Volume 22 Issue 17
Originally issued as F3

Global Journal of human-social science: F
Political Science
Volume 22 Issue 3 Version 1.0 Year 2022
Type: Double Blind Peer Reviewed International Research Journal
Publisher: Global Journals
Online ISSN: 2249-460X & Print ISSN: 0975-587X

Free & Fair Election & Representative Government in Nigeria: Some Legal Options

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GJHSS-F Classification: DDC Code: 341.482222 LCC Code: K3241



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Free & Fair Election & Representative Government in Nigeria: Some Legal Options

Michael Eyo

Abstract- The rights of individuals in any democratic society are guaranteed in constitution and the various International Conventions on Civil and Political Rights instrument including the right to vote and be voted for in an election. Free and fair election means that every adult citizen of 18 years and above has the right to be registered as a voter, right to vote and stand for election, right to become a member of any political party, right to express his opinion, move freely and the right to associate and assemble with others, and should not be deprived of these rights except under the prescription of the law or in the executionof the judgment of court of competent jurisdiction. This study proposed that in-spite of legal instruments, elections in most countries of the world are often marred by violence, imposition of candidates, impunity, violation of fundamental freedoms and other forms of illegalities perpetuated by political actors. This study seeks to examine these electoral malfeasances and proffer some legal options that promote free and fair election in Nigeria. The work adopts the Doctrinal Research Method which seeks to analyze the concept, free and fair election. Materials for this work were sourced from secondarysources. Findings from the work show that it is not because there are no laws to ensure free and fair and indeed reprimand perpetrators of election malpractices, but because most countries of the world have weak institutions and strong individuals who manipulate the electoral process in their favour with impunity particularly in countries often afflicted by endemic corruption. The work recommends that Nigeria should build strong institutions, adopt electronic voting system, criminalize election malpractices and corruption and ensure independence of the INEC and the judiciary, as panacea for free and fair elections in the country.

I. Introduction

Democracy, to large extent, is synonymous with representative government, usually instituted through free and fair elections as guaranteed by the electoral law, the constitution of the country concerned and the requirements of International Law. Election, therefore, is a democratic channel for political recruitment, an opportunity for popular participation of the people in the governance process which offers political parties ample opportunity to mobilize support to form the government for effective service delivery and improvement in the standard of living of the people.

Election may make or mar a democratic setting; make democracy, where there is a non-partisan and impartial body saddled with the responsibility to manage and conduct elections[1] based on universal human suffrage, where the citizens are free to vote and be voted for, where elections are held at regular intervals in accordance with electoral law and the constitution mar democracy if it is characterized by fraud, violence, suppression of fundamental rights and freedom, fear and intimidation, where political parties are formed along ethnic lines that where the electoral system does not reflect the geo-political environment and other forms of electoral malpractices which are illegal acts done with corrupt fraudulent or sinister intentions to influence election in favour of a candidate[2]. In other words, where the country is ethnically segmented and the major political parties derive their membership and supports mainly from the major ethnic groups in their regions where non-indigenes are discriminated against by being barred from voting thus excluding them from participation in the political process[3].

As succinctly put by Schedlers[4] elections malpractice which the author tag menu ofmanipulations range from vote buying and selling falsification of elections results, ballot box and ballot paper snatching, violence. Nay election that lacks credibility could certainly lead to voter's apathy and crisis of confidence in the declared process. Anti-democratic practices such as falsification of voters register, under- age voting, snatching of ballot boxes, denial of voting rights to qualified physically challenged persons and deliberate falsification of voters' figures to favour a particular candidate have greatly bastardized the democratic process. Consequently, political leaders who emerged from such flawed and jaundiced election conduct themselves as hirelings, seeking only self and interest of their god-fathers and cronies which further impoverish and subjugate the already poverty stricken and dejected voters and depleting the already depleted and ailing economy. Election malpractice is a process by which rules and regulations that governs the conduct of

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[1] Lain McLean and Astair McMillan *Concise Dictionary of Politics* (London: Oxford University Press, 2009) P.165.

[2] B.O. Nwabueze.

[3] E.E. Osaghae, *Crippled Giant: Nigeria Since Indepnece (Ibadan: John Archers Publishers Ltd, 2011). P.9.*

[4] A. Schedler A, Election without Democracy: the menu of manipulation, in Journal of Democracy Vol. 13 No. 12, 2002.

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elections are manipulated in favour of some persons to the detriment of others[5].

Given the latest scenario, can election marred by these flaws ever enthrone a truly representative government? What are those critical factors that make for free andfair election? And how can free and fair election be sustained in a democraticsetting? These and other questions are what this work seeks to provide answers to. This work adopted the Conceptual or Doctrinal theoretical framework which is based on concept or abstract ideas and seeks to analyze these ideas, words, concepts, doctrine with a view to developing new ideas or further establishing or re-interpreting existing ones[6].

The study adopted the Game theoretical framework as enunciated by John Von Neumann and John Nash and Oskar Morgentem[7]. This theory involves game which derives from the actions of two or more players (politicians, election managers and the voters) who adopt strategies to favour them. They derive benefits (payoffs) if their strategies succeed and assume authority to allocate resources in the political system using available information or guidelines such as electoral law, and the Constitution. Free and fair election obtains where the guidelines are not manipulated, there is an unbiased team of managers of the electoral process, the electorate are free to compete with one another and the results reflect the true positions in the field[8].

This study proposes that representative democracy is enthroned where there is free,fair, credible and competitive elections.

Consequently, materials for this paper were sourced from primary and secondary sources. Primary sources include the laws on the particular issue of research as well as decisions of superior courts of record on the same issue including but not limited to the constitution and cases. While secondary sources involve books, journals, seminar papers, workshops, reports of panel, newspaper and internet materials[9].

II. Conceptual Clarifications

a) Fair and Free Election

The legitimacy of any government in a democratic dispensation is predicated upon the general will of the people, usually expressed through the electoral process. In other words, the people, particularly, those of voting age, usually 18 years and above should be free to participate in the entire process ranging from belonging to any political party of their choice, should be card carrying voter, political party should be protected by law.

The Universal Declaration of Human Rights[10], has specifically provided for the right of all adult citizens[11], irrespective of sex, religion or ethnic background, to participate in governance of his country directly or indirectly by freely choosing their representatives, voting in election by secret ballot, the right to be voted for and express their candid opinions.

Free and fair election is that election that expresses the will and opinion of the people, an election in which the voting population (electorate) has the opportunity to freely choose their representatives without fear of intimidation in election conducted at interval and vote cast in secret and based on universal suffrage. These opportunities or rights are only protected in representative government that is responsive and accountable to those who elected it. For an election to be free and fair, the need for the provision of and guarantee of certain fundamental freedoms such as right of assembly, speech, expression, movement, association is unarguably inevitable. This has been ably captured by Diamond[12] (1995) that free and fair election should comply with three requirements viz; periodic competition among individual and groups, high and inclusive level of political participation in the process by the electorate and substantial degree of freedom as well as sustainedcompliance with electoral Rules or Acts.

The 1999 Constitution of the Federal Republic of Nigeria[13], provides that every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impact ideas and information without interference.

In the American political process, ten critical elements to free and fair election include but not limited to credible electoral administration; effective oversight of

[5] S.I. Ebirin The effect of Electoral Malpractices in Nigeria's Democratic Consolidation (1999-2003 in Journal of PublicPolicy and Administration Research, Vol. 4 No. 2.

[6] O. Ben Igwenyi, *Practical Text on Law Research Methodology* (Abakaliki: Omega print Media and Publishing Co 2016) p.7.

[7] J. Neuman, Vaud, et el ated in S.B. Vatma (ed) Modern Political Theory S.B Varma (ed) (New Delhi: Vikas Publishing House, 2009).

[8] Ibid.

[9] A. Schedler Elections without Democracy: The Menu of manipulation, in Journal of Democracy, Vol. 13. No. 12., 2002.

[10] United Nation Declaration of Human Rights Resolution 219A (III), 10 December, 1948.

[11] UN International Covenant and Civil Rights, Resolution 2200A (XXI) of 16 December, 1966.

[12] L.L. Diamond. Politics of Developing countries: Comparing experiences with Democracy (Boulder: Leynne Lienner, 1995).

[13] Section 39 of the 1999 Constitution of the Federal Republic of Nigeria.

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electoral process; informed and active citizenry; representative and competitive multi-party system; effective governance by elected officials and strong institutions, inclusion of women and disadvantaged groups[14]; effective transfer of powers through election at regular intervals; consensus and confidence buildingand sustainable local engagement.

This is aptly captured by the Inter American Commission on Human Rights, when it states that "to verify with respect to these rights, whether holding of periodic, genuine elections, with universal, equal and secret suffrage, takes place within the framework of the necessary constitutional guarantees so that the results represent the popular will, including the possibility that the voters could, if necessary, effectively take appeal of an electoral process that they consider fraudulent, defective and irregular or that ignores the right to access, under general conditions of equality, to the public function of their country[15].

In Nigeria, free and fair election further entails respect for human rights, Rule of Law, acceptance of results of credible election by political parties and individuals. For instance, in Constitutional Rights and Civil Liberties Organization v. Nigeria[16] The African Commission on Human and People's Right rejected the annulment of the 1993 Presidential Election in Nigeria in which M.K.O. Abiola[17] won by very wide margin as well as the ousting of the court jurisdiction to entertain the objection that arose there from.

Free and fair election, invariably, provides the pivot on which good governance, political stability, economic development and prosperity of the society revolve.

b) Representative Democracy

Democracy implies that the ultimate authority of any political system is vested or resides in the people. The people have the sovereign power which is expressed in the constitution and expressed through the elected officials. Bryce[18] sees democracy as the right of the people expressing their sovereign will through the votes or the rule by the majority who determine the aims and aspirations of the government and monitor and check the exercise of authority by elected officials. The most popular definition of democracy is that given by former Americanpresident Abraham Lincoln who sees it as the government of the people, by the people and for the people. Whatever perspective the definition may take, it is pertinent to note that democracy signifies constitutional or representative government in which every adult participate in the political process and decision making through elected officials periodically selected by the people to represent them at policy and decision making levels.

In most developing countries, representation is usually territorial in which the electorate in the political system are grouped into electoral constituencies. Each constituency elect representative who represent them in the legislative and executive arms of the government. Representative democracy is therefore the form of government in which the governing officials are elected or the representatives of the different electoral constituencies elected by the constituents to participate in the legislative and executive processes in their legislature and executive arms of government consult, express their views and demands and account to them at regular intervals.

The term government relies almost exclusively on the power of the electorate and treats their representative as their agents or messengers, who instead of using their own judgment, must only translate the judgment of their constituents into concrete policies and action.[19]

Put differently, the representatives take input demands/support from the constituents to the government and participate in processing those demands and support and get the results in the form of output (polies and decision) which they feed back to the constituents[20].

III. Electoral Malpractices

Scholars seeking to define and categorize practices that undermine electoral process have generally used one of two basic approaches termed inclusive and restrictive. They conceived inclusive (Fraud, Malpractice and Manipulation) to be as broad as possible, no matter the imprecision. Some writers in this category situate their definitions on normative findings; that electoral wrongdoing violates domestic norms or internationally accepted standard for free and fair elections.

Electoral malpractices which are either pre-election, election period and post-election period involve

[14] A. Azocar , V. Chile, Report No. 137/99 case 11,863, December 27, 1999.

[15] J. Courtney, "International Law in J. C. Courtney (ed) Registering Voters: Comparative Perspective" (Havard:The Centre for International Affairs, 1991) pp.1-2.

[16] See African Commission on Human and People's Right Report No. 10293 (1998) para. 47.

[17] M.K.O. Abiola, who was assumed to have won the 1993 presidential general election under what was seen as thefreest and fairest election in Nigeria.

[18] J. Bryce (1921) Modern Democracies New York: Oxford University Press.

[19] O.P. Guaba, (2007) An Introduction to Political Theory New Delhi: MacMillan Ltd, p.432.

[20] D. Easton. An Approach to the Analysis of Political Systems: World Politics, Cambridge University Press, 1957).

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"the manipulation of rules, the manipulation of voters and manipulation of voting[21]. Manipulation is either of rules, electoral law are distorted so as to favour a contestant in the elections for example when the rule "prevent certain political persons from contesting elections, or when large sectors of the adult population are excluded from voting", or manipulation of voters to distort voter's preferences and sway preferences for the favourite. The first one involves "illicit forms of tactics that are deceptive and that violate campaign finance laws orsevere bias media coverage of the election". The second form, consist of alteration of the manner of preferences are expressed at the polling station through vote buying or intimidation with the aim of increasing the vote of a specific political candidate. Voting manipulation or electoral maladministration, involves ballot – box stuffing, mis-reporting, "under-provision of voting facilities in opposition strongholds, lack of transparency in the organization of the election, bias in theway electoral dispute are adjudicated in the court.

Electoral malpractices are undoubtedly an impediment to the democratization process. This is especially true in countries that have scaled the hurdle of transitioning from authorization to democratic regimes. Having gone through the bitter experience of electoral corruption since 1999, there are a number of ways Nigeria has been affected or will be affected by the problems created by the conduct of elections devoid of transparency and these include: -

Electoral malpractices tend to accelerate the level of voter apathy in a population. People may refrain from voting in subsequent elections if previous or current polls are 'won' through rigging, false declaration of losers as winners, and bribing of electoral officials. In the 2011 general elections in Nigeria, the 26 April 2011 Gubernatorial/State Houses of Assembly polls had a very low voter turnout because of the real or perceived duplicity that had taken place in the 9 and 16 April National Assembly and Presidential elections respectively. The general feeling among Nigerian voters was that their votes were not going to count. Their fear was that whether they voted or failed to vote, 'winners' would emerge through 'politricks'[22]. This trend is dangerous for the maturity of Nigeria's democracy.

In a democratsing society, frequent recourse by politicians to fraud to win elections defeats the raison d'etre of elections as the basis for legitimizing the occupation of political office, and the exercise of political power and authority that accompanies it. Elected political office-holders who won election through rigging will, forinstance, be lethargic about accountability to the electorate. This results from the notion that they bought their way through with money, were not voted into office. This tendency illustrates why 'the much anticipated "democracy dividend", whether construed as improvements in governance, stability, or economic welfare, has not materialized' since 1999. There has therefore been concerted grumbling among Nigerian voicing their dissatisfaction with the performance of their elected public office – holders, as evident in the 9 January 2012 mass agitation to protest the hike in fuel prices by the administration led by President Jonathan.

The perception of political office as an investment by politicians with the hope to recoup once they win elections and enter office[23], heighten the tendency for larceny from the public treasury. It follows that democracy dividends can never be delivered to the electorate, because money meant for public projects is diverted into private pockets as rent, pre-bends and rewards to 'godfathers'.

Continous reliance on corrupt practices such as rigging, intimidation and violence to obtain victory in elections can ignite political protest. Such protests can either rapidly or slowly degenerate and metamorphose into full-fledged anarchy. This is what has heightened level of violence and terrorism that exacerbated insecurity in Nigeria.

Furthermore, where elections are fraught with malpractices, the value of political parties as vehicles for peaceful transfer of power is also defeated. This is always the case where there exists a strong ruling party whose control of the system weakens other opposition parties because of its political might. At a point, members of these opposition parties cross carpet to join the ruling party. This trend makes politicians evermore less principled in their political conduct because the obsession to acquire political power in order to amass illegal wealth outweighs all other considerations, including integrity and reputation of parties. It suffices to reiterate that electoral malpractices are antithetical to democratic ethics; they emasculate the very foundation on which democracy is established and diminish the prospects of moulding the framework for its workability for in all democratic regimes the principal officers of government should be chosen through competitive elections in which the bulk of the population can participate.

IV. Some Critical Legal Options in Free and Fair Election

The right to vote demonstrates that eligible voters have unfettered freedom to maketheir choice and vote for the candidate or political party so chosen without intimidation or fear; parties registered under the

[21] S. Birch. Electoral Corruption Institute of Democracy and Conflict Resolution (IDCR) briefing paper INP –Content/upload 5/9/20.

[22] R. Lustig Elections and Politricks: Nigeria's Style in New Statesman of 10th December, 2008.

[23] J. U. Illo "Political finance regulations in Nigeria: The Legal Framework in N. Obnorah (ed) Political Finance and Democracy in Nigeria: Prospects and Structure for Reforms, Centre for Law and Social Administration, Lagos.

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law have equal right to contest election and campaign for support in their electoral constituencies, hold rallies, meetings and debate; individuals of voting age can register and vote, the votes also count. Free and fair election means every adult person is free to choose his representatives, votes in election by secret ballot, has equal opportunity to be candidate and is entitled to his view on election matters.

Consequently, the critical issues or options in free and fair election involve the electoral system, electoral law, the presence of an impartial/independent electoral body, respect for fundamental rights and freedoms, the presence of multi-party system, the absence of electoral violence, the presence of women in politics and election litigations.

a) Electoral System

Free and fair election is achieved through proportional representative system in which seat are won based on the electoral strength of the party. Electoral constituency is determined by the equality of the voting power.

However, in creating constituency, the electoral body takes into account the presence of means of communication, the topography of the area and the population. This is to ensure that no segment of the population is disenfranchised or discriminated against either on the bases of race, sex, or religion. Effective representation in democratic setting is guaranteed where the state is delineated into electoral constituencies depending on electoral system inuse. For instance, Nigeria being a multi-party system, is divided into 109 senatorial districts for equal representation of the states, 360 House of Representatives constituencies based on population. The 36 states of the federation are also delineated into a number state constituencies according to the population, all geared towards the expression of the people's will and ensuring that the different segments of the country and states are not disenfranchised.

The US congress is made up of 100 senatorial districts, two senators per state chosen by popular votes for six years. The House of Representatives in the US is composed of 436 constituencies elected for two years according to population. This is in contrast to the senate that has equal representative[24].

In the Uk, the Upper House or House of Lords is appointive, restricted specifically to the Nobles and Peers based on hereditary. It consists of 900 members. The House of Commons or the Lower House has 635 constituencies elected at a irregular interval, that is without specific tenure. This is because a government that suffers a vote of no confidence in the parliament may be dissolved irrespective of the time it has been in power after being elected[25].

b) Electoral Law

Every person with the right to vote also has the right to stand for elective office hence, the need to put in place and maintain voters register with the names ofall eligible voters to prevent electoral abuse and fraud by individuals, special interest groups, political parties and government. This is widely accepted as an authoritative and legitimate means of ascertaining the voting population of the country. The voter's register is updated at regular intervals preferable, yearly to avoid manipulations. Beside the voter's register should be published to enable errors detected to be corrected.

In Nigeria the Independent National Electoral Commission (INEC) has the responsibility to maintain and update register of voters on continuous basis. The register contains the names of persons entitled to vote in Federal, State and Local Government or Area Council elections.

Furthermore, a person shall be qualified to be registered as voter if he is a citizen of Nigeria, has attained the age of 18 years, is an ordinary resident, works in, originates from the local government or area council or wards covered by the registration center, present himself to the registration officer of the commission for registration as a voter, and is not subject to any level of incapacity to vote under any law, rule or regulation in force in Nigeria.

Proper updating of voters' register yields confidence and ensures free and fair election, strives where electoral law promotes the right of the electorate to freely choose their representatives in election conducted on the basis of universal adult suffrage, secret balloting and at regular intervals. For instance, in Nigeria, the Governor, and the state Houses of Assembly are conducted every 4 years. In the United Kingdom, it is conducted every 5 years, in the U.S.A[26] every 2 years for the members of the congress and 4 years for the president.

Furthermore, Sections 47, 48, 49 of the 1999 Constitution of the Federal Republic of Nigeria[27] provides that there shall be a bicameral legislature (National Assembly) made up of the Senate and House Representatives, the Senate shall consist of 3 senators from each state and 1 from the Federal CapitalTerritory. The senate shall be made up of 109 members, while the House of Representatives shall be 360 members.

[24] A. A Appondoria, the Substance of politics (New Delhi: np, 1994) pp. 332-334.

[25] M. J. Eyo, Groundwork of political Science (Port Harcourt: Publishers, 2016), pp.

[26] G.S. Godwin- Gill, *"Free and Fair Elections (Geneva: Inter-Parliamentary Union, 2006)"*, P.114.

[27] Section 7, 48, 49 1999 Constitution of the FRN as amended.

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c) *The Right to vote*

Here, all adult citizens have the right to participate in governance through election, i.e the right to vote and be voted for guaranteed by the law, the right tojoin any political party of their choice, to hold opinion without interference, seek, receive and impart information and make their choice, right to move freely for campaign for election, campaign for a chosen political party or candidate; right to ventilate their views, rights to security of life and property, right of protection by the law and remedy for violation of their rights.

These rights should not be restricted except as provided by the law and necessary in the interest of national security, public order, protection of public health or consistent with state obligations under International law or in execution of judgment of the court. No party or candidate shall engage in violence, thuggery, they shall willingly accept the result of free and fair electionand respect the rights of others.

Every adult citizen from the age of 18 years has the right to vote in election, without fear, intimidation or discrimination on the basis of colour, sex, religion, or ethnic group. To achieve free and fair election, there should be impartial and non-discriminatory procedures for registration of voters. Granting of the right to vote instills confidence in the electorate. Some countries base such rights on a number of factors including but not limited to age, residency, tax and citizenship. In Nigeria the voting age is 18 years and above. In an attempt to widen franchise to include citizens in the diaspora, Nigeria is about to relax discrimination based residency.[28] The 1999 Constitution of the Federal Republic of Nigeria, provides that all adult Nigerians are eligible to vote, without emphasis on residency.

d) *Presence of an impartial/Independent Electoral Body*

There should be an independence body to regulate electoral process including the political parties which should always demonstrate the readiness to accept both the process and outcomes of the election. The presence of an independent judiciary is key to free and fair election. The electoral body should be made up of men of impeccable character and integrity and ever ready to be impartial in their actions. Nations have setup independent bodies to handle elections, the result of which determine whether the body is fair, neutral, independent and impartial, or has the tradition of integrity and charged with the function of organizing, preparing and conducting election. In Nigeria, section 153(f) of the 1999 Constitution as amended provides for the Establishment of Independent National Electoral Commission (INEC) a body corporate with perpetual succession which can sue[29] and be sued, charged with the responsibility of conducting elections, voters and civic education, promoting knowledge of sound democratic election, processing and conducting any referendum pursuant to the provision of the 1999 constitution or any law or Act of the National Assembly. Furthermore, section 1 of the Electoral Act, 2010 also spells out the Independent National Electoral Commission as a legitimate body to conduct and manage elections in Nigeria[30].

e) *Respect for Fundamental Rights and Freedoms*

It is the responsibility of the state to respect and guarantee the observance of human rights of individual citizens. Consequently, the government should ensure that freedom of movement, assembly, association and expression are respected particularly in the context of political rallies and meetings, parties andcandidates are free to communicate their views to the electorate and enjoy equality of access to state media, state and public media should avoid bias and remain non-partisan in their reportage.

State should ensure that political parties and candidates enjoy reasonable opportunities to present the electoral platforms, the principle of secret balloting is respected and voters are able to cast their ballot freely without fear orintimidation.

Again, the state should guarantee the safety of both political parties and individuals, guide against all forms of election fraud or other illegality, that the integrity of the process is guarantee, that counting of ballot is undertaken by trained personnel subject however to independent monitoring and impartial verification. There should be transparency and accountability of the process of election making use of party agents and independent election monitors or observers.

Free rallies, absence of violence and intimidation, free access to public media, availability of code of conduct in which the candidates agree to adhere to prescribed rules to forestall violence and acrimony and communicate with each other, monitoring of election results, secret balloting and avoidance of double voting should not be encouraged to ensure free and fair election.

Besides fundamental rights and freedoms, rule of law is an important ingredientfor improvement of free and fair elections. The rule of law here means the supremacy of the law i.e the observance and supremacy of civil law; the equality before the law i.e equality of citizens before the law and not favoritism; all actions/policies must be according to the law, respect for human right and the institutionalization of constitutional and democratic governance

In Amakiri v. Iwowri[31] in the words of Allagoa, Ag. C.J. of rivers state, the rule of law in practical terms

[28] Section 25 1999 Constitution of the FRN as amended.
[29] Section 153 (f) of the 1999 Constitution of the FRN as amended.
[30] Section 1 Electoral Act LFN 2010.
[31] (1974) IRSLR 5.

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means no person, however highly placed, is beyond the law and it implies due consideration for other and a true fear of God. The courts are watchdogs of these rights and the sanctuary of the oppressed and will spare no pains in tracking down the arbitrary use of power where such cases are brought before the court… the fruits reaped by respect for the Rule of Law is stability, and efficient. Persons in authority and government functionaries should by their good example command and not demand respect.

Furthermore, in Pats-Acholonu JCA, in Guardian Newspaper Ltd. V.A.G. Federation[32] defines the rule of law when he said that the federal military government is not above the law. Until such a law is abolished or repealed, it must abide by it.This is part of the Rule of law. It must therefore conduct its affairs according to the law. That will bring certainty and order.

f) Presence of Multi-Party System

Democracy is more sustainable in a multi-party system, that is where there are more than 2 political parties. This is to ensure that everybody of voting age is given the opportunity to vote and belong to any political party of his own choice. Nigeria and the USA, for instance, are multi-party system. At present Nigeria has about 66 political parties with different ideological inclinations. This avail the various rural communities and areas to register and belong to those political parties that capture the aspiration of the local communities.

The party system may be categorized according to the number, nature, characteristics, functions or ideological orientation of the political parties operating in the political system. Some are classified as one-party, two-party or multi-party system.

A multi-party system is one in which there are more than two political parties for the interest of individuals, cultural groups, organization, socio-economic groups that prefer direct but distinct political representation for programme of their own specific objectives rather than join a large coalition of many interest. Thus there may be separate parties for peasants, minority, religious, occupational groups. Multi-party system is consistent with democratic-principle of allowing the citizens the widest possible choice of alternatives in the realm ofpublic policy.

The multi-party reflects almost the entire units, interest, groups, sections of the country in the legislature making them have that sense of belonging for having their view, interest expressed and realized; multi-party system does not easily degenerate into authoritarian or dictatorship. No single party is so powerful to dictate to other parties; it makes for compromise and/or coalition which enable the system to maintain some form of stability; multi-party system is ideal where proportional representation as a method of representation, is adopted.

g) Absence of Electoral Violence

State must ensure peaceful conduct of elections as well as ensure that every party candidate and voter enjoys equal security and steps should be put in place to checkmate electoral violence and thuggery. State should ensure violation of human rights and complaints relating to election are determined promptly either by Election Appeal Tribunal or the regular court of competent jurisdiction.

For any election to be free and fair, there should be some mechanism to properly deal with disputes arising there from, particularly those bothering on substantial compliance with the electoral law and the constitution.

For instance, in Nigeria, the Electoral Act provides that any person who snatches or destroys any election material commits an offence[33], any person who directly or indirectly makes use of or threaten to make use of force, violence or restrain inflicts or threaten to inflicts himself with injuries, damages,harm or abduct or impede free use of voters, commits an offence[34].

An election may be questioned on any of the following grounds: that is to say that a person whose election is questioned was, at the time of the election, not qualified to contest; that the election was invalid by reason of corrupt practices or non-compliance with the provisions of Electoral Act; that the respondent was not duly elected by majority of lawful votes cast at the election; or that the petitioner or its candidate was validly nominated but was not lawfully excluded from the election[35].

Where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election or that the election was married by substantial irregularities or non—compliance with the provision of the act, the Election Tribunal or Court shall not declare the person with the second highest votes or any other person as elected, but shall order a fresh election[36].

h) Women in polities

It has been generally observed that in most countries of the world, women are not fully integrated into political, economic and education sectors against the spirit and letter or Article 7 of the UN Convention on the Elimination of All Forms Discrimination Against women[37] which provides that nations should take all

[32] (1995) 5 NWLR PT. 398. P 103 AT 741 CA.

[33] Section Electoral Acts, 2016.
[34] Section 131 (a) (b) (c), Electoral Act, 2010.
[35] Section 138 (a) (b) (c), (d) Electoral Act, 2010.
[36] Section 14 (2) Electoral Act, 2010.
[37] UN Convention on the Elimination of All Forms of Dissemination Against Women, Report 1992.

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appropriate measures to eliminate discrimination against women in political and public life, ensure gender equality, guarantee them the right to vote and be eligible to stand for election into any office, the right to participate in the policy formulation and implementation in government and hold and perform public functions at all levels.

Furthermore, the Beijing Declaration and Platform for Action 1995[38] is pushing for support for the rights of the women to fully and actively participate in policy machinery of the nation. Nigeria has since keyed into this by adopting the affirmative action that makes it mandatory for 35 percent of seats in the legislature and executive position to be set aside for women.

For instance, in Argentina, the women are given preferential treatment in the government. For instance in Maria Marciadri Morni v. Argentina[39].

An Argentine political party failed to allocate offices to women as prescribed by law. This was challenged in the law court. The court held that it was binding responsibility of all public institution including political parties to provide adequately and respect the right to vote and be voted for make any election freeand fair.

Furthermore, in Nigeria in Wilson v. A.G Bendel State[40] Nnaemeka-Agu JSC stated thus; courts have a duty to protect vested rights, as otherwise lawlessness will reign. So they have always taken the view that any attempt by a competent authority to take away citizens' vested rights must be done in strict compliance with the law and laid down procedures therefore.

i) Political parties, Campaign and Political Education

Free and fair election is ultimately predicated on the nature of election campaign. For credible election to strive, such fundamental freedoms as right of assembly movement, association and expression must be guaranteed during campaigns. There should be free access to the media particularly public media, the government should offer equal opportunity to parties, candidates and supporters to be protected such that at the end of the day, voter cast their votes in a free and fair manner in secret without fear of intimidation and where international observer groups are handy to observe every relevant aspect of organization and conduct of the election based on national laws. Campaign should be devoid of intimidation, violence, brutality, repletion and other forms of illegality.

The 1999 Constitution of the Federal Republic of Nigeria[41], provides that only political parties registered with INEC shall canvas for votes in any election in Nigeria. The programmes of the political parties shall conform with the stipulations by INEC and the provision of chapter 2 of the 1999 Contribution of the Federal Republic on the fundamental objectives and directives principles of state policy[42]. Similarly, the Electoral Act, 2010[43] provides that the political association registered with INEC shall be regarded as a political party. The commission also has the power to deregister any political party on the grounds of bridge of the requirements for registration.

Political party funding has also been regulated. Consequently, any political party that keeps fund or get funds outside Nigeria shall commit an offence punishable under the law. Electoral Act has also put ceiling to funding of election by political parties. For the presidential election, the ceiling is 1 billion naira, for governors 200 million Naira, senate 40 million naira, House of Representatives 20 million naira and state assembly 10 million naira[44].

Political education involves the use of poster, radio and television programmes, flyers, and pamphlet should be widely circulated on the rights of the voters, the process of election and abuse and the consequences thereof. This is central to free and fair election to be achieve.

j) Election Litigation

In every election process there are usually complaints and contention over election results by the competing political parties. In other to insure free and fair election, there must be an independent judiciary or tribunal to hear and determine the veracity of such complaints. Where this is not available, election cannot be said to be fair.

The Electoral Act[45], provides for petition against any election. Such petition shall be handled by election tribunals and the regular courts. For any election to be credible, the court must be independent with firm and impartial judges.

V. Conclusion

Representative democracy is a constitutional government in which officials are elected on the consent of the people and accountable to the people and serve as trustees of the power vested in the people for the protection of their rights, liberty and property. It involves political inclusiveness and periodic elections.

[38] Beijing Declaration and Platform for Action Report 1995.
[39] Argentine Law Report, case 11.307, Report no. 102/1999.
[40] (1985) NWLR PT. 4, P. 572 AT 654 SC.
[41] Section 221 of the 1999 Constitution of the FRN as amended.
[42] Section 79 of Electoral Act 2010.
[43] Section 78 (1) of Electoral Act 2010.
[44] Section 91 (2) (3) (4) Electoral Acts, 2010.
[45] Section 133 Electoral Act, 2010.

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Free and fair election is the only avenue to sustain democracy. Where election is marred by violence, brutality, suppression, snatching of election materials, the use of force and discrimination on the basis of colour, ethnicity, religion, there is no secret balloting, universal suffrage is not upheld, there is no free and fair.

Elections in Nigeria are usually characterized by malpractices and scarcityreflected the will of the people. This negative phenomenon has dampened the emergence of an enduring democracy in Nigeria. The voting system in Nigeria does not guarantee free and fair election due to inherent weakness such as rigging, falsification of result, multiple voting, underage voting, electoral violence often manipulated by the politicians to their own advantage. Lack of credibility during election has ultimately led to voter's apathy and lack of confidence in the electoral process by the people.

Beside, where there is one political party which is invariably in government where the electoral body is made up of corrupt and partial officials and where there are flagrant violations of fundamental rights and freedom, and disrespect for court order, free and fair election is a far cry and the stability of the society is seriously threatened and at the verge of extinction.

VI. Recommendations

We wish to recommend that in order to promote free and fair election andsustain democratic ideals:

- The government should adopt steps to guarantee freedom of instructional framework to conduct periodic free and fair election in observing with their obligation under international law.
- The sitting government should establish effective, impartial and non- discriminatory institutions, procedure and clear criteria for the registration of voters, based on age, citizenship, residence.
- Provide for formation of viable political parties with national outlook.
- Regulate the funding and electoral campaign fund of political parties,
- Ensure the separation of the party from the state and establish conditions for vying for legislative position on equitable basis.
- Carry out voters' education to make the electorate familiar with election procedures and issues.
- The state should ensure that those responsible for various aspects of the election are trained and act impartially and that coherent voting procedures are established and made known to the voting public
- The country should build and strengthen its institution
- There should be complete independence of the judiciary and INEC
- Electronic voting should be adopted in all elections.
- Ensure updating of electoral registers, balloting procedures with the assistance of national and international actions observers.
- Encourage parties, candidates and media to accept decisions of electoral body in every election that was transparent in accordance with the recommendation of international election observers.
- Adopt a code of conduct to govern the election campaign and the polling period, ensure the integrity of the ballot through appropriate measures to prevent multiple voting or voting by those not entitled to vote and ensure the integrity of the process for counting of votes.
- The police and other state security agencies should remain as neutral as possible during election.
- All sectional or ethnic oriented political should be-registered.

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