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# ELECTORAL PETITIONS AS A GUIDE FOR DEMOCRATIC REFORMS IN NIGERIA

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## **Abstract**

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*Democracy is regarded as the best form of government globally due to its cherished ideals. True democracy is a result of election credibly conducted, free from electoral fraud and such established government is seen as legitimate by the people. However, Nigeria's democracy is different as the conduct of elections is characterized by electoral fraud, thuggery and grievances. The aforesaid situation has weakened democracy and its values in Nigeria, which by-product is attitudinal political apathy of Nigerians toward elections. The paper examined electoral petition as a guide for restoring the anomaly in the electoral process and for consolidating democracy and deepening its value in Nigeria. The paper utilized observation and secondary methods of data collection. The paper established the possibility of using electoral petitions in strengthening and deepening democracy and its values with the aid of incorruptible electoral tribunal in Nigeria. Recommendations are equally made to realize the possibility.*

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**Keywords: Democracy, Government Elections, Data Collection**

## **INTRODUCTION**

In democracy, the people are active participants in their own affairs. It is a people's government. It is a form of government that by principle allows popular participation of citizens in the process of governance. Ray (2011:199) noted that in democracy the

people exercise their choice in the matter of selection of their leaders by participating in electoral process.

Sarbine and Thorson (2007) view democracy as a system of government designed to provide liberty, material welfare, education and equal distribution of wealth to all in the state. Democracy must meet the essential conditions of equal level playing ground for all individuals and groups, equal participation and political liberties of various dimensions. Democracy is a government in which ultimate power rests with the people through their representatives. The quality of democracy can be measured by the level of peace, freedom, justice and the living standard of the people.

In the contemporary world, any other form of government other than democracy is considered outmoded, an aberration and is resisted by champions of democracy. That is why military coup d' état today are condemned by some African leaders who have little regard for democracy and good governance. Democracy connotes essential freedom, justice, equity and peace. Citizens of a state have the right to choose their leaders and this can only be done in a just and peaceful political atmosphere. In other words, democracy cannot be built on injustice and deceit. Democratic leaders and its governance can only be legitimate if the elections that brought them to leadership are conducted in a free, fair and credible manner, and anything short of this may call for post-electoral violence as the people perceive such emerged leader and such government as illegitimate, someone who has subverted their electoral right through electoral fraud/rigging.

Nigerian democracy is peculiar in the sense that it is characterized by denial of electoral right, justice and peace. Electoral fraud is the current political culture of Nigerian politicians. This scenario makes the electorates develop attitudinal political apathy. Hence, the legitimacy of successive Nigerian government is in doubt. This situation is evident in the 2003 general election which was rigged and the 2007 general elections which were worse than military coup. The masses who were encouraged to register were disenfranchised. The results of the Independent National Electoral Commission (INEC) was strongly opposed and rejected as illegal and fraudulent. In that election, Yar Adua was imposed as president. The president in his inaugural speech admitted the imperfections and anomalies in the election that ushered him into the presidency and promised to carry out electoral reforms.

The attitude of the politicians toward electoral contest is weakening democracy and its values in Nigeria as most times both the masses and the opposition parties may be helpless, particularly if the party involved is the ruling party. Politicians want to win either by hook or crook. It does not matter to them whether the people accept them as

their choice candidate or not. It is on this basis that the paper sets out to examine electoral petitions as a guide for consolidating democracy and deepening its values in Nigeria, using observation and secondary methods of data collection.

### **Methods of Study**

The study adopted the observation technique and the historical method of data collection. Observational technique is a primary tool of scientific inquiry which makes it possible to record event simultaneously with their spontaneous occurrence. This means the method affords the researcher to watch events as they occur. In other words, the researcher sees, hears and records socio-political phenomena as they are happening. The secondary source derived from textbooks, journals, periodicals and the visual media as well as the internet.

### **Theoretical Framework**

The framework of analysis adopted in this paper is structural-functionalism. According to the exponents of this theory, in every political system, there exist specialized political structures or institutions which perform specific functions. For instance, in all modern political system, six types of political structures exist, such as: political parties; interest groups; legislatures; executives; bureaucracies and the judiciary (Almond, Powell, Strom and Dalton, 2004).

Structural-functionalism provides an insight into the connection between social structures and the functions which they perform to bring about results. Structures are arrangements within the system that perform functions which are either diffused or diffracted, while function is the outcome of the system (Omodia, 2007).

Structural functionalism has two major properties: input and output. Input functions are:

- i. Political socialization and recruitment
- ii. Interest Articulation
- iii. Interest Aggregation
- iv. Political Communication

The output functions are:

- i. Rule Making
- ii. Rule Application
- iii. Rule Adjudication

In relating structures to functions and process to policy and performance, Almond et al, (2004), indentified three concepts crucial to the workings of the political system.

These are: capabilities, conversion process and system maintenance cum adaptation functions.

As stated earlier, every political system performs both the input and the output functions. It should be noted that similar structures can perform different functions in different political systems. Therefore, it is better to study the functions rather than the structures or institutions.

The utility of this theory to this study cannot be overemphasized. As the theory implies, when the political structures and institutions are weak and deficient to perform their roles sufficiently, there will be breakdown or disequilibrium in the system. The Nigeria State is characterized by prebendalism, ethnicity, religious intolerance, money politics, violence and insecurity. It is in order to guide against electoral malpractices and violence that featured in every election that led to establishment of electoral tribunals in Nigeria.

### **Conceptual Understanding of Electoral Petition and Rigging**

#### **Electoral Petition**

Electoral petition refers to a written application meant to challenge the result of election such as presidential election, governorship election, National or State Houses of Assembly elections or Local government council's elections. Elections petitions are peculiar and totally different from civil cases (Babalola, 2007). Electoral petitions are essentially designed to redress electoral grievances which could be rigged elections and other forms of electoral violations.

#### **Electoral Rigging**

Nwabueze (2003) sees election rigging as a dubious act characterized by illegalities with the intention of influencing an election to favour a candidate(s) through intimidation or falsification of results or other means and announcing a candidate who is not the rightful winner. Electoral rigging is the act of subverting elections by involving in dishonest activities as against one-man-one-vote in elections. Therefore, electoral rigging is an instrument of dubious politicians and their followers use to manipulate electoral process to their advantages.

#### **Stages of Electoral Rigging**

Electoral rigging or election malpractice does not start with vote counting as most people are made to believe. Although, vote counting offer an opportunity for

electoral fraud. Electoral malpractice can take place at any stage even long before election to the effect that a casual observer cannot fish out exactly what is happening when accusations are made. Electoral rigging could start with census and electoral delimitation of wards and constituencies. This is also referred to as gerrymandering.

- **Gerrymandering:** This is the act of manipulating electoral ward or constituency in order to gain undue advantage during election. It is common practice in Nigeria to create more wards by the ruling party in anticipation of fraudulently winning election. People in an electoral area that are short-changed through gerrymandering often complain of marginalization in terms of representations and political opportunities because of skewed wards even when census figure proved them to be more populous. For instance, the Ijaw in Warri North Local Government of Delta State have complained that the Itsekiri's electoral wards were manipulated to favour them during election. In America, gerrymandering is recognized by the constitution. Specifically, in North Carolina, democrats depend on black votes to win election. Elsewhere, in the same U.S, voting is in favour of Republicans. This is because some districts and races have been predetermined constitutionally in favour of either party (Aljazeera, 2016).

Nwaze (2012:88-91) identified three stages of electoral rigging in Nigeria, which are:

- Voter's registration stage
  - Political campaign stage
  - Voting (and vote counting) stage.
- **Voter's Registration Stage:** This involves under-age registration, multiple registration, disenfranchising voters and Registration of aliens, which Odivwri, in Sokoh and Umukoro (2010:84) identified as ECOWAS voting.
  - **Political Campaign Stage:** This involves financial inducement, thuggery, smear campaigns, false promises, threats and coercions.
  - **Voting and Vote-Counting Stage:** This involves buying of voters cards at the polling centres, intimidation/harassment by thugs and security operations, snatching of ballot boxes, ballot stuffing, manipulation or bribery, a different result declared and recorded from what was actually counted at the polling centres, and recording more votes at the polling centres than the number of voters registered.

The above identified stages of electoral rigging/fraud and techniques are carried out



in manipulating the electoral process to confer undue advantages to a particular politician or group in Nigeria.

### **Electoral Tribunal and Democratic Consolidation**

Electoral tribunal is a special type of court instituted with the power to handle petitions from candidates who are aggrieved from the conduct of elections (Nwagboso, 2011). Tribunal varies according to the nature of dispute or problem involved.

Electoral tribunal can be seen as an authorized group of people by law to settle electoral disputes emanating from conducted elections in a democratic setting. The definitions above is in line with section 285 subsection 1 and 2 of the 1999 constitution of Nigeria (as amended) mandates that there shall be established for each state of the federation and federal capital territory one or more election tribunals to be known as the National and State House of Assembly Election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether any persons has been validly elected as a member of; the National Assembly or House of Assembly of a State, and Governor or deputy governor of a State.

In order to checkmate fraudulent practice and its negative implications, the National Assembly established the 2010 Electoral Act with special provisions on election timeline, for voting, counting and declaration of results, just as it ensures redress is gotten through expeditious trial that aimed at nipping in the bud the undue delay which petitioners experience in getting redress in court.

The National Assembly is doing all these to ensure that elections in Nigeria are free, fair and transparent. A fraud-free election is a function of the credibility of electoral tribunal. Incorruptible electoral tribunal is an instrument for strengthening and deepening democracy and its values in Nigeria. Establishment of tribunal has created the opportunity just as it empowers (see section 285 of the 1999 constitution of Nigeria) electoral oppressed candidates to submit electoral petitions to the election tribunal, 21 days from the day the final results was declared by the Independent National Electoral Commission (INEC).

In furtherance, the submission of petitions is to enable the tribunal ascertain the declared winner of an election validly elected by the electorates to be their representative. The declaration of true winner of an election through tribunal would vitalize democracy and deepen democratic values in Nigeria. This is because the

electorates would discard political apathy and participate in politics as they can now speak through their votes. Therefore, there would be stability as the government govern in accordance with the wishes, interests and aspirations of the electorates; just as the electorates would equally support policies of the government, which they regard as legitimate government.

### **Political Participation and Legitimacy of Government**

Government that is undemocratic or oligarchic does not call for citizens support but democratic government not only calls for support but equally needs full participation of the citizens to succeed. Political participation is a means of legitimating government through democratic, free and fair elections which gives opportunity for the citizens to exercise their franchise. That is to say, legitimacy is an attribute of authority based on the belief or perception by the people of a state that the governing authority is lawfully constituted.

A government is legitimate if it formulates and implements its policies in accordance with the values and beliefs of the citizenry. The absence of this leads to political instability that may cause the government to focus more on the use of force to bring about stability which may not be achieved. Bamgbose (2002:7) noted that legitimacy enables a government to invest societal resources in goals and objectives which will sustain its legitimacy. This was evident in Nelson Mandela's administration in South Africa. Legitimate government leads to good governance because the government rests on the wishes of the majority of the people.

### **Conditions for Questioning an Election**

The Electoral Act 2010 of the Federal Republic of Nigeria (FRN) amended 2010 in section 138, subsections 1 outlines the conditions under which an election may be questioned to include the following:

- the person whose election is challenged was, at the time of the election, not qualified to contest the election,
- the election was invalid by reason of electoral fraud or non-compliance with the provisions of this Act,
- the respondent, or the petitioner or its candidate was validly nominated but was excluded from the election unlawfully.

### **Guidelines for the Operations of Electoral Tribunals**

Electoral tribunal is a legally constituted body with guidelines of operations. FRN Electoral Act 2010 (as amended, 2010) states the guidelines of election tribunals in

part VIII as follows: section 134, subsection 1, 2, 3 and 4 respectively states that;

- i. Petition challenging result of an election shall be filed within 21 days after the declaration of result.
- ii. Judgment shall be delivered in writing within 180 days from the date of the filing of the petition by electoral tribunal. This provision becomes necessary because once an Election Petition is not concluded within 180 days from the date the petition was filed by the petitioner, it ousts Election Tribunal jurisdiction to hear the petition and this applies to rehearing.
- iii. Appeal from the ruling of electoral tribunal or court shall be heard and concluded within 90 days from the delivery of judgment.
- iv. All appeals from election tribunals may follow the practice of first giving its decision and reserving the reasons for final decision for hearing to a later date.

Section 137, subsection 1 and 3 respectively states who are entitled to present election petitions as follow;

- i. Election petition may be presented by one or more of the following persons  
(a) a political candidate in an election (b) a political party which participated in the election.
- ii. In case, there is complaint involving the electoral officer, presiding officer or returning officer they may not be joined as respondents although, that would depend on the nature of the complaint, the commission shall be the respondent for itself and its staff.

Section 140 states the conditions or nullification of election by Tribunal (or court) as follow.

Section 1 of the section 140 states that subject to subsection 2 of the section, if the tribunal or the court as the case may be, determines that a candidate who returned as elected was not validly elected on any ground, the tribunal or the court shall nullify the election.

Section 2 states that where an election tribunal or court nullifies an election on the ground that person who obtained the highest votes at the election was not qualified to contest the election, the election tribunal or court shall not declare the person with the second highest votes as elected but shall order a fresh election.

Furthermore, subsection 3 of the section 140 states that if the tribunal or court determines that a candidate who was returned as elected was not validly elected on the ground of valid votes cast at the election, the Election Tribunal or the court as the case may be, shall declare as elected the candidate who scored the highest number of valid votes cast at the election and satisfied the requirements of the constitution and the Act.

### **Electoral Petition and Strengthening of Democracy**

The election conducted in a peaceful, just, free and fair political atmosphere established people-rooted democracy. This would make electoral petition unnecessary as there will be no electoral grievances. Electoral fraud kills democratic values, culture and weakens democracy.

In Nigeria, democratic values, culture and institution are weakened by electoral fraud and this has caused Nigeria democratic deficiency. Rigging of elections is the current political lifestyle of Nigerian politicians. An objection to electoral fraud by any political party or candidate is not an aberration in electoral process of choosing democratic leaders. An aggrieved candidate with genuine evidence should go to tribunal by petition.

Electoral tribunal is empowered legally to confer legitimacy on elections or withhold the same depending on the evidence before it for examination. The role of tribunal is crucial in the actualization of the retrieval of the stolen electoral mandate of the people by fraud. The independence and credibility of the tribunal is crucial in the actualization of the retrieval of the stolen electoral mandate, so, it is something to be serious with. Hence, impartial electoral tribunal is very imperative.

The essence of electoral tribunal is to serve as a guide for enhancing democracy and deepening democratic values and culture. This can only be achieved if the tribunal is independent and credibly claim the stolen electoral mandate by dubious politicians through fraud. This is because political parties or candidates are entitled to electoral victory via total votes legally obtained in an election. This was evident in Adams Oshiomole of Edo State and Mr. Emmanuel in Uyo who regained their stolen electoral mandates through tribunals (Olasupo, 2010: 52, Adekunle, 2008: 48).

Between 1999 to date, electoral tribunals have nullified several elections ranging from governorship elections, House of Representatives to Senatorial elections. In the aftermath of the 2003, 2007 and 2011 general elections, the elected governors of

T Abia, Bayelsa, Enugu, Adamawa, Ondo, Ekiti, Kogi and Edo States, among others  
f were nullified by electoral tribunal (Nwagboso, 2011).

/ Following the 2015 general elections, the elected governors of both Taraba and  
f Rivers States had their elections nullified. However, they were reinstated by the  
i courts on appeal. In Akwa Ibom, Kogi and Benue States among others, some  
National Assembly members were sacked by electoral tribunals (Gbenga 2015).

A stolen electoral mandate claimed by tribunal at the altar of impartiality as shown in Oshiomole and Emmanuel's cases among others, earlier mentioned without doubt revive democracy just as it also strengthened and deepened democratic values and culture, as the people regained their lost democratic consciousness and belief in democracy and its principles. This scenario will serve as an antidote to political apathy in Nigeria.

### **Conclusion and Recommendations**

Democracy is a government formed by all through elections. True democracy cannot be formed under unhealthy political atmosphere characterized by thuggery and electoral fraud as seen in Nigeria today. This situation has made most Nigerians show apathy to party politics.

In order to vitalize and deepen democracy and its tenets in Nigeria from electoral thieves through electoral petitions, the following recommendations are made:

- The established electoral tribunals should be impartial in their dealings and follow strictly the authorized guiding principles/laws. This is to avoid the alleged case of Edo State Electoral petition Tribunal sitting in Benin City that gave "undue technicalities to judicial proceedings in place of substantial justices" (Abdulwahab, 2015:9).
- Nigerian judicial commission should train lawyers to be expert in handling electoral tribunal matters.
- Any aggrieved political party or candidate should feel free and not intimidated to go to the tribunal with clear evidence for fair hearing.
- Independent National Electoral Commission (INEC) should make available electoral materials in dispute to both tribunal inspectors and any candidate or political party with strict security guide. This is to avoid the case of All Progressives Congress accusing INEC of conniving with Governor Nyesom

Wike to frustrate its efforts to inspect the materials used in the conduct of the April 2<sup>nd</sup>, 2015 governorship election in Rivers State, even when the tribunal authorized them to inspect the materials.

- There is need for electoral reforms that will specify penalties for legally electoral fraudsters in Nigeria. The government must demonstrate the will to penalize those who violate electoral rules.
- Above all, the constitution must ensure that no one is above the law. In Nigeria, the rich and the powerful appear to be above the law. They violate the Nigerian constitution with impunity, this should not be so

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