The areas will now be considered in more detail, not necessarily in the tripartite categorization or in any particular order.

1.10 Intra-party democracy and limitation of party supremacy

Political parties are a creation of section 221 of the 1999 Constitution, which by its section 222 imposes the duty on parties to file copies of their constitution with INEC. The primary method of contest for elective offices is said to be between the political parties.⁵³ By Section 221 of the Constitution, it is only a party that canvasses for votes, and therefore it is a party that wins an election.

A good or bad candidate may enhance or diminish the prospect of his party in winning but at the end of the day, it is the party that wins or loses an election.⁵⁴ This is so notwithstanding the inclusion of the name and photograph of the candidate on the ballot paper.⁵⁵ This may be regarded as an aspect of party supremacy. But this has enabled political parties to use/sponsor popular candidates so as to win an election and thereafter dump/substitute them for the parties' preferred dark horse. Cases abound where candidates who never contested a primary for particular offices suddenly emerge as the party candidate.

⁵³ *Amaechi v. INEC & 2ors* (2008) 5 NWLR (Pt. 1080) 227 held no. 12 (S.C.).

⁵⁴ *Ibid.*

⁵⁵ *Buhari v. INEC* (2008) 4 NWLR (Pt. 1078) 546 at 659-660.

It is true that Section 34 of the Electoral Act, 2006, has tried to prevent this by requiring cogent and verifiable reasons not later than 60 days to the election⁵⁶, but it still happens anyway. The solution to this problem lies in a provision for independent candidacy. This will require an amendment of the Constitution because, as it is now, Section 221 of the 1999 Constitution effectually removes the possibility of independent candidacy in our elections, and places emphasis and responsibility on political parties. Without a political party a candidate cannot contest. It is however a known fact that some people are averse to party politics, or may be frustrated by the party, and therefore cannot contest on party platform. Thomas Jefferson is credited to have said, "If I could not go to heaven but with a party, I would not go there at all".⁵⁷

A provision for independent candidacy is therefore strongly advocated. It will be recalled that during the first republic, there was indeed a provision for independent candidates. In this way, the choices before the politicians and indeed the electorate were not confined to the portals of the existing parties. Our democracy will become more robust, more enriched, when there are wider options. Serious thought should be given to independent candidacy with a view to restoring it. This is one big way to ensure that victorious and clearly popular candidates are not short-changed in the name of intra-party democracy and party supremacy.

Still on political parties, there is the emergent challenge posed by what is popularly referred to as "consensus" in the parties' choice of a candidate to sponsor. You no longer have "elected candidates," rather, you have "consensus candidates". The Electoral Act, 2006, has gone a long way to enthrone intra-party democracy by not leaving any room for a candidate who never contested a primary election to emerge as a party candidate. In this case, "primary election" simply refers to an exercise of choosing, through popular votes by party members, the candidate of a political party to field to contest an election on its ticket.⁵⁸

⁵⁶ See also: *Udeh v Okoli* (2009) 7 NWLR (Pt 1141) 571, held 1, 2. Here the court held that "insufficient reason" is no reason whatsoever, because it was not cogent. In the event of death of the candidate, substitution or replacement may be made without a need for cogent reason: *ANPP v Usman* (2008) 12 NWLR (Pt 1100) 1 at 56 – 57. This is probably because in such case the fact of death is itself sufficiently cogent and verifiable.

⁵⁷ Thomas Jefferson, Letter to Francis Hopkinson, March 13, 1789, in David Shrager and Elizabeth Frost, *The Quotable Lawyer*, New England Publishing Associates, Inc. 1986 at page 242.

⁵⁸ *Idris v All Nigeria Peoples Party (ANPP) & Ors* (2008) 8 NWLR (Pt. 1088) 1, held no. 13.

The requirement of party primary election is to ensure that our democracy is truly reflective of the people's choice even at the party level. Under Section 85 of the Electoral Act, 2006, it is mandatory that political parties inform INEC of the date and time of holding a convention or congress summoned for the purpose of nominating candidates for any of the elective offices. What has emerged recently is the practice where, instead of primary elections, few "party elders" or "stakeholders" reach a "consensus" on who is the party's sponsored candidate.

This practice is wrong and unlawful in many respects. It is a flagrant violation of the Electoral Act 2006. Also, apart from thwarting intra-party democracy, it promotes internal disharmony, factionalism and encourages political "god-fatherism", with its many attendant problems. There can be no arguing that just as lack of transparency in party nomination process hinders the emergence of credible candidates, the role of "money-bags" and "god-fathers" impacts negatively on the development and functioning of political parties, and ultimately on democracy. Godfatherism leads to "jujufication" of democracy – where aspirants to democratic (or political) offices swear to juju or take traditional oath of total submission, allegiance and obedience to their godfathers before they can win election or get political appointment. Voodoo oath scandals have rocked some States in Nigeria in recent times.

In *Orji & Anor v. Peoples Democratic Party (PDP) & Ors*⁵⁹ where Orji, the declared winner in a gubernatorial election, was alleged to belong to, and to have sworn an oath at Okija shrine, the court held that oath-taking before Okija Shrine is a valid process under customary law arbitration.⁶⁰ Oath-taking as a condition for political office is clearly undemocratic and should be discontinued.

Akin to consensus is the practice of sole candidacy and issuance of automatic tickets to candidates as a means to by-pass party primaries. This practice thwarts the party's internal democracy by denying a level playing ground to all contestants. A candidate should seek a (second) term in office only if he or she has truly acquitted himself or herself creditably in the first term or in public assessment. And if

⁵⁹ (2009) 14 NWLR (Pt.1161) 310

⁶⁰ *Ibid.*, held no. 15. The court held that it was not proved in evidence that the shrine was a "secret society". It held further that unlike a secret society, "a shrine means a tomb of a saint or other holy person, a place hallowed by its association with a sacred object or person, a niche, alcove or shelf for a religious image": held no. 13.

he/she has done so well, why then would he/she be afraid of competition rather than be rest assured that his or her good works will see him or her through? In this regard, the advice of the Political Adviser to the PDP National Chairman should be taken seriously.

In his words:

If you think you are a miracle President, governor, Council Chairman, Federal or State legislator or Councilor in your first term, rather than go around hustling for automatic nomination, go and prove your claim to good performance by winning a credible party primary.⁶¹

As to sole candidacy, a footnote may be added that nothing may be wrong with it if really there are not other candidates. What happens in practice is the the incumbent (mis)uses a lot of Government funds to cow, threaten and even eliminate and silent all opponents.

1.11 Restructuring and True Independence of INEC

The INEC, as an Election Management Body (EMB) should be truly independent in three respects: in appointment of members, in funding, and in functioning. INEC must not only be independent but must be clearly and manifestly seen to be so. The present constitutional modalities for the appointment of the INEC chairman and members should be reviewed so that INEC is not made captive of the executive arm of government. Both the National Assembly and other stakeholders should be involved in the appointment.

The Justice Muhammed Uwais Electoral Reform Report had recommended the vesting of the appointment of the chairman and members of INEC in a neutral body other than the presidency, whose incumbent is likely to be a contestant in the election and therefore an interested party. This will avoid a situation where the chairman and members are as well prominent or putative (or even notional) members of or have vested interest in the ruling party, and therefore cannot be fair or independent. The argument of the presidency appears to be that in a democracy where there is complete separation of power, the power of appointment normally resides in the executive, not in the judiciary, in this case the National Judicial Council.

⁶¹ *The Guardian*, Monday, May 25, 2009, at p. 67

Our view is that a middle ground can be found by getting both the National Assembly and other stakeholders involved. The same applies to State INECs *mutatis mutandis*. In other words, as it is done in South Africa and other countries, the electoral commission should owe its existence and composition to the National Assembly and the various civil society organizations which abound. As to the South African practice, this was re-stated last year at a forum on Public Interest and Development Law Issues (SPIDEI), a Section of the Nigerian Bar Association, in Abuja. There, speaking on “Electoral and Constitutional Reform for Democracy Building and Development”, Pansy Tlakula, the Chairman/Chief Executive Officer of South African Electoral Commission said:

The Electoral Commission of South Africa (Commission) ...consists of five members one of who is a judge. To engender public confidence in the commission, the appointment procedure of members of the commission is transparent. Moreover, the constitution recommends the involvement of civil society in the recommendation process of members of the commission.

The appointment procedure for the members of the Electoral Commission also ensures their impartiality ...The names of candidates are solicited from the general public and the selection process is managed by an open and representative panel consisting of the Chief Justice of the Constitutional Court, who chairs the panel, representatives of the Commission on Gender Equality, the South African Human Rights Commission and the Public Protector. The Panel calls for public nominations, compiles a short list and conducts public interviews of the short-listed candidates, and thereafter makes its recommendations to a committee of the National Assembly. This committee will in turn make recommendations to the National Assembly, which must approve the recommended candidates by a resolution adopted with the supporting vote of a majority of members...The formal appointment is then made by the President of the country. A member of the commission can only be removed

from office by the President if the National Assembly has adopted a resolution calling for that member's removal.

While it cannot be argued that we cannot swallow the South African model hook, line and sinker, it can also not be argued that we can learn very useful and instructive lessons from it. We need not reinvent the wheel, but can study and adopt best practices on election management around the world.

As regards funding, it still remains an aphorism that he who pays the piper dictates the tune. As long as INEC has to go cap in hand to the Executive arm of Government for money, so long will it remain a mere captive of the Executive arm. The answer lies in putting the funds of the Commission in a consolidated account, so that the commission is insulated from what the Swan of Avon described as the "innumerable slings and arrows of outrageous fortune that flesh in heir to." With these two reforms, the Commission would have a real rather than virtual independence, which will in turn enable the Commission function in the way that promotes the conduct of free and fair elections in the country.

1.12 Curtailment of election rigging and electoral offences

Election rigging has been occurring in this country, but if one is to go by the number of recent judicial reversals of election results, it may be said that the level of rigging in the 2007 elections defies characterization. Some would argue, however, that the losing party lost not because he or she has not rigged but because he or she has been out-rigged in what has become competitive rigging. However, beyond the candidates and the political parties, the democratic problem in such case is that the "winner" has rigged so much that he/she overwhelms the wishes of the people, torpedoing them completely. Democracy suffers for it.

We have classed electoral offences together with rigging because in most cases electoral offences lead to rigging, ie, illegal interference in the counting of votes or in the electoral process. For example, "treating" (giving money to influence voting) and bribery induce rigging. So do "hijacking" of ballot boxes and voting materials, thuggery, alteration/mutilation/falsification of results,⁶² over-voting, intimidation and other electoral malpractices. Even abduction, murder

⁶² *Haruna v. Modibbo* (2004) 16 NWLR (Pt. 900) 484 held 2

and assassination are carried out with the object of influencing election result. Electoral violence in Nigeria has been judicially noticed. In *Buhari v. Obasanjo*⁶³ the Supreme Court likened electoral violence and bloodshed in Nigeria to the “new Gorgon” which Macduff the Thane of Cawdar described when he saw the bloodied murdered King Duncan in William Shakespeare’s *Macbeth*.⁶⁴ The court decried the “nation-wide spread of violence, intimidation and other acts of terrorization as well as other barefaced acts that literally chill the bones.”

While rigging is accentuated by the desire by politicians to win at all cost, electoral offences derive from the thinking that the end justifies the means. This has aggravated the unwillingness of politicians to play by the rules of the game, and has reduced electoral victory to a matter of who rigs more. This has resulted in competitive rigging. Electoral Offences as provided for in Part VIII of the Electoral Act 2006 are an admixture of both rigging and offences, and they carry the penalty of fine or imprisonment or both. We recommend that additionally, anybody found liable should be disqualified for life from contesting for any elective office.

1.13 Police and other Security Agents

The involvement of the police and other security agents also has a bearing on election rigging and electoral offences. Security agents are normally drafted in to maintain law and order, and to ensure free and fair election. Rather than remain impartial security men, security agents have been known to take sides and exacerbate crisis and voters disenfranchisement. As a deeply troubled Supreme Court noted:⁶⁵

That in this day and age in this country that has been independent for 45 years we can still witness horrendous acts by security officers who ought to dutifully ensure peace and tranquility in the election process suddenly turning themselves into agents of destruction, and introduced mayhem to what ordinarily would have been a civilized way of exercising franchise by the people who are sovereign, is regrettable.

⁶³ (2005) 13 NWLR (Pt. 941) 1 (SC)

⁶⁴ Macduff had screamed “O horror, horror, horror! Tongue nor heart cannot conceive nor name thee! Confusion hath made his masterpiece; ... Approach the Chamber and destroy your sight with a new Gorgon ...” See: *Macbeth*, Act 11 Scene 1, at page 929 column 2, in *The Complete Works of William Shakespeare*, 18th impression, 1978, The Hamlyn Publishing Group Ltd., London.

⁶⁵ *Ibid.*, at page 300

The Supreme Court deprecated the “nefarious activities of thugs and ...security officers and party men”. Police action may be attributable to lack of understanding of the philosophy and ethics behind election in a democratic state and lack of understanding of the dynamics of election processes. Security agents should be properly tutored that in the exercise of their duty to maintain law and order in election areas, their allegiance is to the Constitution. Security men should have a series of workshops to learn to practice what Police in developed nations do. Policemen who engage in rigging or electoral offences deserve higher punishment in view of their position, duty and public expectation.

1.14 Pendency of election petitions

Right now there is no time limit as to how long election petitions should last. The Electoral Act 2006, by Section 141, stipulates 30 days within which to present an election petition. So the petitioner only knows the beginning and not the end! The 30 days is from the date the result of the election is declared. The 30 days is inclusive of both dates, and time begins to run from the day the result of the election was declared.⁶⁶ To ensure a quick determination of petitions, Section 148 of the Electoral Act 2006 provides for accelerated hearing.

It is commendable that the Election Tribunal and Court Practice Directions of April 2007⁶⁷ introduced what is known in the United States of America and the continental Europe (civil law jurisdictions) as Front Loading System. Paragraph 1 of the Election Tribunal and Court Practice Directions, 2007, makes it mandatory that all petitions “shall” be accompanied by:

- (a) Statements indicating the number of witnesses the petitioner intends to call in proof of the petition,
- (b) Written statements on oath of the witnesses whose identity may be represented by an alphabet or a combination thereof; and
- (c) Copies of list of every document to be relied on at the hearing.

A petition which fails to comply with the above shall not be accepted for filing by the secretary. In *Nkeiruka v Joseph*⁶⁸ the Court of Appeal held that the “shall” in paragraph 1(1)(b) of the Practice Directions is

⁶⁶ *Action Congress v. Jang* (2009) 4 NWLR (Pt 1132) 475, held 4 and 5.

⁶⁷ Made pursuant to section 285(3) of the 1999 Constitution of Nigeria.

⁶⁸ (2009) 5 NWLR (Pt 1135) 505

a command.⁶⁹ However, the same Court of Appeal held in *Chime v Onyia*,⁷⁰ that the “shall” in paragraph 2 does not similarly require a respondent to “front load” copies of the documents he intends to rely on. It is hereby submitted that such approach defeats the intention of the Practice Direction.

The general intention of the draftsman in paragraph 1 of the Practice Directions is to encourage and enforce “front-loading” as a principle of our modern civil procedure system so that a defendant would have full knowledge and adequate notice of the case of the plaintiff.⁷¹ By this evolving procedure of front-loading, all documents and witnesses’ depositions are filed and pre-trial hearing is held at which a number of issues are sorted out before the case comes up, merely for adoption of the depositions and possible cross examination. Written addresses are then filed, again to save time which would be lost in oral submissions by counsel. The procedure has been held to ensure elimination of unjustifiable delay and expenses.⁷² It also engenders a just, fair and speedy disposal of cases.⁷³

This procedure should therefore be maintained. It is however not clear why, even with this procedure, election petitions take donkey years to be determined in Nigerian courts. Is it the notorious “Nigerian factor”? We recommend that the Act should go further to stipulate how long a petition should last. Three months from the first hearing date may not be too short. A leaf may be borrowed from foreign jurisdictions, particularly the United States of America, in terms of speed of disposal of election petitions. The United States of America has 50 States.

Yet, all elections are concluded and election petitions determined before winners are sworn into office. In the *Bush/Al-Gore case* over manual recounting in Florida, the matter went to the US Supreme Court three times within 33 days and was resolved in favour of George W. Bush before the swearing-in date, and before George Bush assumed office as President. In fact, even in Nigeria, before 1999 all election petitions against a candidate used to be concluded before the candidate declared as winner by the electoral body could be sworn in. It would be recalled that President Shehu Shagari’s

⁶⁹ At page 254.

⁷⁰ (2009) 2 NWLR (Pt 1124) 1 at 51.

⁷¹ *Nkeiruka v Joseph* (2009) 5 NWLR (Pt 1135) 505, held1, 3.

⁷² *Saidu v Abubakar* (2008) 12 NWLR (Pt 1100) 201 held no. 7.

⁷³ *Ibid.*

sweating-in ceremony in 1999 took place only after the Court had decided the $12\frac{2}{3}$ question in his favour.⁷⁴

Right now the duration of election petitions is open-ended in Nigeria, with the consequence that quite often, the presumed winner would have spent two-thirds or more of the term before the deemed loser wins at the tribunal. Such judicial victory can only be pyrrhic, and makes nonsense of the democratic process. An early line should be drawn between authentic winners and losers. *Obi v. Ngige* is a typical case in point. As the Supreme Court warned in *Buhari v. Obasanjo*,⁷⁵ with the way our present law is couched, the incumbent would have long finished and left his office and even if the petitioner finally wins, it will be an empty victory bereft of any substance. We have to reform our Electoral Act to make trials very short, setting an upper time limit, otherwise we risk having the present scenario coming up all the time. This would of course necessitate an amendment of the Constitution.

1.15 Number of Political Parties

The argument against proliferation of political parties is that they may degenerate into tribal or ethnic groupings, whereas if the parties are few (say, two or three) the national character will be reflected and preserved. Both arguments are correct. But against this must be balanced the freedom of association which is guaranteed by the constitution. The wheat and the chaff should be allowed to grow together, and at the end of the day, water will find its level. Interestingly, the 2006 Electoral Act does not limit the number of political parties that may be registered. Section 78 (1) provides clearly that “any political association which complies with the provisions of the Constitution and this Act for the purposes of registration shall be registered as a political party...” This all-inclusive stand should be maintained. This will also prevent the Electoral Commission refusing the registration of a party on some extraneous grounds.

1.16 Recommendations and conclusions

As to enhancing the credibility of the electoral process, the areas suggested for reform are not in anyway exhaustive. By way of summary, the areas touched on for reform are: Curtailment of party supremacy, provision for independent candidacy, a check on consensus candidacy, advocacy for independence of INEC as regards

⁷⁴ See: *Awolowo v. Shagari & Zors* (1979) All NLR 120

⁷⁵ *Ibid*, at p. 299, *per* Pats-Acholonu, JSC.

appointment, funding and functioning; more serious punishment for election rigging and electoral offences; enlightenment for security personnel who are to man election duties, and more punishment for breach.

A recommendation has also been made for putting a cap on duration of election petitions, and lastly, on number of political parties that should be allowed. Apart from all these areas of reform, a case should also be made for a permanent regime of voter education to educate Nigerians on their civic right and responsibility to vote and to guard their votes as well as the power that their votes carry in a democratic Nigeria. A more informed voter would be more vigilant in guarding his or her vote against ballot snatchers. With these reforms in place, our democracy would be the healthier and the people would be the happier.

With regard to participatory democracy, one may make bold to say that an important force in combating disenfranchisement and encouraging participatory democracy is the growth of organizations engaged in election monitoring. Already we normally have United Nations Teams, the European Union, African Union, and other foreign teams on hand to monitor our elections, but local and party monitors should also be involved in assisting government to hold free and fair elections by observing the process from the beginning (voter education, candidate campaigns, planning for the ballot) to the end of vote count. By declaring an election "free and fair" monitors can legitimize the outcome of that election and this would give the emerging leaders more credibility.

There is need to sensitize the police on their role and duties in the electoral process. There is grave danger in using ill-trained police officers for election security duties. It is scary to send policemen to election places when they have not been properly tutored that in the exercise of their duty to maintain law and order in election areas, their allegiance is to the constitution. There should be workshops for the police, so that they learn to practice what police in developed nations do.

Electoral officers who will take part in future elections should undergo massive civic education. INEC should invoke and utilize its powers in this regard under Section 162 of the Electoral Act 2006. In line with the foregoing, there is also the need for voter education. There must be State-wide, Nation-wide enlightenment programme

educating the masses as to their rights, as to how the citizens who are sovereign can exercise their franchise freely, unmolested and unperturbed.

To ensure proper exercise of the citizens voting right, there must be a de-emphasis on money. It is true that it is often said, "as expensive as an election", but that is in the sense of the cost of campaigns and electioneering, as it is happening in the United States of America right now. It is important to demonstrate to the citizenry what incalculable harm bribery and corruption has done in this country so that at election time they should learn to shun people who try to buy their votes.

When the recommendations are implemented, we would then be able to assert that the will of the citizens shall be the basis of the authority of government, which will be expressed in periodic and genuine elections where they fully and freely participate. It is only then can we have effective leaders.

There can be no doubt that it is only through a credible electoral process that an effective leader can emerge. Where election is free and transparent, the votes of the people count. The leader that emerges in such circumstance will not only believe in the inherent self worth of others but will also make sure that his actions are consistent with the wishes of the people he leads; he will be honest, keep his promises, and follow through on his commitments. This will result in trust and confidence of the people.

When we talk of effective leadership, we now have the commonly used term "political leader". This simply refers to an individual who is involved in influencing public decision-making. It *includes* people who hold decision-making positions in government, and people who seek those positions whether by means of election, coup d'etat, appointment electoral fraud, conquest, right of inheritance, divine right or other means. In fact it is common these days to have people regarded as political leaders who are not at all directly in government. However, all leaders need to be effective, and this may not be possible if the emerging process is not democratic and credible. Where the electoral process is not credible, where democracy is not sufficiently participatory, the leaders that emerge from skewed election will owe no allegiance to the people, and to that extent will not be effective.