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THE CURRENT STATUS OF ELECTORAL LAW IN NIGERIA

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Abstract

This paper investigates the Electoral Law and elections in Nigeria with particular focus on exposing the mechanism for achieving credible elections necessary to consolidate and sustain the country's nascent democracy. The paper is motivated due to fact that over the years, Nigeria continues to witness with growing disappointments and apprehension as to the country's inability to conduct peaceful, open, free and fair elections whose results are widely accepted and respected across the country. It argues that the problem confronting election in Nigeria cannot be divorced from the laws regulating electioneering process and which problems have historic in nature before, during and after independence. The paper employs doctrinal method of research, thus its library based. The paper found that the current position of laws regulating elections processes in Nigeria have many shortcomings, consequently, there is the need for reform.

Keywords: Election, Fundamental Rights, Democracy, Reform, Development

I. INTRODUCTION

The recently intensified global synergy for transparent, free and fair elections, often at great personal risk, demonstrates how significant the rights to seek for elective position, vote and be voted for has become to individuals. However, Electoral Law and elections in Nigeria continue to elicit more than casual interest by Nigerian scholars due to the fact that despite the appreciation that only credible election can consolidate and sustain the country's nascent democracy, over the years, Nigeria continues to witness with growing disappointments and apprehension, inability to conduct peaceful, free and fair, open elections whose results are widely accepted and respected across the country. The phenomenon on election cannot be

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divorced from the laws regulating electioneering process in Nigeria and problems are historic in nature before, at and after independence. All the elections that have ever been conducted in Nigeria since independence have generated increasingly bitter controversies and grievances on a national scale because of the twin problems of mass violence and fraud that have become central elements of the history of elections and of the electoral process in the country.

Arguably, irrespective of the marked improvements achieved in the electoral laws, the conduct of elections continued to be marred with absence of freeness, fairness and same bedeviled by violence. Thus over the years, electoral processes in the history of Nigeria's democratic governance have continued to be marred by extraordinary displays of rigging, dodgy, "do or die" affair, ballot snatching at gun points, violence and acrimony, thuggery, boycotts, threats and criminal manipulations of voters' list, brazen falsification of election results, the use of security agencies against political opponents and the intimidation of voters. It is against this background that this paper examines the electoral laws in Nigeria the journey so far and the current position. Apart from interrogating the evolutionary trend of the process, prognosis and diagnosis of the procedure, an attempt will be made at providing the road map to the Eldorado of our electoral process.

2. EVOLUTION OF ELECTORAL LAWS

Despite the vital place of electoral laws in the conduct of elections in a democratic system of government, the organization of free and fair elections remains a real challenge for the 'new' Nigeria democracy. It important to state from outset that most electoral laws in pre, post and present independent country Nigeria were largely determined and influenced by vested political, religion, regional and ethnic political interests. The reason is no more than associated with the adversarial nature of politics as a contest for the advantage of interests few and access to powers by Nigerians. Apart from this is the notorious fact that politicians whose conduct is supposed to be regulated by laws are the ones who design electoral legal framework. They usually have personal egoistic goals in view and usually jettison altruistic nationalistic goals.

Because this half hazard management of electioneering processes and inadequacy of electoral laws, elections in Nigeria continued to be characterized by one form of crisis or another and sometimes even lead to violence such as, killings and destruction of properties. However, the electoral laws principles generally started receiving renewed attention in Nigeria from August 28th 2007 when the Yar'adua

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government instituted the Uwais Committee on Electoral reforms. This is notwithstanding the fact that the development of electoral legal framework in Nigeria having a very volatile history spanning about ninety three year (93) years from (1922 to 2015) when these changes have occurred.[1] In terms of historical legal development, the legal framework for elections in Nigeria evolved in the following chronology:

Historically the "Elective Principle" introduced by Sir Hugh Clifford was used in 1922 for the Calabar and Lagos Municipal Elections and was also used in the 1946 Council Elections (Eko-Davies, 2011). [2] The guidelines for the election only provided for participation of a few Nigerians and voting was conditional upon tax payment, restricted to adults with an annual income of not less than 100 Pounds sterling, then a monumental fortune. This dichotomy continued particularly restriction of voting either by tax or sex, up till 1959 when full universal adult suffrage was adopted nationwide, this was also retained in 1979.[3]

Note that it was until 1958 that the first detailed electoral regulations, the Elections Regulations of 1958 (For the House of Representatives) was drafted, but was amended subsequently in 1959, as the Federal Legislative House Regulations of 1959. Yet, this was replaced by The Nigeria Electoral (Transitional Provisions) Act of 1961 which was the first comprehensive Electoral law drafted by the Indigenous Nigerian legislature. [4] The latter Act was replaced by a more comprehensive Electoral Act of 1962, the first most definitive Electoral framework in post-independent Nigeria. The 1962 Act had a post-election dispute requirement including the need to pay deposit on lodging an election petition. This latter addition was later abolished in the amendment of the Electoral Act of 1964. The military takeover of government truncated the continuous reformation election laws in Nigeria between 1966 until 1977 when political activities were restored again with the promulgation of the Electoral Decree of 1977.[5]

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[1] Nnadozie, U., "History of Elections in Nigeria." In Jega, A & Okechukwu Ibeanu (eds) In Jega Attahiru & Ibeanu, Okechukwu (eds) *Elections and the Future of Democracy in Nigeria* (2007). Nigerian Political Science Association (NPSA).

[2] ibid

[3] ibid

[4] Omotola, J. Shola. "Elections and Democratic Transition in Nigeria under the Fourth Republic.", (vol. 109, No 437, 2010), African Affairs) 535-553.

[5] Oche, O., "Democracy: Conceptual and Theoretical Issues." In Hassan A. Saliu (eds.) *Nigeria Under Democratic Rule (1999 – 2003)*. (Ibadan: Ibadan University Press Plc. 2004)

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Essentially the 1977 Electoral Decree which ushered in Shehu Usman Aliyu Shagari as President of the country introduced several significant amendments such as; reduction of voting age from 21 to 18years, the mandatory need to show a three year tax clearance certificate before a person can qualify to contest elections, the disqualification of electoral officers from voting in elections, and for the first time, it placed a time limit for the conclusion of election petitions before winners are sworn into offices different from what we currently have in section 285 of the 1999 constitution (as amended).[6] The 1977 Electoral decree was modified in 1978 and created the procedure for fielding candidates for election.

The 1977 Electoral Act was succeeded by the 1982 Electoral Act, with the Federal Electoral Commission mandated by the Act to compile a new voter's register. The Act was used to conduct the 1983 election that was followed by so much disputation and disagreement culminating into another military intervention consequent of post election crises.[7] This process of developing all encompassing electoral law for Nigeria was interfered with because of Military took over of Government that saw General Muhammadu Buhari has Head of State in 1983.

As a result of the coup, further development on electoral Laws were put on hold until 1987 with the introduction of the effective period of the framework which was extended when the State Government (Basic Constitutional and Transitional Provision) Decree No 50 of 1991, the National Assembly (Basic Constitutional and Transitional Provisions) Decree No.18 of 1992 and the Presidential Election (Basic Constitutional and Transitional) Decree No.13 of 1993 were then enacted and became the framework used in 1993 when a General election was finally conducted. This was adjudged as the most free and fair election in Nigeria.[8]

In terms of legal framework development, these frameworks introduced for the first time, educational qualifications for candidates seeking governorship positions and membership of the House of Assemblies to possess at least School Certificate or equivalent. The Decree ousted the jurisdiction of the courts in intra-party and inter party disputes. Thus, Election Tribunals established under the Decree could only entertain election petitions only on the ground of undue return at the election.[9] The history of the 1993 General Election is well

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[6] ibid
[7] Nnadozie, U., (note 1)
[8] ibid
[9] ibid

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documented: suffice to say that it can be used as an example of the fact that even if an election was well conducted with a good legal framework, we can still have an unacceptable outcome if the political ambiance is unsupportive of transition, indicating that more than a good legal framework and good election management is enough for political transition.

Be that as it may, the 1993 electoral framework gave way for Decree No.3 of 1996 by the General Sani Abacha Government, which also established the National Electoral Commission of Nigeria (NECON) with this decree. The latter framework was replaced by the Local Government (Basic Constitutional and Transitional Provisions) Decree of 1997, the State Government (Basic Constitutional and transitional Provisions) Decree No.22 of 1997 and the National Assembly (Basic Constitutional and Transitional Provisions) Decree No.6 of 1998 all of which were meant to guide the transition elections planned by the General Sani Abacha Government which allowed the existing five registered parties to adopt him as their consensus presidential candidate, just before his untimely death.[10] Upon the demise of General Sanni Abacha, the General Abdulsalam Abubakar regime commenced a new transition program using a new legal framework that includes; the Transition to Civil Rule (Political Programme) Decree No.34 of 1998; the National Assembly (Basic Constitutional and Transitional Provisions) Decree No.5 of 1998; and The Presidential Election (Basic Constitutional and Transitional Provisions) Decree No.6 of 1999.[11]

These legal frameworks led to the restoration of democratic system of government that heralded the current political dispensation. Since the use of the latter framework, there have been several amendments of the main electoral framework in the form of the 2001 Electoral Act, the 2002 Electoral Act, the Electoral Act of 2006 and the Electoral Act of 2010 (as amended). The last amendment provided for tenure of Office of The Secretary to INEC, and empowers INEC to determine the procedure for voting at an election, but rejected the proposal for INEC to conduct all elections the same day, the committee noted that the commission lacked the capacity to manage large scale elections in a single day and also rejected the proposal to make presidential debates mandatory before an election. In holding the latter

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[10] Osumah, Oarhe and Aghemelo, Austin T., 'Elections in Nigeria since the End of Military Rule' (vol. 36, No 2, 2010, AFRICANA), 37

[11] Ozor, Frederick Ugwu, "Electoral Process, Democracy and Governance in Africa: Search for an Alternative Democratic Model." (vol. 36, No 2, 2009, Politikon), 315–336

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position, the committee argued that. election debates should not be made a constitutional matter.[12] Thus, it can be seen from the long periods of development and the constant changes even within short periods to the legal framework for elections that many interest and factors influenced the development of such frameworks; hence, it has been more of an evolutionary development than a revolutionary one.

It has been severally contended that the problems of election credibility in Nigeria has to do with the weak electoral laws more particularly also is the institutionalization of the agencies of electoral administration, the Independent National Electoral Commission (INEC), the political parties and security agencies in the country have continually endangered the consolidation of democracy in Nigeria. Globally, countries and citizens across the globe have recognized that free and fair elections are a crucial point on the continuum of democratization and an imperative means of giving voice to the will of the people, which is the basis of governmental authority itself. If the electoral laws are reformed in ways that fundamentally address these problems it will assist Nigeria's democracy. Consequently, for election to free and sustainable for development, participation in elections must be conducted with the framework of the law particularly in an atmosphere characterized by the absence of intimidation and the presence of wide range of fundamental human rights, such as. the rights to free expression, information, opinion, assembly, association and to protection from all forms of discriminations intimidation and violence.

3. CURRENT POSITION

The weakness of the electoral laws has seen the gradual perversion of the electoral process under the present democratic dispensation in Nigeria. For example, there have been proven cases of false documents and certificates presented by elected officials in many of the political parties.[13] All these people were cleared by INEC to contest elections and many of them won. A specific case in point is that of the disgraced former Speaker of the House of Representatives, Salisu Buhari, who was indicted for using a forged certificate to contest elections.

Many other elected representatives have been alleged to commit similar crimes ranging from corruption and mismanagement of public fund, forgery of certificates to drug trafficking offences. This is a blatant violation of electoral law, for which a competent electoral body

[12] ibid

[13] Oche, O., (note 3) 56

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and state security apparatus would have detected and disqualified those involved.[14]

The case of PDP v INEC[15] exposed the lacuna in the Basic Constitutional (Transition) Decree 1999 which quickly remedied in the constitution. The case of INEC v Balarabe Musa[16] also exposed the weakness in the 2002 Electoral Act where the Supreme Court in its judgment invalidated some sections of the Act on the ground of the section contravening the provisions of the 1999 Constitution and as such null and void. Similarly the case of PDP v INEC[17] brought another shortcoming which was not contemplated in the Decree that is provision for instance on a situation where an elected Governor is chosen as Vice President before swearing. The question then was whether the Deputy Governor elect could step into the shoe of the Governor.

The cases of Obi v INEC[18] (2007) MJSC and Amaechi v INEC[19] (2007) MJSC also established the imperfections of the 2006 Electoral Act particularly on the rights of political parties to substitute a candidate submitted to INEC and the need to provide cogent and compelling reason for substitution. The amendment that was effected in 2011 thus removed the absolute rights enjoyed by political parties to substitute its candidate which was the characteristic of the 1982, 2002 and 2007 Electoral Acts. The cases Balarabe Musa v Auta Hamzat[20] and Onuoha v Okafor[21] exemplified the danger inherent in vesting absolute power on a political party to substitute candidate. It also changed the nature and time frame within which election can be conducted.

Arguably, irrespective of the fact that one may assume that gradual amendment of the 2002, 2007 and 2011 Electoral Acts have relatively resolved the nagging issues connected to elections in Nigeria, the current position especially with the unfolding new scenarios that emanated from 2015 election have revealed that much is

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[14] USAID (2010) *Electoral Security Framework Technical Guidance Handbook for Democracy and Governance Officers*. Washington DC: United States Agency for International Development.

[15] (1999) 3 SC

[16] (1999) 7 SC

[17] Reynolds, Andrew, "Elections, Electoral Systems, and Conflict in Africa," (vol. XVI, No 1, 2009, Journal of World Affairs)

[18] Kohnert, Dirk, "Election Observation in Nigeria & Madagascar: Diplomatic vs. Technocratic Bias" (vol. 31, No 99, 2004, Review of African Political Economy), 83-101

[19] ibid

[20] (1982) 1 SCNJ

[21] (1982) 4 SCNJ

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still needed to be addressed in our Electoral Act. The first of such current issue was the inconclusive election conducted in Kogi State and the death of APC candidate, Prince Abubakar Audu before a winner in that election was declared.

Of particular concern on the current position of electoral law is the issue of differentiating between electronic voting prohibited for the time being by Section 52 of the Act and voter authentication in the accreditation process, using a hand-held device (Card Readers). Some stakeholders challenged its use insisting that voter authentication was part of the voting process that a voter cannot vote if not authenticated, and both processes could not be separated. The question is whether the argument is correct having regard to the powers given INEC in the constitution? It is also not in dispute that the 2015 election was conduct using Smart Card Reader machines successfully, it is however, not sure whether or not the procedure can be sustained in future elections in Nigeria having regard to the Supreme Court position on Card Readers in the Governorship elections disputes in Rivers, Cross Rivers, Akwa Ibom and Delta State. The examples of the position of the Supreme Court can be distilled from the following cases:

In the case of Wike v Peterside,[22] the respondent complaint was the deliberate non-use of the Smart Card Reader machines in the election. The respondent relied on SCR to establish over-voting. In its judgment, the Supreme Court Per Keker_Ekun JSC held that "the use of Smart Card Reader has not done away with manual accreditation. The introduction of the card reader is certainly a welcome development in the electoral process. Although, it is meant to improve on the integrity of those accredited to vote so as to check the incidence of rigging, it is yet to be made part of the Electoral Act. The failure of the card reader machine or failure to use it for the accreditation of voters cannot invalidate the election."

In another recent decision of the Supreme Court in Shinkafi v Yari,[23] Okoro, JSC stated thus:"My understanding of the function of the Card

[22] Wike Ezenwo Nyesom v Dakuku Adol Peterside (2016) LPELR 40036 (SC)

[23] Muhammed Aliyu Shinkafi v Yari (2016) LPELR 26050 (SC), the position of the Supreme Court in this case and Wike v Peterside can be justified from the provisions of the Electoral Act 2010 (amended): Sections 49(1) & (2); 138(1)(b) & (2) and 153. In particular section 138(1) provides "An election may be questioned on any of the following grounds, that is to say:(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act.(2) An act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of the election but which is not contrary to the

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Reader Machine is to authenticate the owner of a voter's card and to prevent multi-voting by a voter. I am not aware that the Card Reader Machine has replaced the voter's register or has taken the place of statement of results in appropriate forms."

Paragraph 15 of Part 1 of the Third Schedule to the 1999 Constitution (As Amended) empowers INEC to organise, undertake and supervise all elections apart from local government council elections of the states. Section 76 of the Electoral Act 2010 (As Amended) empowers INEC to determine the forms to be used for the conduct of elections. Pursuant to INEC's powers as stated above; INEC decided that in the 2015 General election, the card reader would be used for the accreditation of voters prior to the casting of votes.

This decision generated a lot of controversy in the polity despite the fact that INEC had informed the nation since 2012 when it commenced the process of de-duplication process preparatory to the production of the Permanent Voters Card (PVC) to be verified with the card reader. A number of court actions were even instituted to forestall the use of the card readers as same were regarded as providing for electronic voting Section 52(2) of the Electoral Act 2010 (as amended). It is argued that the position of the Supreme Court exposed the lacuna in the Nigeria Electoral Act 2010 (as amended) and established the imperative of the National Assembly using their legislative powers to remedy the shortcoming(s) in the law.

Another issue which describes the current position of the electoral law has to do with the issue of non-delivery of result sheets with ballot papers at polling units at the same time as expected. Some voters refused to vote unless result sheets were seen, sighted or palpated before voting commenced. INEC guidelines stipulate that all sensitive materials be distributed to the polling units prior to polling, how result sheets became vanishing materials was quite strange. Deliberate or negligent acts on the part of poll officials to deliver form EC8A result sheets at polling units is a serious act that must be sanctioned seriously because it may become a new form of vote snatching.

Collation of results at various centres presented a challenge during the 2015 elections. There were alleged cases of Collation/Returning officers who were trained and given the guidelines of collation procedure and legally designated centres refused to collate results in those official centres. At crucial moments in some collation centres,

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provisions of this Act shall not of itself be a ground for questioning the election." in particular, section

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some collation officers disappeared and maintained what military coup plotters refer to as "radio-silence" or "electronic silence", this is one area that requires stiffer regulatory laws.[24]

Also germane to election process in Nigeria is the salient but current position of the electoral law in relation to the use of military personnel for monitoring election and arguments have been advanced for and against this practice. [25] Although, it has often been stated that the level of election security personnel used in each context reflects the level of political consolidation in a democracy, the argument also reflects some degree of ambiguity in the governance of security personnel during election, and should therefore be made clearer through legislation and voter education. [26]

It is pertinent to note that generally several amendments were proposed to 2010 Electoral Act 2010 by a Commission headed by the Former Chief Justice of Nigeria, Muhammed Uwais, notwithstanding the significance of the proposed reform, the National Assembly in their wisdom refused to take them into consideration in the Amended Electoral Act. This thus account for current position which the Nigeria electoral laws are today.

Example of such area and that significantly establishes the current position of the Nigeria electoral laws is in realm of pre-election legal issues including laws relating to constituency delineation (sections 71,72,73 and 74) polling units creation (S.42), party finances (S.91,92 and 93) Third Schedule Part 1, paragraph 15(1) Card Readers vis-a-vis section 52 of the Electoral Act, the law on media access (S.100), time for commencement of campaigns (S.99), law on party nomination (S. 31),(S.87).[27]

Similarly, on party finance, the law relating to the funding of parties theoretically limits the amount of funds individuals can contribute to a party campaign (S.91) but with an overriding subsection (8)(c) that says " In determining the total expenditure incurred in relation to the candidature of any person at any election, no account shall be taken of : (c) political party expenses in respect of the

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[24] Igbuzor, Otive (2010) "Strengthening and Defending Democracy: Options for CSO Engagement and Capacity Needs for Effectiveness." *A Paper Presented at the Centre for Democracy and Development (Cdd)- Open Society Initiative for West Africa (Osiwa) Joint Forum on Resolving The Political Impasse in Nigeria.* Dennis Hotel. January 15 - 16

[25] Idowu, Olawale, "Corruption, the Police and the Challenges of a Free and Fair Election in Nigeria." (vol. 12, No 7, 2010, Journal of Sustainable Development in Africa), 44

[26] ibid

[27] Idowu, Olawale, (note 25), 18

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candidate standing for a particular". In the 2015 election, political parties, politicians and donors took advantage of this and also found ways around other laws in monetizing the electoral process.[28] Some raised several billions as "Committee of friends" without detailing the individual contributions of these friends, while others raised hundreds of millions as groups with similar opacity on the individual contributions, perhaps the next audit report of the Commission may throw more light on such donations as the Law mandates INEC to audit the finances of parties. But these were even the cases that were widely reported, much of the financing of candidates and parties were conducted outside public knowledge.[29]

At the moment, money-bags continue to hold sway regarding party financing, until the provision of subsection (8)(c) is removed to bring campaign finances to public scrutiny and sanction the will continue to be a violation. But then it is globally acknowledged that the control of the financing of parties is a problematic issue requiring very creative legal approaches to stem the hegemony of financiers and control of the machinery of government.[30]

The law on media access in (S.100) of the Act requires all media organisations particularly government owned media to grant equal access, airtime time parity and coverage to candidates and their parties.[31] However, the law did not specifically empower INEC to monitor compliance and how violations would be sanctioned. The result was that many opposition parties and their candidates were denied access and they complained to INEC that is helpless in the circumstance, given that the only regulatory body for such matters is the Nigerian Broadcasting Commission (NBC). This shows that newer legal control approaches are needed, and an acknowledgement of the practical realities is necessary, rather than having laws that are only prescriptive but not effective in their regulatory potentials. [32]

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[28] ibid

[29] Jega, Attahiru M., "The Electoral Process and Security Sector Synergy." *A Paper Delivered to EMC 6 Participants of Institute for Security Studies (ISS)*. Abuja. August 21, (vol. 13, No 12, 2012, Developing Country Studies) www.iiste.org accessed 22 November, 2016, ISSN 2224-607X (Paper) ISSN 2225-0565 (Online), 56

[30] Animashaun, Kunle, "Regime Character, Electoral Crisis and Prospects of Electoral Reform in Nigeria." (vol. 1, No 1, 2010 Journal of Nigeria Studies), 12

[31] Alemika, E. E. O., "Police, Policing and Rule of Law in Transitional Countries." Lone Lindholt et al. (eds.) *Police, Rule of Law in Transitional Societies*, (Denmark: Centre for Human Rights and Kluwer Publishers, 2003)

[32] Eya, Nd ..a, *Electoral Process, Electoral Malpractices and Electoral Violence*, (Enugu: Sages Publications Nigeria Ltd., 2003)

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Another current position of the electoral laws is the legal issues relating to the conduct of party primaries. The conduct of party primaries have traditionally been an area with many legal challenges, at some point, the Commission was in court as a respondent, defendant and interested parties, that is, in different capacities in over 150 cases just days to a General election. Some of the cases even subsisted months and years after the elections have been conducted with legal representatives of the Commission sometimes compelled to hold contrasting positions on similar issues because of the variety of positions it had to hold in such cases.

Many of these issues arose from the fact that those who make electoral laws are the ones to be regulated by these laws resulting in the making of nebulous and opaque laws guiding party primaries in (S.87), obfuscated by provisos such as (S.31) of the Electoral Act; requiring the Commission to accept any candidate presented by a party which it cannot reject "....for any reason whatsoever" irrespective of the process by which the individual became a candidate.[33]

It should be noted that the Electoral Act 2010 had prior to its amendment provided under Section 87 (9) the procedure for the nomination of candidates by political parties to be observed by INEC under (Sections 85, 86) and where a different candidate other than the one that emerged from the primary, INEC could reject such candidate but this subsection was amended to allow political parties to submit list of candidates irrespective of how they emerged. This particular amendment had fundamental consequences for the 2011 and 2015 elections and would continue to negatively affect future elections unless the issues surrounding internal party democracy are comprehensively examined and legislated upon.

Closely tied to the current issue especially of party primaries is the issue of delegates list. The foundation of any election is the identification of who is qualified to vote and a compilation of a register of voters that is made public. [34] For example, (S. 20) of the Act requires INEC as an election management body to make available to all stakeholders, the register of voters 30 days before election, a specified time-frame prior to the election so that candidates can campaign effectively to such electors. However, the law is opaque on some procedures in party primaries, no rules compels parties to make available at any deadline either to INEC or to aspirants the list of elected delegate party members who will vote in a primary or

[33] ibid

[34] Fischer, Jeff. *Electoral Conflict and Violence: A Strategy for Study and Prevention.* (Washington, DC: International Foundation for Election Systems, 2010)

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convention. The result has been that delegates list for party primaries became a "Holy grail" and frustrated by the mystery, some candidates resorted to self-help, by conducting their own primaries and inviting their own observers.

4. WHERE SHOULD WE BE?

The issues of electoral violence have remained a persistent and contending issue in pre, during and post elections in Nigeria. Election violence has affected seriously electioneering processes in Nigeria, despite its adverse effect and impact on the outcome of election, violence in election is not give any preeminent position in the determination of the validity of the outcome of an election.[35] Whereas a petitioner may allege violence as a ground for requesting for nullification of election, at least there has not been any evidence of an election nullified on ground of violence. This reason is mostly due to the stringent rule of evidence that require a party alleging violence to proof the allegation beyond reasonable doubt. It thus argued that for a free, fair, transparent and accountability of election is expedient that the electoral laws provides for specific manner to deal with issue of electoral violence and determine what implication it should have on the outcome of an election.[36]

In another paradigm it is a widely held view that the use of card reader in the last election relatively contributed to addressing issues of election rigging, manipulation and allowed citizens to exercise their franchise without undue threat. The Supreme Court position as earlier noted may have created doubt on the future use of card reader for election. It is here contended that the National Assembly has to take a proactive position on this issues particularly there is need to incorporate same in the Electoral Act. It is argued that technology has advanced tremendously Nigeria need to key into the international best practice of electronic evidence for sustenance of its democracy.

It also instructive to note the new scenario that occurred during the 2015 Kogi State Governorship election was not contemplated in the electoral process. The novelty of scenario also brings to the fore the imperfection in our electoral law. Example of what happened in Kogi State election that was not adequately covered by the law was that dealing with inconclusive election, substitution of candidate in case of death of another before declaration of winner by the Resident Electoral

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[35] Ogundiya, Ilufoye & Baba, T. K., "Electoral Violence and Prospects of Democratic Consolidation in Nigeria." In Jega Attahiru & Ibeanu, Okechukwu (eds) *Elections and the Future of Democracy in Nigeria* (2007) Nigerian Political Science Association (NPSA).

[36] ibid

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Commission. This situation calls for reform in the Act. In the final analysis, the question that should agitate the minds of Nigerians is; whether it is correct or appropriate that our Electoral Act be continuously subjected to amendment? What we need to do is to provide broad principles on our electoral jurisprudence instead of the current tokenism and piece meal approach of putting off the fire at every turn. The present approach will not help our electoral architecture. It is not possible to provide for every conceivable situation in our Electoral Act.

5. WAY FORWARD

i. The electoral law as it is currently does not empower the Nigerian citizen to freely elect a person of their choice, but dis-empower them. It has to be reformed to create access and participatory democracy.

ii. The unexpected and unforeseen incident that occurred in Kogi State governorship election and the Supreme Court position on use of Smart Card Reader in the cases of Wike v Peterside and Shinkafi v Yari demonstrate the need for the amendment of the Electoral Act.

iii. Independent candidates should be allowed to participate and contest election without hindrances.

iv. The electoral law should be gender-sensitive.

v. While the electoral commission needs a high level of autonomy, its powers should be curtailed and its actions open to judicial review.

vi. Campaign laws have to be streamlined and strictly enforced especially for the funding and making political parties and candidates more responsible.

vii. The role of money in politics must be checked through the electoral law not only in theory but by walking the talk.

viii. The issues of violence and election offences must be seriously looked into.

ix. There is need to embrace electronic voting in view of global technological advancement.

6. CONCLUSION

The trend in the electoral process within the present state of the laws is very disturbing especially as it relates to preparation for the next general elections in 2019. The litmus test for democracy in Nigeria will be the extent to which the electoral process is sanitized through the electoral law to ensure fair, participatory, and inclusive electoral participation by the people, transparent and accountable. It is posited that if electoral law is weak, deficient, or poorly enforced, the

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electoral process will be easily subverted. There is need therefore to reform and strengthen the electoral law beyond what is proposed by INEC and ensure full adherence to those laws. Our electoral jurisprudence is fast evolving and Nigerians can only ensure workability by complying with the provisions of the law. Our challenge as a nation is not more for our laws but more for our attitude. Law can only outlaw violence and punish offenders but the political class must make conscious and concerted efforts to ensure that our electioneering and elections are not turned into war. It is no longer "do or die" it is becoming "do and die" all for the desperation of our politicians who appears not to have a life outside government.

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