

**NIGERIA'S DEMOCRACY AND THE CRISIS OF POLITICAL INSTABILITY:  
AN AUDIT OF THE ELECTORAL SYSTEM**

By

Professor Olanrewaju Fagbohun, *Ph.D*

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fagbohun@elri-ng.org

# NIGERIA'S DEMOCRACY AND THE CRISIS OF POLITICAL INSTABILITY: AN AUDIT OF THE ELECTORAL SYSTEM\*

## I. Introduction

I am excited, at the same time nostalgic and anxious standing before this distinguished gathering of elder statesmen, eminent political leaders, distinguished union and labour activists, great Nigerian students, respected civic leaders, highly respected intellectuals in the field of political science, captains of industry, chieftains of the media, and other heroes of Nigeria's democracy. I am excited because I see it as an honour and privilege to be before this distinguished gathering to share my thoughts on a very important national issue on this historic occasion of the 20<sup>th</sup> Anniversary of "June 12". For this, I must express my profound gratitude to the Political and Legislative Powers Bureau of the Lagos State Government and the June 12 Coalition for inviting me to be the Guest Speaker.

My nostalgia stems from the fact that the event of "June 12" was one that many would wish did not end the way it did. I will not speak about the *persona* of Chief Moshood Kashimawo Olawale Abiola who was a significant actor in the June 12 debacle,<sup>1</sup> since there are many here who can more competently do so. I would rather note that the historical significance of the June 12, 1993 election is that it was the first time in the close to 90 years of suffrage rights in Nigeria<sup>2</sup> that the country had a truly credible, free and fair election where the losing party in a rare spirit of sportsmanship congratulated the winning party. The June 12, 1993 election was therefore a political watershed for electoral democracy. Voters, tired of the brigandage of the military came out en-masse determined to cast their vote. It was June 12 that revealed that Nigerians have the potentials to be enthusiastic champions of a viable electoral process. Indeed, the unending widespread clamour for June 12, and the urgent need to equitably and thoughtfully address the practical and philosophical questions that it posed was the great revolution that subsequently defined enthronement of democratic rule in 1999.

The critics of June 12 warn us not to think much of that event or see anything special about the date. This is where I have my anxiety. Historically, jurisprudence teaches us that history

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\* Professor Olanrewaju .A. Fagbohun, Ph.D, is the Director of Studies at the Nigerian Institute of Advanced Legal Studies. He is also a Director of the Environmental Law Research Institute, a non-profit organization. He can be reached by e-mail on <fagbohun@elri-ng.org>.

<sup>1</sup> Chief MKO Abiola was the Presidential candidate of the Social Democratic Party for the June 12, 1993 election, and the acclaimed winner of the said election. The second political party was the National Republic Convention which had Alhaji Bashir Tofa as its Presidential candidate.

<sup>2</sup> Prior to Nigeria's independence in 1960, the country which since 1914 has been existing as an amalgamation of the Northern and Southern protectorates had already witnessed three different elections. The first election took place in Lagos and Calabar in September 1923 following the introduction of the Sir Hugh Clifford Constitution in 1922. It involved the Nigerian National Democratic Party led by Herbert Macaulay and the Calabar Improvement League.

matters in our understanding and conception of what the law should be. Similarly, African jurisprudence makes clear the fact that it would be a grave error to disregard valuable insights offered by the past. It is for this reason that we all should see the arguments of these critics as a time-wasting distraction; at its very best, it is a red herring, and to say the least, it begs the question. Why I say this will be clear in a moment.

The subject of this lecture is: *"Nigeria's Democracy and the Crisis of Political Instability: An Audit of the Electoral System"*. The theme of today's event is: "Electoral System, the Bane of Political Instability in Nigeria". The importance of electoral systems lies in its role of regulating the quality of a democracy through a process leading to the award of seats in democratic assemblies to those seeking office. The quality to be measured is the fairness of democratic dispensation, namely, how well relevant public interests are represented and how much control voters have over their government. The sad but incontrovertible conclusion that I have come to, and which I believe echoes the mind of many who are present here today, is that Nigeria at this point in time does not have a self-correcting majoritarian democracy. The thinking in many constituencies is that Nigeria is yet to have a *bona fide* representative government, and this has resulted in a disconnect between the political class and the people.

For majority of Nigerians, there are not even vestiges of hope. Their blank eyes, as you daily see them walk the streets and their wasted frames, poignantly sum up that Nigeria has overwhelmingly retraced from early developmental steps. Inept political leadership of supposedly elected leaders stand behind our individual tragedies and the serious afflictions that have led to the degeneration of our once buoyant and vibrant nation. To many observers, the story of Nigeria is a metaphor of a recalcitrant child destined to be cramped and diminished. Sporadic announcement of woes, human suffering, brazen criminal acts, high level insecurity, unprecedented political violence and a growing number of severely incapacitating conditions that confront the nation with the darker side of optimism have now become commonplace, as both the print and electronic media celebrate how our lives and that of many with whom we have close affinity are violated by the day.

As we inch towards 2015 when Nigeria will be confronted with another round of general elections, how should Nigeria assess the likely consequences of her current electoral system? How should Nigeria think through the process of her conduct of elections in a way that will deliver political stability? What strategic objectives and functional strategies should engage the attention of Nigeria in its quest for an enduring electoral system capable of igniting the spirit of June 12 devoid of that part relating to its annulment? This lecture will not pretend to have answers to these complex questions, but, will throw up the critical issues that will sharpen our picture of a better democratic future. In this context, the celebration of June 12 is aimed, first, at inspiring each and every one of us to bring the images of the current situation

into focus, and decide how we can genuinely bring about positive change. Second, it will afford us the opportunity to think of how to prevent new forms of hijack of true democratic governance, and third, as it directly concerns the theme of today, enable me to put in a few words in the hope that it will translate into increased understanding of Nigeria's electoral system. In this regard, June 12 serve as both a unifying force and a challenge to all of us.

## II. Democracy, Political Instability and Electoral Systems: Grounding the Concepts

I believe that a proper harmonization of the concepts of democracy, political instability and electoral systems is fundamental to our discourse. My thesis here is that political instability is a sign of a breakdown of democracy, and that through an understanding of the critical components of electoral systems, we may begin to create more integral political narratives that can appropriately inform political leadership.

If we follow the lead of President Abraham Lincoln, democracy, in its most basic definition, is government by the people for the people,<sup>3</sup> that is to say, in accordance with the people's preferences and serving their interests. Whether it is direct democracy or representative democracy,<sup>4</sup> what matters is its level of accountability and responsiveness to the wishes of the people. Without attempting to construct an index of the indicator of democratic quality, a number of criteria have been identified as critical in the measurement of democratic quality. Among these are, universal suffrage, universal eligibility for public office, protection of women's rights, socio-economic equality, free elections, freedom of expression and association, public policies that are responsive to voters' preferences, and general satisfaction with democracy.<sup>5</sup> The country must also be sufficiently democratic in terms of regime and institutional characteristics to justify the appellation, and the democracy must have been firmly established.<sup>6</sup>

As has been revealed in several studies, the interface of democracy with political stability is that the development of stable, coherent representative parties which can shape and channel popular preferences is crucial to successful democratization. Where there is a lack of

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<sup>3</sup> He was American 16<sup>th</sup> President (1861 – 65) who brought about emancipation of slaves. He made this statement as part of his Gettysburg Address on Thursday November 19, 1963.

<sup>4</sup> Direct democracy (also known as pure democracy) is a form of democracy in which people decide (e.g. vote on, form consensus on, etc) policy initiatives directly as opposed to a representative democracy in which people vote for representatives who then decide policy initiatives. See, Direct Democracy, Wikipedia, the free encyclopedia <en.wikipedia.org/Direct\_democracy> accessed 17 May, 2013.

<sup>5</sup> Robert Dahl, *Poliarchy: Participation and Opposition*, (YALE University Press, 1971), Arend Lijphart, *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*, (YALE, University Press, 1999), DFJ Campbell, *The Basic concept for Democracy Ranking of the Quality of Democracy*, (2008) Vienna: Democracy Ranking.

<sup>6</sup> In his work, *Pattern of Democracy* (Yale University Press, 1999), Arend Lijphart used a criterion of 19 years of uninterrupted democracy as a basis of assessment of a firmly established democracy. In this view, anything shorter than 15 years is questionable.

inclusion of all groups that should participate in a political process or a lack of moderation on the part of politicians of all groups, there will be political instability which in turn may result in political violence. Just as a marginalized group will lose faith in the democratic process and resort to violence in an attempt to gain power, so also will a lack of moderation give rise to abuse of power and brazen disregard for due process and the rule of law. The struggle to obtain power by the marginalized and the failure to adhere to the tenets of democracy and constitutionalism by those failing to act in moderation are often the determinants of the choices of the political class and other actors to support or oppose viable democratic arrangements, and whether to destroy or build democratic institutions.

In 2004, the Washington Quarterly published a report<sup>7</sup> of a dozen independent scholars that analyzed the fates of democracies and dictatorships around the globe from 1995 to 2002. The summary of that report as relevant to this discourse are as follows:

- (i) Economic, ethnic and regional effects have only a modest impact on a country's risk of political instability. Rather, stability is overwhelmingly determined by a country's patterns of political competition and political authority;
- (ii) The key to maintaining stability lie in the development of democratic institutions that promote fair and open competition, avoid political polarization and factionalism, and impose substantial constraint on executive authority;
- (iii) Wealth and an absence of communal tensions certainly help, but, a country does not have to be rich or homogenous to be democratic and stable;
- (iv) Compared to other factors such as rapid urbanization, economic downturn, and ethnic tensions which can create turmoil in any particular nation, political institutions and the patterns of political behavior that evolve around them determine a country's resistance to instability. Countries with most vulnerable institutions face relative odds of near-term political crises that are higher by roughly eight to two dozen times;
- (v) Among such elements as independence and effectiveness of legislatures and judiciaries, levels of corruption, the degree of political rights and civil liberties afforded to citizens, and whether states were parliamentary or presidential, the ones with the greatest impact on the risk of instability were found to be the character of political competition among major political groups, followed by the power of the chief executive;

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<sup>7</sup> JA Goldstone and J. Ulfelder, 'How to Construct Stable Democracies', The Centre for Strategic and International Studies and the Massachusetts Institute of Technology, *The Washington Quarterly* 28: 1 pp, 9-20.

- (vi) Liberal democracies indexed by regimes in which political parties are fully open, competition is free from violence, and executive power is strongly constrained by independent courts and powerful legislatures are more stable;
- (vii) Regimes that combine nominally democratic rule with factionalized political competition and a dominant chief executive are more volatile and more associated with odds of instability.

The report went on to distinguish factionalized political competition by three main characteristics, namely, parochialism, polarization, and mobilization. *Parochialism* is with reference to a political landscape in which the major political parties focus on the interest of relatively closed social or communal groups rather than on the interests of the nation as a whole, and show clear favoritism toward group insiders. In the case of *polarization*, this occurs when competition over central authority becomes an uncompromising winner-take-all struggle. *Mobilization* is evident when rival groups pursue their parochial interests through frequent and sometimes violent collective action.<sup>8</sup> Would we say that what is happening in contemporary Nigeria provides an illustration of factionalism? The facts are there for all of us to judge. We surely cannot deny the widespread disillusion with Nigeria's political system, and the fact that the political class have consistently pushed the country to the edge on several occasions. For how long this will continue is anybody's guess.

This takes me to the relevance of electoral systems to democracy and political instability. As defined by Nwabueze, "electoral process" which is a term not too dissimilar from "electoral system" includes,

*...the suffrage, the registration of voters, delimitation of constituencies, the right to contest elections, electoral competition between rival parties, the body charged with the conduct and supervision of election, the method of electing candidates within the political parties, nomination of candidates, method of voting, the actual conduct of elections, the determination of results, trial and determination of election disputes, electoral malpractices and their consequences.*<sup>9</sup>

As also noted by Boix,

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<sup>8</sup> Ibid, pp. 15-16.

<sup>9</sup> O Sanusi, 'Election Administration in Nigeria: A Comparative Analysis with the United States of America', <[cdra.org.ng/home/?page\\_id=131](http://cdra.org.ng/home/?page_id=131)> accessed 17 May, 2013.

*...electoral system... are the composite of different rules regulating the access of citizens to suffrage, the number and use of votes by voters, the number and size of electoral districts, the introduction of thresholds and bonuses, and the allocation mechanisms used to transform votes into seats.<sup>10</sup>*

Political scientists have over the years considered the effects of electoral laws on both political stability, voting behaviours and party systems.<sup>11</sup> One point upon which they are all agreed is that the electoral system affects the degree to which voters may hold their representatives to account for their action in the previous parliament. Crush powerfully stated the position thus:

*Electoral systems are the 'most powerful lever of political engineering for conflict resolution'... it determines how votes translate into seats in the legislature... and thereby determining many aspects of the functioning of democracy: what the parties look like, who is represented and by whom, and 'ultimately who govern'... Therefore, the electoral system is the gateway to power in a democracy. It can be manipulated to foster accommodative behaviour by ensuring that groups are included in the political process by decreasing the incidence of zero-sum outcomes... Furthermore, by changing the incentives available to those seeking election, electoral rules can make some types of behaviour more politically rewarding than others, making it possible to incentivize inclusiveness and moderation... Thus, the electoral system is fundamental to the political culture in a society... While getting this right is only one part of the quest for stability, getting it wrong can make stability impossible.<sup>12</sup>*

There are four important goals that a viable electoral system must be able to achieve. First is the achievement of political equality in the context of ensuring representativeness, inclusiveness, accessibility and competitiveness. Second, it must allow for deliberation; that is, it must give room for robust and quality debate that will translate to political knowledge and deliberative decision-making. Still in furtherance of deliberation, it must be capable of healing

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<sup>10</sup> Carles Boix, 'Setting the Rules of the Game: The Choice of Electoral Systems in Advanced Democracies', *American Political Science Review*, Vol. 93, No. 3 (September, 1999) pp. 609 -624.

<sup>11</sup> M Duverger, 1954, *Political Parties*, New York: Wiley; FA Hermans, *Democracy or Anarchy? A Study of Proportional Representation*, Notre Dame: University of Notre Dame; A. Lijphart, 1994, *Electoral Systems and Party Systems, A Study of Twenty-Seven Democracies, 1945-1990*, New York: Oxford University Press; R Taagapera and MS Shugart, 1989, *Seats and Votes: The Effects and Determinants of Electoral Systems*, New Haven, CT, Yale University Press.

<sup>12</sup> J Crush, 'Electoral Systems and Stability in Divided Societies', *e-International Relations*, May 10, 2013 <<http://www.e-ir.info/2013/05/10/electoral-systems-and-stability-in-divided-societies>> accessed 16 May, 2013.

divisions and generating consensus within the community. Third, the electoral system must be capable of defining a political community by excluding non-citizen residents/taxpayers from voting. Finally, it must be able to engender stability.

The above analysis and postulations, I must emphasize, is not merely to give us insights into the interrelationship of the concepts of democracy, political instability and electoral systems, but, it is also to serve as the foundation for what we shall now elaborate about Nigeria. On that basis, I will now proceed to do an audit of Nigeria's electoral system.

### III. An Audit of Nigeria's Electoral System

I do not intend to devote considerable space to outlining the history of Nigeria's electoral process. Aside of the fact that this has been articulated by a number of distinguished scholars,<sup>13</sup> such an exercise will distract and deprive me of sufficient time to discuss the core issues relevant to my lecture. Save for the June 12, 1993 elections, the summary of the position with respect to general elections in Nigeria is that the citizens have always ended up questioning the credibility of the democratic process.

If I may be permitted to say so, it is a matter of common knowledge that elections in Nigeria have consistently been characterized by: problems with voter registration, god-fatherism, political violence, intra-party violence, violent disruption of political meetings, parallel party congresses, delegate bribery, duplicate polls, refusal to send election materials to supposed rival constituencies, ethno-religious slurs, manifestoes devoid of concrete vision and ideologies, imposition of candidates, perversion of election procedures, kidnapping of opponents, assassination of would-be candidates and political chieftains, stealing of ballot boxes and outright rigging. On and on, we can catalogue the fraudulent manipulations and vices which have now become regular features of elections in Nigeria.

At this juncture, permit me to quote the views of Jega prior to his becoming the chairman of the Independent National Electoral Commission (INEC):

Elections in Nigeria have historically been conflict ridden. The campaigns preceding elections are invariably marked by pettiness, intolerance, and violence. Already there are several reported incidences of intra-party, as well as, inter-party violence, conflicts, including abductions and assassinations. And the elections and their

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<sup>13</sup> Dawodu.com, 'The Nigerian Election Process in Perspective', <[www.dawodu.com/election.pdf](http://www.dawodu.com/election.pdf)> accessed 16 May, 2013; IM Abbass, 'Electoral Violence in Nigeria and the Problem of Democratic Politics', <[www.abu.edu.ng/publications/2012-06-11-111712\\_5712.pdf](http://www.abu.edu.ng/publications/2012-06-11-111712_5712.pdf)> accessed 29<sup>th</sup> May, 2013; International Crisis Group, 'Nigeria's Elections: Avoiding A Political Crisis', Africa Report N<sup>o</sup>123-28 March, 2007 <[www.crisisgroup.org](http://www.crisisgroup.org)> accessed 21 May, 2013.

outcomes have often been neither free nor fair, characterized by violations of the process (both inadvertent and willful), corrupt conduct by officials, rigging of results and so on. Again, reports indicate that incidences of these were pervasive during the party primaries, and that some candidates are busy scheming to ensure a favourable outcome for themselves, by hook or crook, in the oncoming elections.<sup>14</sup>

Also, quoting Claude Ake, Adekanye and Nnoli among others, Abbass had this to say:

With unprecedented political thuggery and uncontrolled violence, characterized by wanton destruction of lives and property, election period in Nigeria is best described as warfare... Incidence of intra-party and inter-party conflicts and violence have led to endemic abductions and assassinations of opponents and innocent victims, flagrant and official rigging of election results. Further violations of established process have invariably transformed election periods in Nigeria to as a-matter-of-do-or-die or a matter-of-life-and-death... or that of by hook or crook... This electoral politics has, of course signaled serious dangers for democratic and partisan politics in Nigeria.<sup>15</sup>

What has been the cost to the Nigerian nation? The first military coup d'état of 15<sup>th</sup> January, 1966 had immediate justification in the violent crisis that followed the 1964 general elections. Since then, Nigeria has had to grapple at every election with disturbing and undesirable consequences: entire families have been wiped out, we have lost count of properties destroyed, society have been divided, social and moral values have been desecrated, there has been disruption of environmental controls with attendant health implications, and general deepening of poverty. All of these have created significant challenges to the legitimacy of government, and fuelled the issue of the need for reform of the electoral process.

In succession, Nigeria has had the Nigeria (Electoral Provisions) Order in Council, 1958; the Electoral Act of 1982; same which formed part of the revised laws in 1990; the Electoral Act of 2001; the Electoral Act of 2002; the Electoral Act of 2003; and the Electoral Act of 2006. After the general elections of 2007 which has been labeled as the worst in the 85 year history of elections in Nigeria<sup>16</sup>, the then president, Alhaji Umar Musa Yar'Adua in August 2007 set up a

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<sup>14</sup> A Jega and O Ibeanu, (2007), 'Elections and the Future of Democracy in Nigeria', Nigeria Political Science Association, Nigeria.

<sup>15</sup> IM Abbass, *ibid* n13.

<sup>16</sup> This was the consensus of the various organizations that monitored the election. Among these are the Transition Monitoring Group (TMG); the Catholic Justice, Development and Peace Committee; Nigeria Labour Congress (NLC); Action Aid Nigeria; and

22-member Electoral Reform Commission headed by Justice Mohammed Uwais to examine the entire electoral process with a view to ensuring that Nigeria raised the quality and standard of her general elections.<sup>17</sup> The committee submitted its report on 11<sup>th</sup> December, 2008. At that occasion, the former President had this to say:

Our focus on the electoral reform is predicated on the belief that elections are the very heart of democracy, hence, they must not only be fair but they must also be seen to be so by our people and the rest of the world. We will carefully study and implement with the support of the National Assembly those recommendations that will guarantee popular participation, ensure fairness and justice, and bring credibility to the electoral process in Nigeria.

When President Goodluck Ebele Jonathan assumed office, he included electoral reform as one of his topmost priority, and on the strength of this sent the report of the Electoral Reform Committee to the National Assembly. He also sent the name of Professor Attahiru Jega (a renowned political scientist and activist) to the National Assembly for confirmation as the Chairman of INEC. The National Assembly on its part amended the constitution as relevant to the exercise, and enacted the 2010 Electoral Bill. This has been signed into law as the Electoral Act, 2010.

Following the reforms, the expectation was that the April 2011 elections will usher in massive transformation. While there was a shift to a more improved process and less chaotic electoral arena, the elections, (particularly the presidential election) was still characterized by widespread violence in the northern part of the country. Three days of rioting resulted in the death of over 800 people.<sup>18</sup> Churches were burnt while Nigerian youths serving as ad-hoc election staff in the course of their mandatory youth service became easy targets for savage agents of death. Aside of bringing back the age-long division along ethnic and religious lines, it also witnessed electoral malpractices, chaotic voter registration in the face of poorly functioning biometric scans, several logistical deficiencies and procedural inconsistencies.

Permit me to tarry a while to take a hard look at the aftermath of 16<sup>th</sup> April, 2011 election. It is a grim reminder of the abnormal mutation of mind and selfish streak to which several members of the political class are oftentimes susceptible. The Delphic injunction, "know

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the Federation of Muslim Women Association. This was also the view of the Electoral Reform Committee set up by former President, Alhaji Umar Musa Yar'Adua.

<sup>17</sup> The Committee received 1,466 memoranda, held public hearing in 12 states (two in each of the six geo-political zones) and Abuja. In the course of the public hearing, 907 presentations were made. Experts were also invited from eleven countries.

<sup>18</sup> See Human Rights Watch, 'Nigeria: Post-Election Violence killed 800' <[www.hrw.org/news/2011/05/16/nigeria-post-election-violence-killed-800](http://www.hrw.org/news/2011/05/16/nigeria-post-election-violence-killed-800)> accessed 30<sup>th</sup> May, 2013; EO Alemika, 'Post-Election Violence in Nigeria: Emerging Trend and Lessons', CLEAN Foundation <[cleenfoundation.blogspot.com/2011/.../post-election-violence-in-nigeria.ht...](http://cleenfoundation.blogspot.com/2011/.../post-election-violence-in-nigeria.ht...)> accessed 30<sup>th</sup> May, 2013.

thymself", is a concept of Western thought that has always resounded with solemn significance, epitomizing for generations of inquiries the pinnacle of human intellectual concern. The outcome of the 2011 election is, to my mind, a major blow to the self-esteem of every right thinking Nigerian. Would we not be overestimating the impact of the electoral system if we nurse the view that it is our major problem? Should we not probe our own nature which appears more disturbing at a closer view? If members of the political class should stop for a moment from dissecting the electoral system, but, rather dissect the self to understand the minutiae of the mechanisms that propel their most significant thoughts, emotions and actions, we may be confronted with a finding that we are the intricate causal explanation of our own woes. This may be disconcerting, but, would nevertheless be the truth.

Today, we have the luxury of thought. Without deep reflection, the nation will surely lurch into 2015 in reliance on the immoral concept of "ignorance is bliss" or the limiting assumption of "we are helpless". While forethought does not guarantee that the nation will do better, it surely raises the chances of our avoiding what appears to me to be an impending cataclysm. I will still come back to the important and disturbing issue of self-retrospection, but, for the moment, permit me to revert to my analysis of the electoral system. At this juncture, and in the space that remains, I will outline some key issues that are central to Nigeria's electoral system and democratic stability, and therefore merit investigation. In each case, I identify some findings and generate propositions that are deserving of systematic evaluation, reflection and analysis.

(i) *Delimitation of Franchise and Qualification of Right to Vote*

The issue of voting rights has in recent times become a contentious issue in Nigeria. Fundamental questions bordering on political equality have been raised as to whether minors, non-citizens, prisoners, and Nigerians in diaspora should be allowed to vote. As earlier noted, universal suffrage is usually considered to be one of the most basic criteria for an election to be deemed to be democratic.<sup>19</sup> Yet, all over the world, different jurisdictions have some form of electoral disqualification which confirms that the right to vote is a franchise dependent on law, and thus, not a vested natural or absolute right of which a citizen cannot be deprived.

In Nigeria, eligibility to vote is determined by the Constitution of the Federal Republic of Nigeria, 1999<sup>20</sup> and the Electoral Act, 2010.<sup>21</sup> A person is qualified to be registered as a voter if such a person is a citizen of Nigeria; has attained the age of 18 years; is ordinarily resident, works in, originates from the Local Government Area Council or Ward covered by the

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<sup>19</sup> There is strong support for this in Art. 21 of the United Nations Charter on Human Rights Arts. 2 and 25 of the International Convention on Civil and Political Rights; and in the African Charter on Human and Peoples Rights.

<sup>20</sup> Ss. 77(2) 117 (2), 132 (5) and 178 (5) of the 1999 Constitution.

<sup>21</sup> S. 12 (1) of the Electoral Act, 2010.

registration centre; presents himself for registration as a voter; and is not subject to any legal incapacity to vote under any law, rule or regulation in force in Nigeria.

With respect to minors, 18 years is an age at which nearly all would have completed formal schooling, and hence the stage of maturity at which a person could begin to establish an independent life. Indeed, relatively few countries have voting ages below 18.<sup>22</sup> What Nigeria has in her law in this regard is therefore not arbitrary. In the case of non-citizens, it is only appropriate that the right to vote should define the polity, that is, the political community called Nigeria. The law in Nigeria has already granted a generous franchise in that there is no restriction on citizenship which can be by birth, or acquired by registration or naturalization.<sup>23</sup>

The situation is, however, different with prisoners. The fact that a person has been sentenced to prison or awaiting trial should not mean that the person has ceased to be a citizen. The situation is more worrisome for a country like Nigeria where substantial number of people are awaiting-trial detainees. A number of jurisdictions now view it as invidious to disenfranchise on grounds of gender, race, class or status. The denial of the right to vote to any segment of the population has serious implication in a democratic setting. Aside of the fact that it affects the outcome of an election, it also devalues citizenship. Prior to 2001, "legal incapacity" under the electoral laws of Nigeria includes *the imposition of sentence of death, or in respect of an offence involving dishonesty, of imprisonment for a term exceeding six months or such other punishment as may lawfully be substituted therefore, and the voter has not at the date of the election suffered the punishment or received a free pardon.*<sup>24</sup> Beginning from the Electoral Act 2001, the situation changed. "Legal incapacity" was redefined to mean *"a person disqualified under the Constitution or the Electoral Act, or any other Law, Rules and Regulations from registering as a voter or from contesting elections."*<sup>25</sup>

Countries like Denmark, Israel, Canada, Switzerland, Spain, Republic of Ireland, Australia and South Africa have no formal prohibition of prisoners' voting rights. Further, there is the issue of "double jeopardy" when a prisoner is disenfranchised. This came out clearly in a landmark judgment of the Supreme Court of Israel following the assassination of the Prime Minister, Yitzak Rabin in 1995. There was a move to prevent the killer, Yigal Amir, from being allowed to vote in the election to replace Rabin. The Supreme Court rejected the call, and stated, *"...disenfranchisement would hurt not Amir, but Israel's democracy. Imprisonment was his punishment."*<sup>26</sup> In 2010, the Supreme Court of Ghana similarly upheld the right of prisoners to

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<sup>22</sup> Brazil stands out with a voting age of 16 years.

<sup>23</sup> Ss. 25, 26 and 27 of the 1999 Constitution.

<sup>24</sup> See for instance, see S. 1 (3) (b) of the Electoral Act, Cap. 105, LFN 1990, which has a commencement date of 5<sup>th</sup> August, 1982.

<sup>25</sup> It is to be noted that the phrase "legal incapacity" is usually with reference to age (infancy), physical or mental ability (unsoundness of mind) to do, give, transmit or receive something.

<sup>26</sup> Behan & O'Donnell, "Prisoners, Politics and the Polls: Enfranchisement and the Burden of Responsibility", *British Journal of Criminology*, 48 (March, 2008), 319 – 336.

vote in general elections. Perhaps, if political leaders are motivated to seek the mandate of this segment of the society, they will be more acquainted with how thoroughly that system (just like many other systems in Nigeria) has been destroyed, why it can never meet the goals of deterrence and rehabilitation, and why there is an urgent need for its refinement.

With respect to Nigerians in the diaspora, other than arguments bordering on logistics, there is no valid reason why they should continue to be disenfranchised. The important moral of DNA, IVF and other medical-science discoveries is that human beings have the capacity to liberate themselves from thinking that something is impossible.

## (ii) *The Voting System*

The core of the electoral system is the process of translating votes into seats. There are four main formulas that determine how votes are counted to allocate seats, namely: plurality-majority formulas,<sup>27</sup> semi-proportional systems,<sup>28</sup> proportional representation,<sup>29</sup> and mixed systems.<sup>30</sup> It is not the goal of this presentation to rehash the debates that have raged over the years regarding the relative merits of these different voting systems.<sup>31</sup> Rather, I will focus on the system in use in Nigeria and some of the underlying normative issues that have been raised regarding its appropriateness or otherwise.

Nigeria is using the first-past-the-post (FPTP) system which is one of the variants of the plurality-majority voting system. Under the FPTP, a candidate is neither required to have a minimum threshold of votes nor an absolute majority to be elected. All that is needed is a simple plurality i.e. one more vote than his closest rival. Among the reasons that have been given in support of FPTP is that it is simple to use in that voters only need to choose and vote for one candidate. Second, that it tends to produce stable, accountable, responsive, single-party governments, so that the electoral outcome is decisive. Government can make state policies and law decisively, respond to issues more efficiently, and implement the party's manifesto without the need to engage in post-election negotiation. Third, that it promotes constituency service between voters and their representatives. The idea is that those elected under FPTP remain accountable to the electorate because at the end of their tenure, all that is

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<sup>27</sup> There are five variants of plurality-majority systems: First-Pass-The-Post (FPTP), Two –Round System (TRS), Alternative Vote (AV), Block Vote (BV) and Party Block Vote (PBV).

<sup>28</sup> There are three variants of the semi-proportional systems: Single Transferable Vote (STV), The Cumulative Vote (CV) and the Limited Vote (LV).

<sup>29</sup> Proportional representation has two variants: Open Party List (OPL) and Closed Party List (CPL).

<sup>30</sup> The mixed system combines the plurality-majority and proportional representation systems. It is presented as Additional Member System (AMS).

<sup>31</sup> For features of the different voting systems, see U.K. Parliament, *Voting Systems in the UK* <<http://www.parliament.uk/about/how/elections-and-voting/voting-systems/>> accessed 17 May, 2013. It is to be noted that in the evolution of electoral regimes, during the era of limited suffrage in the 19<sup>th</sup> century, plurality-majority rule was consistently used across all nations. By the turn of the century, consensus around the single member system broke down. Anglo-Saxon countries preserved the plurality rule while nations in continental Europe embraced proportional representations – See Carles Boix *ibid.* (n10).

required where there has been non-performance is a small swing in the popular vote and the opposition will be in office.

The antagonists of FPTP, on the other hand, contend that it is the most unrepresentative voting system. Supporters of any but the most popular candidate have no say in the race, with the result that all their votes are wasted. The wider implication of this is that where there is a dominant party, there is less incentive for opposition voters to turn out to vote. They argue that the FPTP favours a two-party system unlike proportional systems which is more ideal for a multiparty system. They similarly argue that the fairness of proportional systems is such that its inclusion of minor political parties in proportion to their share of the vote is a good check on governance. Finally, they contend that FPTP is a voting system that further marginalizes women.

Permit me to be laconic about the views of both the proponents and antagonists of FPTP in the context of Nigeria. To argue for or against changing the voting system is in itself a tragic error. Anyone engaged in it is certainly not paying careful attention to the mistakes of the past. I am not aware of studies that have been done to explore more systematically issues relating to the voting system in Nigeria. If what have happened in other jurisdiction is, however, anything to go by, it would be seen that proportional systems have resulted in single-party government and reflected the benefits of plurality- majority systems. The same scenario exists with the latter. The implication of this is that the pattern of government is far more complex than any simple linear analysis may confidently push to the fore. It also means that choosing one system over another will be an empirical nightmare as there is no reliable platform upon which to balance all the factors. What will further compound any debate as above referred is that studies have confirmed that a system of federalism in itself secures proportional representation, and thus, make proportional representation and allied voting systems superfluous in a country like Nigeria.

A debate of whether to change or keep to FPTP is suggestive of the fact that the expectation of voting in the first place, which is that "votes must count" has been met. Where this has not been met, there is no basis to scratch our heads in excited anticipation of a future functional system. Think of it in the context of a supermarket that is properly run in accordance with its business manual, but, is not making profit. We can talk of advertising to attract customers. Now imagine a supermarket that is not being run in compliance with the prescribed business manual. It must fail. The road to its success will be to first go back to the prescribed business manuals.

If we do not keep faith with the expectation of voting and allow votes to count, it will be redundant and fallacious to expect the current system to incentivize moderation and vote

pooling, or for us to start considering alternative voting systems. That vote must count is a core starting point. I must not fail to touch on the apathy to election i.e. low voter turnout. The issue is not one of voting system or whether there is a need to make voting compulsory. What has deepened cynicism and negativity of the electorate is the widespread disillusion with the so-called dividends of democracy.

After 50 years of independence and 14 years of democratic continuous rule, majority of Nigerians suffer from lack of basic amenities of life. The situation is appalling. What is most disconcerting, dreadful and devastating is that some of those who fought the ravaging deterioration of the military, and who we regard as visionaries of June 12 are not only contemptuous of that date, but, are now an omnipresent part of the prevailing disorder. They are leading the triumph of the corrupt, the inefficient, the indolent and the opportunistic, and are determined to map into the future at break-neck pace the waste and the ramshackle mess that Nigeria must become. All too often we look beside us at the next man for answers. Perhaps, it will be more beneficial for each and every one of us to look at ourselves and take stock. What "good" or "evil" have we contributed to this enterprise called Nigeria.

There is only so much that the voting system can do where the people operating it are not truly desirous of allowing the elections to be decisive for the outcome. Voting system can exert no influence if the polarization of the society is too strong. In the same vein, the voting system will not work miracles unless the political class are willing and ready to be accountable for their actions to the public. We cannot ignore the limitations inherent in Nigeria and expect the voting system to be the panacea.

### *(iii) Autonomy Of INEC*

It is a widely acknowledged fact that the independence and autonomy of the body saddled with the responsibility to conduct and supervise an electoral process is critical to citizens' perception of the legitimacy of the electoral contests. The failure of an electoral body to act as an independent and administratively efficient institution is a sure recipe for potential political violence. Two factors are critical, namely; institutional capacity and autonomy. The focus of the former is the ability of officials of the electoral body to carry out statutory functions and exercise discretion judiciously, while that of the latter is the ability of the officials to independently decide issues devoid of the influence of the executive and other actors within the state.

From the laws and implementation of the laws guiding voter registration, voter education and polling activities, we can assess the administrative capacity of the electoral body; while from the laws regulating appointment/removal of core officials and funding, we can come to terms

with the autonomy of the body. The cumulative of all these will determine the impartiality or otherwise of the body. With reference to INEC, the Constitution<sup>32</sup> grants structural independence while the Electoral Act grants functional independence. We can tick off on our own assessment of INEC:

a)	Is the composition, procedure of appointment/removal and tenure of the Chairman and members insulated?	YES <sup>33</sup>
b)	Does the body have financial autonomy?	YES <sup>34</sup>
c)	Does the body have full power to determine the rules of the game?	YES <sup>35</sup>
d)	Is it able to independently recruit its staff?	YES <sup>36</sup>
e)	Is it backed by a strong civil society?	YES
f)	Is it backed by a free and critical media?	YES

It is clear from the above that the ability of INEC to perform effectively comes back to who we are and, whether as individuals or as a group we are committed to democratic values. Today, we have a Professor Attahiru Jega who is able to give leadership, integrity and professionalism as Chairman of INEC. INEC received commendation from within and outside for its conduct of the 2011 polls despite some of the problems earlier noted. If we end up sometime in the future with a Chairman without a back-bone, the story will, in my candid view, be different. This is a clear-cut indication of what the “human element” contributes to a successful or unsuccessful enterprise.

*(iv) Political Party Discipline and Money Politics*

Political parties are indispensable tools in entrenching democratic values. In this respect, the mechanism of political parties controls everything from candidates selection to voting into executive office or parliament. Consequently, it is to the leadership of political parties that electoral bodies look for partnership to sustain an enduring democracy. Political parties of necessity maintain discipline over their members and are able to call them to account. Concomitantly, the electoral body maintains control over political parties.

Despite the above two layers of political party discipline, Nigeria’s political landscape regularly reflects mementoes of acts of indiscipline such as party switching, open defiance of party’s decisions and policies, and outright misappropriation of constituency allowance among others.

<sup>32</sup> Ss. 153, 154, 155, 157, 158, 160 and Third Schedule, Part I (F) of the 1999 Constitution as amended by the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010.

<sup>33</sup> This is the checks and balance that the combined reading of the Constitutional provisions guiding composition, appointment, removal, tenure and independence from exercise of disciplinary control seeks to achieve.

<sup>34</sup> S. 81 (3) of the 1999 Constitution as amended by the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010.

<sup>35</sup> Third Schedule Part I (F) paragraph 15 of the 1999 Constitution as amended, and Ss. 9-145 of the Electoral Act, 2010.

<sup>36</sup> S. 8 of the Electoral Act.

Party members also complain of unfair party pre-selection and endorsement. In appraising the above concerns, it must first be acknowledged that party rules are entirely a matter for the party concerned. Consequently, the courts would always be reluctant to delve into the issue of who is a candidate of a political party at any election.<sup>37</sup> It is only where there is infidelity to party rules that a party member will be able to maintain a challenge in court.<sup>38</sup> Even then, he would be expected to first exhaust the party's internal mechanism for resolution of conflict. It is expected that party rules will meet basic principles of free and democratic elections. With particular reference to party pre-selection and endorsement, even though there is explicit legislation in the Electoral Act that mandates political parties to be democratic,<sup>39</sup> and obliges INEC to, with or without prior notice to a political party, monitor the nomination of candidates for an election at any level,<sup>40</sup> parties have their strategy of ending up with sole aspirants who are then confirmed at a special convention or congress of the party.

There are many reasons why political parties, particularly those with strong brands, engage in pre-selection: to favour particular interests deemed relevant to the good of the party; to compensate/incentivize for party loyalty; or to protect a minority or geographical interest. Two problems of political inequality can arise from party pre-selection. First, it can result in the party picking a favoured candidate who is less than competent and thereby deprive his constituency and the political party from having effective representation. Second, it diminishes access to potential winning candidates. It is a balancing act of complex interactions for political party leaders, thus, the need for them to be more critical and committed to fostering both fair play and greater tolerance.<sup>41</sup>

As noted by Oguntade, JSC in the case of *Ugwu & Anor v. Ararume & Anor*.<sup>42</sup>

*An observer of the Nigerian political scene today easily discovers that the failure of the parties to ensure intra-party democracy and live by the provisions of their constitutions as to the emergence of candidates for election is one of the major causes of serious problems hindering the enthronement of a representative government in this country.*

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<sup>37</sup> *Chief Ikechi Emenike v. Peoples Democratic Party & Ors* (2011) LPELR – 1075 (CA).

<sup>38</sup> S. 87 (10) of the Electoral Act. See *Peoples Democratic Party & Anor v. Timipre Sylva & Ors.* (2012) LPELR – SC.28/2012; *Susan Olapeju Sinmisola Olley v. Hon. Olukolu Ganiyu Tunji* (2013) LPELR – 20339 (SC).

<sup>39</sup> S. 87 of the Electoral Act.

<sup>40</sup> S. 85 (2) (c) of the Electoral Act.

<sup>41</sup> As observed by Sarah Birch, a consistently high level of party system instability has four main consequences that are detrimental to democratic consolidation: 1) It reduces accountability – voters cannot 'throw the rascals out' if the rascals no longer exist as a unified group; 2) It impedes party institutionalism by decreasing the level of long-term commitment which politicians, activists, and voters have to 'their' party; 3) It significantly increases uncertainty, hampering the ability of politicians and voters to engage in strategically-driven co-ordination; 4) It raises the stakes at the electoral game. This may have the consequence of weakening the democratic commitment of politicians who may seek other ways of feathering their beds so as to insure themselves against possible political loss at the next election - See S Birch, 'Electoral Systems and Party System Stability in Post-Communist Europe', <[www2.essex.ac.uk/elect/database/papers/sbvoatility.pdf](http://www2.essex.ac.uk/elect/database/papers/sbvoatility.pdf)> accessed 17 May, 2013.

<sup>42</sup> Ss. 88-93 of the Electoral Act.

The promise that fair play within the party gives is political stability. The problem associated with a breach of this cardinal principle by political party leaders, is party system instability<sup>43</sup> that can degenerate into serious and deadly political violence among others.

With respect to money politics, hitherto, the concern was with politicians bribing voters. The current trend is for wealthy interests to buy political influence and favours. The approach of the law in dealing with this as related to political parties is to confer broad and wide-ranging powers on the regulatory body to be able to regulate donations and election expenditure, mandate financial disclosures and constrain election campaigns. As relevant to INEC, there are extensive provisions under the Electoral Act that can effectively be used by the electoral body to meet the above challenges. What will be of tremendous assistance to INEC is sophisticated enforcement. Whether the police and other security agencies are sufficiently positioned to provide the detailed and intricate investigation work that INEC requires to meet these challenges is another issue altogether. For reasons of lack of time, I shall not go into this. It will suffice, however, to note that the cat and mouse game of the regulator and the regulated will always be there between INEC and the political parties. It is for INEC and its support agencies to rise up to the occasion.

The recent tightening of registration rules by INEC is to be commended. It is hoped that there will be stricter enforcement of other provisions of the Electoral Act because where laws are loosely enforced, there will be a weakening of the integrity of the electoral process. Going by the revelation in the All Political Parties Account for the Year 2011 where only 4 of the 23 political parties had financial statements that can be said to be true and fair to be relied upon, it may be necessary to amend the Electoral Act, not only to provide sanction for non-submission of annual statement, but also to provide severe penalties for poor accounting records of financial transactions.

(v) *Social Justice, Electoral Justice-The Quality of Justice*

A final issue that merits systematic exploration is whether Nigerian's judiciary have been able to implant itself in the minds of the political class and the electorate as the impartial authority that can mediate electoral outcomes and conflicts. It is beyond doubt that an effective judiciary is indispensable to the democratization process. Classical constitutional arrangements dictate that when the legislature has put in place the electoral laws, and the executive has, in conjunction with the legislature, facilitated the creation of an independent

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<sup>43</sup> The 4 parties were Action Congress of Nigeria (ACN), All Nigeria Peoples Party (ANPP), Citizens Popular Party (CPP), and Labour Party (LP).

electoral body to manage the process, it is the fundamental duty of the judiciary to also put in place independent and impartial umpires to adjudicate electoral conflicts as may arise<sup>44</sup>.

The role of the judiciary relates to both pre-election and post-election matters. Pre-election matters are the issues arising prior to an election such as the validity of the nomination of a candidate for election and, whether a candidate has met the conditions relating to qualification as a candidate in an election among others.<sup>45</sup> As earlier noted, the court will ordinarily not interfere in matters falling within the confines of the internal affairs of a political party. The court, however, will not allow this to be used by a political party to subvert with impunity the rule of law. The issue for the courts in relation to pre-election matters relate to delays and impartiality. Where cases are unduly delayed or are adjudicated in a way that strongly suggests compromise on behalf of the adjudicator, it will most forcefully desecrate electoral governance.

With respect to post election matters, Section 285 of the 1999 constitution spells out the tribunals that will adjudicate on such matters, and also their jurisdiction.<sup>46</sup> The two key issues here relate to reliance on technicalities and impartiality. The effect of the time limit within which election petitions are to be completed<sup>47</sup>, which is not helped by the way respondents use all sorts of tactics to unduly delay proceedings in the knowledge that they will be allowed to continue in office for as long as the case lasts,<sup>48</sup> have pushed many election tribunals to engage in giving technical electoral justice as opposed to substantial social justice. One must admit the pressure on these tribunals who many a times sit on weekends and other public holidays to try to dispose of complex matters within prescribed limits. Yet, the problem of technical justice is that it leaves the victim with the feeling that he has been "robbed". Technical justice is nothing short of injustice pretending and/or parading itself as justice.<sup>49</sup> The victim is thereupon motivated, consciously or unconsciously, to explore other avenues to express his dissent. The victim will embrace the utilitarian justification and argue in his mind that political violence may be *prima facie* evil, but, that there are circumstances when it may be morally right to protect self-respect, assert human dignity or protest oppression. I will only reiterate what I have said earlier about impartiality which is that election tribunals should live above board and not compromise on their sacred role.

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<sup>44</sup> S. 6 of the 1999 Constitution vests the judiciary with the power to adjudicate on matters between parties.

<sup>45</sup> See Ss. 66, 107, 137 and 182 of the 1999 Constitution as amended.

<sup>46</sup> The Supreme Court is now the final appellate court on Gubernatorial elections by virtue of S. 233 (2) (e) (iv) of the 1999 Constitution as amended, while by S. 239 (1) (a) the Court of Appeal is the Court with original jurisdiction to hear matters arising from Presidential elections. States also have responsibility to create electoral tribunal to deal with Local Government elections by virtue of S. 7 (1) of the 1999 Constitution.

<sup>47</sup> S. 285 (5) – (7) of the 1999 Constitution as amended. Also, S. 142 of Electoral Act.

<sup>48</sup> S. 143 of the Electoral Act.

<sup>49</sup> The appellate courts have consistently emphasized the need for substantial justice devoid of technicalities in election petitions. See *Omidiran v. Etehe* (2011) 2 NWLR (Pt. 1232) 471 at 497; *Nwole v. Iwuagwu* (2004) 15 NWLR (Pt. 895) 61 at 82; *Odon v. Barigha-Amange* (No. 2) (2010) 12 NWLR (Pt. 1207) 13 at 65.

INEC can assist to reduce the work load of election tribunals through the proper conduct of elections. This will reduce grounds of complaints. In addition, violators of electoral laws and those who have committed electoral offences should be appropriately and severely sanctioned as a deterrence for others.<sup>50</sup> It is also not out of place for INEC to start thinking seriously about electronic voting. There are several reasons to be fearful about new technology and computer security. At the same time, our electoral system must be able to keep pace with new developments to benefit from efficiency, cost saving, accuracy, convenience and greater accessibility.

## Conclusion

In this lecture, I have tried to look at Nigeria's electoral system and the consequences on political stability. Unfortunately, I have only done this superficially for reasons which I believe are quite obvious to this very distinguished gathering. There are a number of other points that deserve mention, but my mandate as well as the need for me to be careful not to unduly take for granted your patience in listening to me are clear limitations. Our electoral laws may still require a bit of tweaking "here and there", but, not so damning as to see it as the bane of Nigeria's political instability. We must shift our focus more to how critical supporting institutions like the law enforcement agencies and the judiciary can better play their roles. At the risk of sounding repetitive, political parties must have the will to remain accountable, while political leaders and the political class must begin to see power as a means to serve other ends and not merely self gratification. They must exude passion, a feeling of responsibility, a deep sense of proportion and I, dare say, a fervent desire to engage with the people with their heart.

As for the heroes of Nigeria's democracy, the heroes of June 12, we must continue to do what we can to educate people to exercise their right to vote, discourage anti-social elements, shun corruption and other parochial tendencies, demand transparency, encourage people to vote for values, talents and visionary leaders, and never keep silent in the face of evil. Only then will the spirit of June 12 continue to abide by our electoral system. God be with us.

*Thank you.*

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<sup>50</sup> This provisions of Ss. 94-112 as it relates to prohibition of certain conducts, and Ss. 117 to 132 in relation to electoral offences are quite extensive and can be utilized by INEC and law enforcement agencies to protect the electoral system.