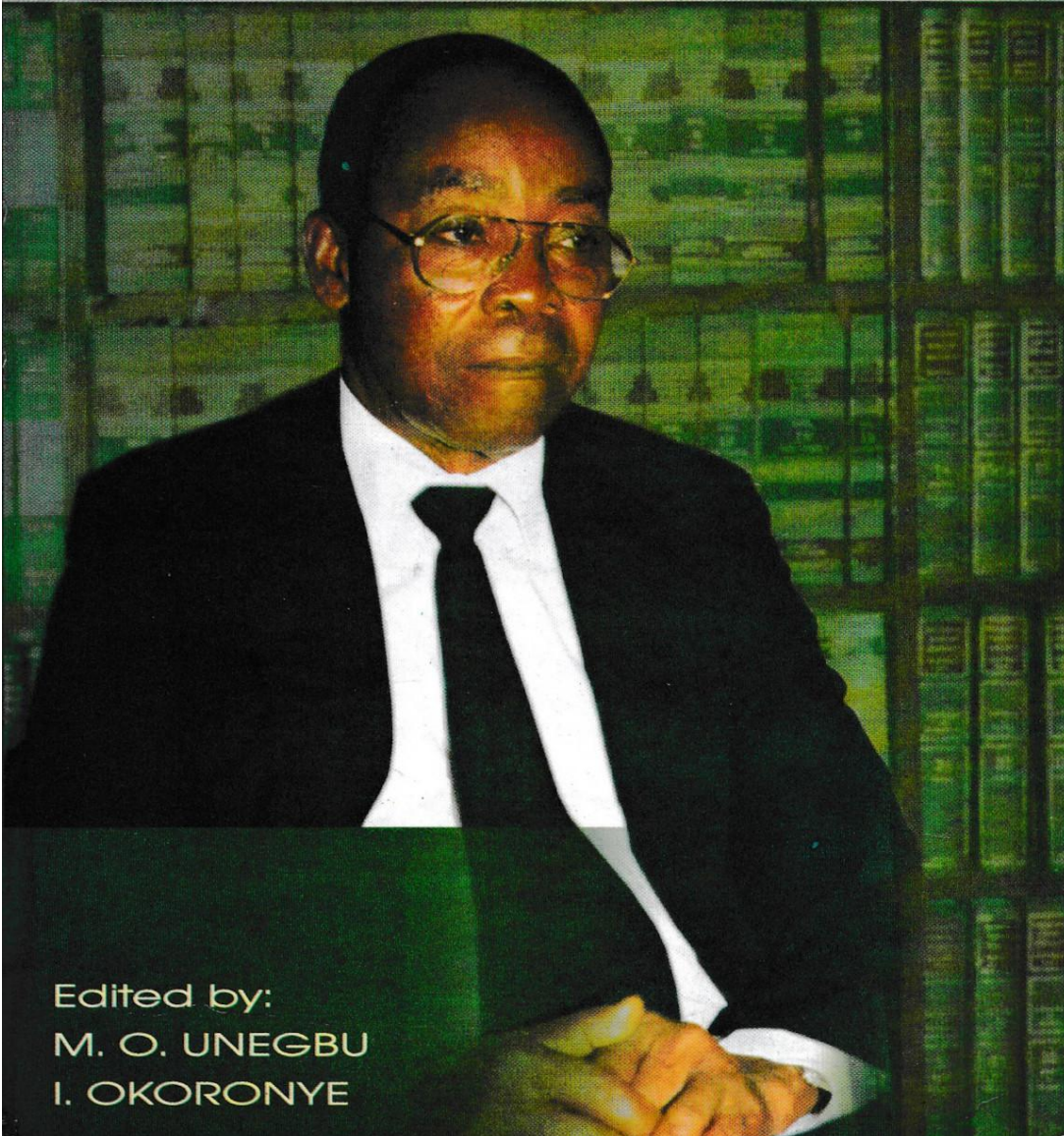


Legal Developments In The New World Order

Essays on International, Comparative
and Public Law in Honour of
Prof. U. O. Umozurike (OON)



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Chapter Five

LEGAL FRAMEWORK OF CITIZEN'S RIGHT TO VOTE AND BE VOTED FOR

BY

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The will of the people shall be the basis of the authority of government; this will 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 procedures.¹

Preamble

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.² It is a form of government which as far back as 1850, Daniel Webster eulogized as "the peoples government, made for the people, made by the people, and answerable to the people",³ and in 1863 Abraham Lincoln re-echoed it as "... government of the people, by the people, for the people".⁴ What makes democracy is the universal suffrage or franchise by the citizens. Universal suffrage⁵ here refers to where the right to vote is not restricted by gender, belief, tribe or social status.

1. The Universal Declaration of Human Rights, Article 21.
2. Abraham Lincoln, Messages to Congress, July 4, 1861, in David Shrager and Elizabeth Frost (eds.): *The Quotable Lawyer*, p.85.
3. Daniel Webster, 1782-1852, Franklin Pierce Adams, *FPA Book of Quotations*, 1952.
4. Abraham Lincoln, Gettysburg Address, November 19, 1863.
5. Other types of suffrage are: Women's suffrage, manhood suffrage, equal suffrage, census suffrage, and compulsory suffrage. See: <http://en.wikipedia.org/wiki/Right-to-vote>.

Voting is done by citizens as a way of participation in government. By voting, the citizens can critically influence government and governmental decision-making, because it enables them to express their preference for a candidate through periodic, free elections. It is for this reason that the citizen's right to vote and be voted for becomes very important.

Introduction:

Looking at the topic, it is obvious that the three catch phrases in the topic are: citizen, right to vote, and right to be voted for. I will start by taking the phrases severally, and later take them jointly.

To begin from the beginning, the first question is: Who is a Nigerian citizen? This is a purely constitutional question, to which chapter 3 of the 1999 Constitution provides the answer by way of explanation, rather than definition. The word "citizen" connotes membership in a political society to which a duty of permanent allegiance is implied. The Constitution recognizes three categories of Nigerian citizens: by birth, by registration, and by naturalization. By Section 25 of the Constitution, citizenship by birth further comprises three categories. This section provides that the following persons are citizens of Nigeria by birth:

- S. 25(1) (a) every person born in Nigeria before the date of independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria, PROVIDED that a person shall not become a citizen of Nigeria by virtue of this section if neither of his parents nor any of his grandparents was born in Nigeria;
- (b) every person born in Nigeria after the date of independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and
- (c) every person born outside Nigeria either of whose parents is a citizen of Nigeria.

The phrase "belong to" as used in Section 25(1)(a) is explained in section 318(1) of the 1999 Constitution to refer to a person either of whose parents was a member of a community

indigenous to a particular state in Nigeria. This has been judicially recognized in *Anzaku v. Governor of Nasarawa State*.⁶

Of the three categories, citizenship by birth is expectedly the strongest and most resilient. A Nigerian citizen by birth is allowed by the constitution to acquire the citizenship of another country while still retaining his own Nigerian citizenship. He can thus acquire dual citizenship. The overriding superiority of citizenship by birth is also more glaring when it comes to the qualification or fitness to be voted for the positions of President of Nigeria or Governor of a State.

This will be discussed under the Right to be voted for. The point of immediate interest, and which should be made right away, is that Nigerian citizenship is the primary legal basis on which one can vote or be voted for. As citizens of a democratic country, you are at the same time the rulers and the ruled, the law-givers and the law-abiding, the beginning and the end.

The *Right to Vote* is a constitutionally recognized right. It is commonly referred to as suffrage,⁷ which is the civil right to vote, or the exercise of that right. In that context, it is also called *political franchise* or simply the 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.

6. (2005) 5 NWLR (Pt. 919) 448, held 10, 11.

7. From the Latin *Suffragium*, meaning "voting tablet", and figuratively "right to vote".

Section 117(2) provides similarly for the voting age for State Assembly Elections. The same voting age applies for election of the President⁸ and the State Governor.⁹ 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 former French colony, naturalized 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.

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

8. See Section 132(5) of the Constitution.

9. See Section 178(5) of the Constitution.

- (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 candidate¹⁰ must not be below forty and thirty-five years of respectively.¹¹ 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.¹² 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 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.

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

11. See Section 131(b) and 177 respectively of the Constitution.

12. Sections 131(a) and 177(a), *ibid.*

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.*,¹³ 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 held¹⁴ 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."¹⁵ In other words, passing of School Certificate Examination or obtaining 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.¹⁶ This emphasis is important because instances abound where candidates have been challenged for non-acquisition of School Certificate or its equivalent. In fact even if one were to

13. (2005) 10 NWLR (Pt. 932) 151.

14. *Ibid.*, held No. 2.

15. *Ibid.*, at p.223 lines A-B.

16. *Alhaji Iman v. Sheriff & Ors.* (2005) 4 NWLR (Pt. 914) 80, at page 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.

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; or
- (b) education up to Secondary Certificate level; or
- (c) Primary Six School Leaving Certificate or its equivalent and -
 - (i) Service in the public private sector in the Federation in any capacity acceptable to the Independent National Electoral Commission for a minimum of ten years, and
 - (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, and
 - (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*,¹⁷ 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

17. (2005) 4 NWLR (Pt. 914) 80.

to Secondary School Certificate level and therefore was academically qualified to stand election into the office of Deputy Governor of Borno State.

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,¹⁸ which is why the Court of Appeal held that a candidate cannot nominate himself.¹⁹

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.²⁰ 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.²¹

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.²² The nomination and sponsorship of a candidate for

18. 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.

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

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

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

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

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 parties²³ 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 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 has 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.²⁴ 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:

S.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.

23. 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.

24. *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.

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 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.

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*.²⁵

25. (2007) 12 NWLR (Pt. 1048) 367 at pp.443, 508.

The use of the word "shall" has been held to be compulsory and mandatory rather than permissive and directory both in the Electoral Act 2002²⁶ and Electoral Act 2006.²⁷ 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 checked and found to be true. The truth in the reason must be self-evident and without any suggestion untruth".²⁸ 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.²⁹ By this 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

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

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

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

29. *Ibid.*, at pp. 510-511, 520.

party, the Act has further enhanced the candidate's chances to remain in contention and his right to be voted for.

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.³⁰ 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.³¹

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.

A public or civil servant can belong to a political party, as part of the constitutionally guaranteed freedom of association and assembly under Section 40 of the Constitution.³² 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.³³ Cases abound where candidates' elections have been voided for failure to resign from employment thirty days to the 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

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

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

32. *INEC v. Musa* (2003) 3 NWLR (Pt. 806) 72 (S.C.). In this case the Supreme Court declared Section 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 Section 40 of the Constitution.

33. Section 66(1)(f) of the 1999 Constitution.

or any other law by the Federal or State Government which indictment has been accepted by the Federal or State Government respectively.³⁴ 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. They may be the report of the inquiry or may be any other credible documentary evidence,³⁵ such as a White Paper.³⁶

For election into the offices of the President and State Governor in particular, a candidate cannot be voted for (i.e. is ineligible) if it has been elected to such office at any two previous elections.³⁷ This point fell for judicial interpretation in *Buhari v. Obasanjo*³⁸ 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 2003.³⁹

Other Cases:

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

34. Section 66(1)(h), *ibid.*

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

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

37. See Sections 137(1)(b) and 182(1)(b) respectively of the 1999 Constitution.

38. (2005) 13 NWLR (Pt. 941) 1 (SC).

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

court held that the James Ibori who was earlier convicted was not shown to be one and the same person as the one 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 house.⁴⁰

Exercising The Right:

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 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. There is not much that can be done despite the hue and cry by losers – actually it is only those who lose out that complain. It is an entirely an intra-party affair over which the court has no jurisdiction. But there is 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*⁴¹ 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.⁴²

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

41. (2008) 4 NWLR (Pt. 1078) 546.

42. At p. 724.

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 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, per Pats-Acholonu JSC, when he said in the case of *Buhari v. Obasanjo*.⁴³

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.⁴⁴

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, not 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. With this kind of mind set 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:

43. (2005) 13 NWLR (Pt. 941) 1 (SC).

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

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.⁴⁵

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

I ascribed 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.⁴⁶

Perhaps we should at this stage make some recommendations and draw conclusions.

Recommendations and Conclusion:

An important force in combating disenfranchisement 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.

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.

45. *Ibid*, at p.300.

46. *Ibid*.

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 statewide, 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 was the case in the recent presidential election in United States of America. 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 freely exercise their right to vote and be voted for. We hope this will be sooner than later.