Dissecting the Anatomy of Fraudulent Elections in Africa: Proposals for Reforming Nigeria's Electoral Process

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DISSECTING THE ANATOMY OF FRAUDULENT ELECTIONS IN AFRICA: PROPOSALS FOR REFORMING NIGERIA’S ELECTORAL PROCESS

By

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Introduction

Elections represent the most fundamental step toward constitutional democracy. Elections enable citizens to participate in the political process and provide them with powers to initiate changes in the society. “By creating regular channels for political competition and furnishing opportunities for citizens to evaluate and change leaders, elections represent a cornerstone of democratic rule.” More importantly, elections deepen the concept of accountability so central to constitutional democracy, by giving citizens the opportunity to choose their leaders and to reject those they do not like. Ultimately, the powers of the electorate to reject candidates for elective offices compellingly reinforce the notion that powers in a democracy lie not with the government, but with the people. Credible, fair and free elections enable the citizens to reassert their power and

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1 G. Shabbir Cheema, Building Democratic Institutions: Governance Reform in Developing Countries, 25 (2005) (“free, fair and regular elections constitute one pillar of democratic governance. Such elections confer and sustain legitimacy and choice in the political process. As such, they are an important first step in the crafting movement of, by, and for the people.”); Kenneth Roth, Despots Masquerading as Democrats, 1 Journal of Human Rights Practice, 140 (2009) (“The concept of democracy reflects the powerful vision that the best way to select a government and guide its course is to entrust ultimate authority to those who are subject to its rule.”).

2 Thomas R. Dye, Politics in America, 249 (2003) (“elections also have an indirect influence on public policy, allowing voters to influence policy directions by choosing between candidates or parties with different policy priorities.”). Etannibi Alemika, Quality of Elections, Satisfaction with Democracy and Political Trust in Africa, Afro Barometer, Working Paper, No. 84, p. 1 (elections provide citizens with the opportunity of (a) choosing between competing policies and parties; (b) holding elected officials accountable for their actions; and (c) translating the symbolic notion that “power of sovereignty resides in or belongs to the people” into political reality).


4 Molly Bentz, Functional Democracy: Responding to Failures or Accountability, 44 Harv. Int’l L.J. 387, 402 (2003) (“accountability mechanisms on the other hand not only require leaders to face the consequences of their decisions, but place the power to sanction those leaders in the hands of those most affected by the decisions – citizens.”); Adigun Agbaje & Said Adejumobi, Do Votes Count? The Travails of Electoral Politics in Nigeria, Africa Development Vol. xxxi, No. 3 25, 26 (2006) (“in liberal democratic theory, an election is a viable mechanism for consuming representative government. Apart from facilitating leadership succession, it promotes political accountability, citizens participation and gives voice and power to the people.”).

influence over the government, and remain the best antidote for bad governance and executive hubris. As Alexander Hamilton famously observed, “the natural cure for an ill-administration is a change of men.” Political elites fearful of rejection at the next poll will operate with a heightened sense of their limitations and vulnerabilities, and hopefully will display greater sensitivity to the needs and welfare of their citizens. The most fundamental value of elections is that they facilitate peaceful and orderly change of government shorn of the violence that often characterizes changes of government during the military era. Describing the importance of elections in a constitutional

6 PAUL COLLIER, WARS, GUNS AND VOTES: DEMOCRACY IN DANGEROUS PLACES, 18 (2009) (“In a democracy, a government has no choice but to try to deliver what ordinary citizens want. If it is seen to perform sufficiently well then it gets reelected; if it is judged to be inferior to alternatives, then it loses. Either way, government strives to perform because it is accountable to voters.”); TIMOTHY BESLEY, PRINCIPLED AGENTS? THE POLITICAL ECONOMY OF GOOD GOVERNMENT 36 (2006) (“Constitutions offer only limited provisions for the control over politicians – punishing them only for the grossest abuses. The main sanctions for poor performance is electoral— those who perform badly will not be reelected.”); Staffan I. Lindberg, The Surprising Significance of African Elections, 17 J. Dem. 139, 150 (2006) (noting that elections despite their flaws are the best available mechanism for translating this right of self government into the effective governance of a modern state).

7 ROBERT A. DAHL, A PREFACE TO DEMOCRATIC THEORY, 3 (1956) (if ordinary citizens cannot exert a relatively high degree of control over the leaders then the minimal threshold of democracy has not been reached.).

8 USAID, FOREIGN AID IN THE NATIONAL INTEREST: PROMOTING FREEDOM, SECURITY AND OPPORTUNITY 33 (2002) (“when competitive elections are truly free and fair, they do provide an instrument for removing bad, corrupt or merely ineffectual leaders. They thus provide an incentive for political leaders to govern more effectively in the public interest.”).

9 Quoted by WILLIAM BUCKLEY LET US TALK OF MANY THINGS, 165 (2008): Elections, according to Professor Teshome serve three main purposes in a democratic society: (1) elections serve as a means for people to choose their representatives; (2) elections are a means of choosing governments; and (3) elections give legitimacy to the political system. Wondwosen Teshome, Democracy and Elections in Africa: Critical Analysis, International Journal of Human Sciences, vol. 5 issue 2, 1 at 6-7 (2008).

10 Jennifer Widner, Africa’s Democratization: A Work in Progress, CURRENT HISTORY, May 2005, p. 216 (“if citizens could vote against poorly performing politicians at the ballot box, political elites would have a stronger incentive to attend to the needs of ordinary citizens, choose policies that would generate economic growth, and reduce corruption.”) Cheema, supra note 1 at 25 (noting that elections provide the direct participation and ultimately accountability that translates into a higher degree of inclusion and consequently, less alienation and cause for violent dissent).

11 Describing the values of elections, Professor Adelaja Odukoya stated:

An election is therefore an empirical demonstration of a citizen’s liberty and political choice. It is for this that it serves to legitimize government. Properly managed, elections provide a veritable platform for conflict resolution and transformation outside the battle field and without bloodshed.

democracy, the Nigerian Electoral Reform Committee noted that:

Free and fair elections are the cornerstone of every democracy and the primary mechanism for exercising the principle of sovereignty of people. Through such elections, citizens participate in the governance of their country by choosing those who govern in the quest for development. By their choices, the citizens confer legitimacy and authority on those who govern, making it easier for them to mobilize public support and cooperation for the implementation of development programs. Free, fair and credible elections are therefore a crucial requirement for good governance in any democracy.12

Africans, like their counterparts in established democracies, have long recognized elections as the means for citizens to elect their leaders.13 They also recognize that conducting credible, free and fair elections remains Africa’s direct, perhaps only route to democratic consolidation. The problem, however, is that the ability of elections to achieve the results described above rests on several pillars, all of which are shaky in Africa. Elections in Africa differ from those conducted in established democracies in four critical ways.

First is the overpowering role of the ruling party. Ruling parties have what their counterparts in established democracies can never have: the power to brazenly manipulate elections and thus the ability to blunt and negate the will of the people.14 Governments in Africa conduct elections with neither sincerity nor seriousness in allowing the process to function as intended. Rather elections turn through violence — at a time and in a manner chosen by coup plotters – it now changes hands principally in accord with institutional rules.”).


13 Staffan L. Lindberg, The Surprising Significance of African Elections, 17 J. Dem. 139, 140 (2006) (noting that by June 2003, 44 of Sub-Saharan Africa’s 48 states have conducted what are often referred to as “founding elections,” typically marking a transition from a long period of authoritarian rule to fledgling democratic government.).

14Daniel Calingaert, Election Rigging and How to Fight it, 17 J. Dem. 138, 140 (2006) (“Ruling parties skew electoral competition to their advantage through many methods, some more crude than others. They may obstruct the opposition and its supporters, pressure ordinary citizens, use state resources to support incumbents, stack electoral commissions with their stalwarts, or control the media.”)
out to be shams orchestrated by the ruling party to ensure hegemony over the nation, and more importantly, to poultece international concerns about democracy in Africa.\textsuperscript{15} Elections, drained of meaning and relevance, become powerful and very attractive tools used by the ruling party both to retain power and to buy reprieve from the world community. Ruling parties in Africa have become more proficient and creative in orchestrating electoral fraud. Their control of the nation’s security apparatus, unopposed access to vast resources and the powers of appointing electoral commission officials enable them to skew and manipulate elections in their favor.

Second is the attitude of political elites toward elections. Africa’s political elites view elections through a different lorgnette fogged by their desire for self advantage. The rapid obsession with attaining power leads them to engage in fraud and other irregularities, especially violence, to achieve victory.\textsuperscript{16} More fundamentally, political elites know that the electoral process neither encourages nor rewards those who play by the rules. Electoral outcomes are determined not by the candidates’ personal charisma, ideology or even preference by the citizens; they are determined by the candidates’ ability to out-maneuver opponents in what often turn out to be violent and anarchic competitions for supremacy.\textsuperscript{17} Political elites espouse no ideas or ideology, and in most cases have neither principles nor moral scruples. They approach the electoral process without any constraints, no

\textsuperscript{15} Kenneth Roth of the Human Rights Watch, a New York based human rights organization, accurately captured the reasons why leaders organize elections. He stated that:

The local population knows all too bitterly what a farce the elections really are. At best, these leaders gain the benefit of feigned compliance with local laws requiring elections. Rather, a good part of the motivation behind this democratic veneer stems from the international legitimacy that an electoral exercise, however empty can win, for the most hardened dictator.

Roth, \textit{supra} note 1 at 142.

\textsuperscript{16} See pages 15-20 of text \textit{infra}.

\textsuperscript{17} \textit{Id.}
fears of sanctions for illegal acts, no sense of obligation or responsibility to the nation, and act with scant or no regards for the humanity of their opponents.\textsuperscript{18}.

The third is the attitude of citizens toward elections. The illegal and unnecessarily provocative and brazen manipulation of the electoral process causes citizens to approach elections with a mixture of frustration and disdain. Some citizens disgusted and demoralized by the shenanigans of the ruling party lose interest in the democratic process and fail to participate in the electoral process. Other citizens, especially the poor and the unemployed, view elections as avenues to make money and readily lend themselves to corrupt practices and violence once the pay is right. Also, because of pervasive illiteracy, most citizens lack the sophistication to evaluate the candidates and their programs on how to govern. The sophisticated ones with the capacity to critically evaluate the candidates, are often prevented by ethnic bias and disinformation from engaging in meaningful evaluation of the candidates.

The fourth is the nature of the society. Elections conducted amid dysfunctional institutions, archaic and tamper prone voter registration and voting procedure, and organized by corrupt, and compromised election officials provide the recipe for disaster. Electoral commissions that typically serve as impartial umpires are often corrupt, inefficient and partisan. Modern facilities that ensure tamper proof voter registration, voting and collation processes are either nonexistent or distorted by biddable election commission officials. Security operatives, especially the police charged with maintaining order and protecting the integrity of elections watch impassively as ruling party candidates tamper with election materials and ballot boxes.

\textsuperscript{18} \textit{Id.}
This paper examines the conundrum of conducting elections amid chaos and uncertainty resulting from environmental factors and the attitude of political elites toward the electoral process; it is divided into two broad parts. Part I describes the features of elections in Africa, namely the overbearing influence of the ruling party, attitude of political elites, electoral violence, the emergence of political godfathers, and the impact of ethnicity on the electoral process. Elections in Nigeria will continue to be conducted under dubious and questionable circumstances unless something is done to challenge and subvert the environmental factors that lead to electoral irregularities.

Part II examines what Africa must do to reclaim the integrity of the electoral process currently under siege by corrupt politicians. The challenge for Africa is how to simultaneously make elections a credible and effective way for citizens to choose their leaders as well as vital and integral component parts of the process to deepen democracy. Conducting credible election is so crucial to efforts to deepen democracy because “democracy can hardly be expected to take hold where elections are reduced into a symbolic exercise in mass participation with predictable results rather than a process of competition with uncertain results.”19 Despite the problems with elections in Africa, I argue that electoral problems are neither inevitable nor insoluble but rather, they result mainly from the failure of leadership to set the template for appropriate electoral behavior and their inability or unwillingness to provide the resources needed to sanitize the electoral process and rid it of irregularities. Political elites must match their commitment to promote democracy with the willingness to allow the electoral process to function without efforts by them or their goons to rig or manipulate elections. Electoral irregularities cannot yield to cosmetic reform or tokenism. Reforms

require vast systemic changes to subvert the culture that spawns fraud, to reestablish the credibility of the electoral commission gravely tainted by electoral officers who act more like partisans than neutral umpires, to establish effective mechanisms for conducting credible and tamper-proof voter registration and voting exercises, and to punish perpetrators of electoral fraud and to fairly and quickly adjudicate election disputes. Lastly, part II examines five things Nigeria must do to eliminate the inefficiencies and perverse incentives that lead to electoral irregularities, namely, integrating modern technology, prosecuting electoral fraud, subverting the culture that engenders electoral irregularities, improving the mechanism for adjudicating election disputes and reclaiming the integrity of the Independent Electoral Commission.

Powers of the Ruling Party

With the frequency of elections in Africa, it seems that Africans are increasingly subscribing to the views expressed by Wangari Maathai, a Kenyan political activist and winner of the Nobel Peace Price:

[I]t is in no one’s interest to have governments threatened by guns, or coups, or civil wars. Instead, governments need to be “threatened” by votes cast in free and fair elections. If leaders think their people will not reelect them because the people are unhappy about how they are managing the affairs of the state, leaders will (or should) respond to the wishes of their citizenry.  

The problem, however, is that in Africa elections present two diametrically opposed options. An election can be a potent and powerful tool used by citizens to transform the society by electing leaders who can be trusted to carry out changes in the society, or elections can degenerate into a farce, an

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insidious and destructive process that disfigures governance and negates citizens’ choice for change and reform.  

In most parts of Africa, the second option has regrettably proved true because “in the great majority of cases, the main function of election was less to choose a government than to serve as a form of legitimization of political choices which had already been made by other means.”

Describing elections in West Africa, an African political scientist noted that “devoid of the attributes of freeness and fairness, elections become an empty shell, lacking any real democratic content.”

Electoral irregularities are neither aberrational nor unique to any nation: they are endemic and widespread across the continent of Africa, and far too often lead to what one scholar refers to as “democratic dictatorship.”

For the ruling party, electoral fraud represents part of a more general scheme to erode the concept of accountability and govern without feeling constrained by public opinion and the prospects of losing elections. Ruling party candidates approach elections with typical chutzpah, bolstered by the knowledge that their control of both the electoral commission and security forces, especially the police, confers nearly insurmountable advantages on the ruling party.

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21 Paul Collier, Wars, Guns and Votes: Democracy in Dangerous Places, 44 (2009). (“Elections can potentially spur a government to adopt reforms but they can also drag it further down the road to bad governance.”). [hereinafter Democracy in Dangerous Places].


23 Odukoya, supra note 11 at 152.

24 Chiedozie Alex Ogbonnia Group and Party Politics in Nigeria, 15 (2005). Explaining the concept, Ogbonnia noted that “[I]n democratic dictatorship, elections are a facade through which the selected persons are installed to positions of authority. To achieve the design or constructs, various forms of electoral malpractices are employed. The selected and imposed persons did not derive the mass support and hence lack both credibility and legitimacy. Based on the foregoing, the elected persons are accountable not to the masses but to the group that installed them.” Id.

25 Professor Kieh accurately captured the strategy used by the ruling party to win elections: Electoral fraud is a pervasive devise that is used in various African states. Ostensibly, the goal is to keep the incumbent regime and the ruling party in power . . . . the tendency is for the faction or
the Nigerian context, rightly described by Professor Herskovits as “ample money, control of security forces, and this year especially, a compliant electoral commission” presents formidable obstacles to the opposition that most of them have been unable to surmount. Ruling party candidates have all the advantages on their side – more access to resources, more and better press coverage from state-owned television and radio houses, control over the chairman of the Independent National Election Commission (INEC) and other election commission officials, most of whom are prepared to act as satellites to the ruling party, and they more importantly receive favorable treatment from security operatives charged with providing safe custody of election materials, including ballot papers. It is fraction of the ruling class that has control of the state power to corrupt one or more of the dimensions of the electoral process for the purpose of retaining power. One method is that the incumbent regime would appoint an election commission that consists of members who are subservient to the interests of the incumbent regime and its associated faction or fraction of the ruling class.


27 Describing the advantages of incumbents in Africa, Professor Gyimah-Boadi noted that:

Elections in Africa continue to significantly reflect the overwhelming advantage incumbent parties enjoy over patronage resources— which then enable them to manipulate electoral institutions, electoral rules and procedures; to siphon off state resources and deploy then into partisan use in elections; to commission development projects, many of them off-budget, especially in an election year; to extort donations from private business people and rent-seekers; and to invest in businessmen who can be counted upon to decant resources back into the party coffers. It also allows the ruling party to use subtle and crude means to disorganize and destroy opposition parties; to deny the opposition the oxygen of media coverage; to deploy state security agencies and sometimes the courts to harass the opposition; and to block private sector sources of funding for the opposition by destroying businesses of those not aligned with the ruling party or suspected to be sympathetic to the opposition.

E. Gyimah-Boadi, Political Parties, Elections and Patronage Random Thoughts on Neo-Patrimonialism and African Democratization, in Votes, Money and Violence: Political Parties and Elections in Sub-Saharan Africa 29 (Mathias Basedau, Gero Erdmann, Andreas Mehler eds. 2007)

28 Gerard Alexander, Making Democracy Stick, www.hoover.org/publications/policyreview/2920346.html (“in all democracies, incumbents have advantages like patronage and publicity. But this advantage widens dangerously for any prospective democracy when incumbents control the central or even sole source of wealth in a society that is otherwise poor.”).
therefore not surprising that the ruling party hardly loses elections to opposition candidates. 29 Only in two cases, Senegal in 2000 30 and Ghana in 2008 31 did ruling party candidates lose to opposition party candidates.

Scholars have consistently expressed strong doubts about the credibility of the electoral process in Africa. 32 For example, Paul Collier stated that the purpose of an election “was to anoint the incumbent with the magic oil of democracy, not to choose a president.” 33 African election campaigns according to Professor Michael Bratton, “are mainly moments for politicians to engage in mass mobilization and manipulation of electoral rules. All too often campaign strategies feature material inducement and political intimidation.” 34 Professor Richard Joseph framed the choice governments face somewhat elegantly, stating that “governments facing the prospects of a peaceful dismissal by the people can allow the doors of democracy to open further but such governments can also seek to slam


31 See Olawile-Olaleye, Atta-Mills Emerges as New President, THISDAY, Jan 4, 2009, available at 2009WLNR 159943 (reporting that the opposition party candidate, Professor Atta-Mills won the presidential election in Ghana.)


33 Collier, DEMOCRACY IN DANGEROUS PLACES, supra note 6 at 61.

Elections in Africa present the government in power with two options: allow the electoral process to function as intended — fairly, impartially and objectively, and accept the peoples’ verdict by allowing the results of elections to reflect their preferences and choices, or “slam the door shut” by negating the peoples’ choice by skewing and manipulating the process to retain power.

So far in Nigeria, the second option remains very attractive to governments which have the resources, powers and inclination to “slam the door shut” by negating citizens’ choice and rigging elections to achieve favorable outcomes. And in most African countries, the latter has regrettably proved true. Violence, electoral fraud and irregularities have become staples of the electoral process in Nigeria. The ruling party has so debased elections in Nigeria that the International IDEA was forced to declare that “elections in Nigeria, by and large, have been no more than “choiceless” exercises in which the outcomes have often been determined before election day.”

The ruling party, aided by the police and an obeisant electoral commission, rigged and manipulated the electoral process to achieve preordained outcomes in the 2003 and 2007 general elections. Virtually everyone familiar with elections in Nigeria will agree with the assessment provided by two scholars who scathingly noted that:

Nigeria is in the league of less successful countries in the areas of election management and outcomes: the electoral rules are either unclear, ever changing, or easily subverted: the electoral body is


36 INTERNATIONAL IDEA DEMOCRACY IN NIGERIA, 142 (2000).

37 HUMAN RIGHTS WATCH, CRIMINAL POLITICS VIOLENCE “GODFATHERS AND CORRUPTION IN NIGERIA” [hereinafter CRIMINAL POLITICS] (nationwide polls in 1999 and 2003 were systematically rigged and local government polls in 2004 were plagued by similar abuses, and to the dismay and shock of many Nigerians who had hoped for signs of progress, the country’s widely anticipated 2007 polls proved to be another violence farce. Many seasoned observers stated that the 2007 polls were among the worst they had ever witnessed anywhere in the world. Those elections reflect deeply seated patterns of abuse that characterize the day-to-day conduct of many public officials.”). [hereinafter referred to as CRIMINAL POLITICS].
structurally weak and perennially ineffective; the political actors and agencies are like gladiators in their conduct; while the people are often powerless in an environment of political and electoral misdemeanor. To use Claude Ake’s words, “voting does not amount to choosing in the Nigerian environment, as electoral choices are made by political barons outside the orbit of electoral norm, rules and procedure. In such circumstances, “winners and losers have often been determined before the contest, and voters merely go through the charade of confirming choices already made.”

Human Rights Watch stated tersely, and perhaps bluntly that “Nigeria has not held a free and fair election since the end of military rule; polls in 1999 and 2003 were characterized by widespread violence, intimidation, bribery, vote rigging and corruption.”

Elections in Africa are beset by a farrago of deep-rooted, widespread and seismic irregularities orchestrated principally by the ruling party to retain power. As Professor Villalion aptly observed, “elections themselves may be a strategy for maintaining power and many African elections . . . have been clearly intended to forestall change or even strengthen the status quo.”

Periodic elections designed to provide an opportunity for the electorate to choose its leaders have degenerated into occasions for the ruling party to demonstrate its suzerainty over the nation. The ruling party does not conduct elections with sincerity nor hope of providing a fair and credible opportunity both for candidates to compete for votes and for citizens to choose their leaders. Rather, they allow other parties to participate in the elections only to give “a


39 HUMAN RIGHTS WATCH, ELECTION OR SELECTION? HUMAN RIGHTS ABUSES AND THREATS TO FREE AND FAIR ELECTIONS IN NIGERIA, 1, April, 2007.


41 Herskovits, supra note 26.

42 John Makumbe, Electoral Politics in Zimbabwe: Authoritarianism versus the People, AFRICA DEVELOPMENT, xxxi,
veneer of legitimation to a fraudulent and sham election. Jaded voters go to the polls simply to fulfill their civic obligations, but they are under no illusion that the results will reflect how they voted. They know that the electoral process has become transmogrified into an auction in which parties and candidates with the greater capacity to cheat and perpetrate fraud emerge victorious. Human Rights Watch, in a disturbing report on elections in Nigeria, offered a caustic denunciation of electoral irregularities in Nigeria:

Many of Nigeria’s ostensibly elected leaders obtained their position by demonstrating an ability to use corruption and political violence to prevail in sham elections. In violent and brazenly rigged polls, government officials have denied millions of Nigerians any real voice in selecting their leaders. In place of democratic competitions, struggles for political office have often been waged violently in the streets by gangs of thugs recruited by politicians to help them seize control of power. In recent years, hundreds of Nigerians have lost their lives in the cross fire or as paid proxy fighters for the country’s political leaders.

Attitude of Politicians toward Elections

Nigerian politicians do not regard elections with the same mindset as politicians in established democracies. For Nigerian politicians, winning an election is not about securing the mandate to serve

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no. 3, 45, 46 (2006) (noting that “in some, if not many, African countries, the ruling party has mastered and perfected the art of manipulating electoral systems with the primary objective of deceiving the people into believing that they govern themselves.”); Carolyn Logan, Rejecting the Disloyal Opposition: The Trust Gap in Mass Attitudes Toward Ruling and Opposition Parties in Africa, Afro Barometer Working Paper no 94, p. 3 (2008) (“many of the regimes conducting purportedly liberalizing elections during the 1990s have, in reality, made very little progress toward giving greater voice to citizens. More than a few of the authoritarian rulers succeed in gaming the system, finding ways to conduct elections that offered the appearance of competitiveness without the reality, thus preserving their control over the levers of power.”).


44 HUMAN RIGHTS WATCH, CRIMINAL POLITICS, supra note 37 at 2.
the people. Candidates make no pretensions that their quests for elective offices are animated less by a desire to serve the people than a passion for the swag of electoral victory. Politicians view power as a means toward an end – acquisition of wealth.\textsuperscript{45} They simply want to win and reap the benefits and perquisites that go with the office.\textsuperscript{46} Elections therefore are in essence contests between those current purlioners of state wealth and those who want to do the same. As trenchantly observed by Professor Odukoya, “the incumbent public office holders/governments seek to hang on to power by all means and the insurgents seek to institute a new patronage.”\textsuperscript{47} Professor Kyari Tijani observed that politics in Nigeria is a:

\begin{quote}
Means for self-service in Nigeria today. It has also become the surest, quickest, easiest and most rewarding avenue for escaping the gnawing poverty to which most Nigerians are today condemned. First, it requires no training, no capital to initiate a political career in Nigeria in the first instance. You need a strong jaw, a capable pair of legs, and a godfather. Strong atavistic instinct, cynical attitude to Nigeria’s development and willingness to stand behind your godfather will not only complete the list of qualities you need, but would also accredit you to the winning party of the times. Politics . . . . is not a matter of issues or ideology, but simply of the stomach as its most successful practitioners would readily tell you.\textsuperscript{48}
\end{quote}

\textsuperscript{45} Omano Edigheji, \textit{Political Representation in Africa: Towards a Conceptual Framework}, \textit{AFRICA DEVELOPMENT} Vol. XXXI, No. 3 93, 94 (2008) (noting that “Africa’s political elites use control of government for primitive capital accumulation — looting of the state coffers for personal gains and party interests, especially by the incumbent party. As a consequence, the contest for political power has been marked by violence, intimidation, bribery and corruption.”).

\textsuperscript{46} JENNIFER M. HAIZEN & JONAS HORNER, \textit{SMALL ARMS, ARMED VIOLENCE AND INSECURITY IN NIGERIA: THE NIGER DELTA PERSPECTIVE}, 7 (2007) (“Elections in Nigeria are significant not only on the political level, but also in the area of economics. Given the highly centralized nature of government as a result of decades of military rule, political power and economic resources are concentrated in the hands of political leaders. As such politics in Nigeria could be called the “politics of allocations,” through which electoral victory is immediately tied to access to the state as an avenue for wealth accumulation and conferment of status. Those who are part of the system benefit from the system, while those who are outside of it are left out of the distribution process.”).

\textsuperscript{47} Odukoya, \textit{supra} note 11 at 152.

The contest for power between craven, opportunistic candidates motivated solely by greed and naked lust for power excites frenzy, hysteria and violence that frequently bring the country to the brink of social upheaval.\textsuperscript{49} As the report of the Electoral Reform Committee found, “over the years, the politicians have become more desperate and daring in taking and retaining political power, more reckless and greedy in their use and abuse of power, and more intolerant of opposition, criticism and efforts at replacing them.”\textsuperscript{50} Explaining the impetus for electoral violence, two scholars observed that:

\begin{quote}
The perception that elections are truly zero-sum contests for access to resources, combined with a culture of impunity, has encouraged the use of violence by politicians to secure electoral success. Politicians have in the past provided weapons to privately funded militias who wield these arms as tools to intimidate the politicians’ opponents and the latters’ supporters.\textsuperscript{51}
\end{quote}

The electoral process therefore degenerates into a farce in which citizens and groups struggling for access to and control of the nation’s wealth engage in all forms of fraud, irregularities and violence to achieve their objectives. As one commentator aptly put it, “politics has been militarized with violence becoming an ordinary tool of elections and a part of the political culture.”\textsuperscript{52} The fear of social upheaval and violence hover over the nation with each election cycle. Electoral irregularities always bring the nation to the brink of precipice and continue to raise the ominous specter of disorder and

\textsuperscript{49} E.Gyimah-Boadi, \textit{supra} note 27 at 27 (“disturbingly, African elections too often cause or aggravate social tensions and exacerbate fragility.”).

\textsuperscript{50} \textsc{Report of the Electoral Reform Committee}, \textit{supra} note 12 at 19.

\textsuperscript{51} Hazen & Horner, \textit{supra} note 46 at 7.

\textsuperscript{52} \textit{Id.} at 10.
have often provided the impetus or justification for military intervention in the political process. In fact, both the 1966 and 1983 coup plotters cited electoral irregularities in the preceding elections as some of the reasons for their decisions to overthrow the civilian administration.

Politicians navigating the treacherous shoals of party and electioneering politics know that electoral outcomes are shaped by certain realities. They know that elections are not about competing ideas or vision for the country presented by the candidates. They are also not about the qualifications, competence or scruples of the candidates because “in Nigerian politics, charisma is much less important than an arsenal of thuggish campaign tactics.” They are more disturbingly not about an acceptance or rejection by the citizens as reflected by their votes. Both the candidates and ordinary citizens know that elections are “mere political rituals in which the people have neither voice nor power, and their mandate is freely stolen by the political barons and their clients.” Candidates therefore participate in elections on the explicit understanding that electoral victory comes through

53 Mojeed Olujinmi Alabi, Electoral Reforms and Democratic Consolidation in Nigeria: The Electoral Act 2006, CEU Political Science Journal Vol. 4 No. 2, p. 278 (“while the elective principle was introduced in Nigeria almost a century ago, the country is not known to have conducted elections devoid of acrimony, rancor and controversies. Indeed, disputes pertaining to electoral systems and processes have truncated the democratic process thrice in less than half-a-century of Nigeria’s existence as an independent state.”).

54 Ema Orji, Issues on Ethnicity and Governance in Nigeria: A Universal Human Rights Perspective, 25 FORDHAM Int’l L.J. 431, 443 (2001) (noting that “the smoldering volcano of rampage, arson, pillage and jungle justice, triggered off by the allegations that the western region elections were rigged provided a fertile ground for the military to seize power on Jan. 15, 1966.’’); Charles M. Fombad, Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from South Africa, 55 AM. J. COMP. L. 1, 4 (2001) (“The real danger for constitutional democracies and democratic consolidation in Africa that result from the regular rigging of elections is what it portends for the future. In destroying a serious way faith in peaceful change through the ballot box, it raises the ugly specter of change by the use of force.”)

55 E. Gyimah-Boadi, supra note 27 at 27. (“election campaigns have tended to be useless and parties and candidates that have attempted to win elections by campaigning on policy or ideological platform have not been successful.”).


57 Agbaje & Adejumobi, supra note 4 at 41.
irregularity. They therefore espouse no ideology, have no ideas or programs, and in most cases, have neither principles nor scruples. Their sole mission is to win elections and they are willing to do whatever it takes to win. They know that electoral irregularities — violence, fraud, rigging — influence, shape and determine the outcome of elections. Describing preparations for the 2007 elections, Professor Larry Diamond stated that:

As elections neared, political chieftains became warlords, raising private militias to do electoral battle. Individual candidates were assassinated, and communal violence flared. In the end, scores perhaps hundreds of Nigerians died in election related violence, and many voters simply gave up from fear, confusion or exhaustion.59

Mired in this disturbing and distressing mindset, it becomes almost impossible for politicians to let the process proceed as intended. They obtrude, disrupt, and skew the process, often with violence, to secure favorable outcomes.60 Each candidate prepares for elections ready and eager to be the victorious baron in what often turns out to be a crude, barbaric and violent contest for power in which nothing is off limits or beyond the pale.61 The strongest candidates learn to survive the ruction by whatever means possible --- fair, foul and fraudulent --- including inevitably and ultimately, violence.62 Stephanie Hanson, describing the preparations for elections in Nigeria, stated that:

58 Jibrin Ibrahim, Nigeria’s 2007 Elections: The Fitful Path to Democratic Citizenship, 7 USIP Special Report (2007) (noting that many political parties, especially parties of incumbents, rely on electoral fraud rather than popularity to stay in power.).


60 Agbaje & Adejumobi, supra note 4 at 29 (noting that Nigeria’s electoral politics seem to have been hijacked by forces of wealth and power for purposes that are entirely predatory and subversive to democracy.”).

61 In a report appropriately titled “Politics as War,” Human Rights Watch documents the links between politics, corruption and violence in River State, see HUMAN RIGHTS WATCH, POLITICS AS WAR: THE HUMAN RIGHTS IMPACT AND CAUSES OF POST-ELECTION VIOLENCE IN RIVERS STATE, NIGERIA (2008); For a detailed examination of electoral violence in Nigeria, see HUMAN RIGHTS WATCH, CRIMINAL POLITICS, supra note 37.

62 George Klay Kieh Jr. Political Corruption and Violence in Africa, in STATE OF CORRUPTION, STATE OF CHAOS 143,
In the months preceding mid April’s polls, political candidates have engineered the kidnapping of their opponents, would-be candidates have been assassinated, and thugs have been hired to intimidate rival campaign supporters. Such behavior is business-as-usual in a country run by political “godfathers” or political elites who sponsor candidates with the understanding that they will reap financial benefits once the candidate takes office.\(^{63}\)

Another problem is that politicians know that it is impossible to conduct fair and free elections where candidates with better plans or messages are chosen by the electorate to lead them.\(^{64}\)

Incumbents, on their part, rarely run on their records or vision for a better country. Most of the incumbents know that they cannot win in a free and fair election. The only way for them to retain power is to do what got them into power in the first place --- rig the elections. They therefore spend little or no time crafting policies or programs to present to the electorate. They instead choose to invest resources in their devious schemes ---- vote-buying and political intimidation -- to prevail against their equally determined and desperate opponents. Professor Bratton aptly explains this phenomenon:

All too often, campaign strategies feature material inducement and political intimidation. In extreme forms, unconventional modes of electoral practice are manifest in explicit acts of vote buying and electoral violence. Both kinds of activity, which aim to deny citizens the freedom to express their electoral preferences, are incontrovertibly illegal. But, because persuasion alone seldom generates enough support, candidates nonetheless regularly attempt to purchase or

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\(^{63}\) Stephanie Hanson, Nigeria’s Godfather Syndrome, available at www.cfr.org/publication/13077/nigerias_godfather_syndrome.html.

\(^{64}\) Attahiru Jega, Election Administration in Nigeria – Organizing the 2007 Elections in Electoral Reform: Building Confidence for the Future, supra note 3 at 30 (“In Nigeria, election administration has been profoundly inefficient, characterized by muddled processes, and lacking in the desirable attributes of “free and fair” elections, a situation which often induces acrimony and even violence.”).
compel votes.\textsuperscript{65}

The understanding that the electoral process is distorted by irregularities provides the impetus for candidates to resort to extra legal measures both to safeguard their interests and to level the playing field. As Jeff Fisher explained:

An electoral process is an alternative to violence as it is a means of achieving governance. It is when an electoral process is perceived as unfair, unresponsive, or corrupt, that its political legitimacy is compromised and stakeholders are motivated to go outside the established norms to achieve their objectives. Electoral conflict and violence become tactics in political competition.\textsuperscript{66}

Electoral Violence

Politicians are intuitively drawn to the notion that elections can only be won by engaging in violence or other electoral irregularities designed to subdue and overwhelm opposing candidates. Violence takes “place both within parties as political candidates seek their parties’ nomination and among parties vying for seats in government.\textsuperscript{67} Politicians swooning with desire to achieve victory care less about electoral rules, laws or even the humanity of their opponents. Opponents are viewed as impediments that must be overwhelmed by any means possible. Candidates are willing to kill anybody perceived to constitute an obstacle to their quest for power.\textsuperscript{68} Human Rights Watch presents

\begin{footnotesize}
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\item \textsuperscript{65} Bratton, supra note 5 at 1.
\item \textsuperscript{66} Jeff Fischer, Electoral Conflict and Violence: A Strategy for Study and Prevention IFES White Paper, 7 (2002)
\item \textsuperscript{67} INTERNATIONAL CRISIS GROUP NIGERIA’S ELECTIONS: AVOIDING A POLITICAL CRISIS, Africa Report No. 123 March 2007 at p. 9 (describing the ruling party’s, PDP, primaries, the report stated that “the PDP primaries were veritable theaters of violence. In virtually all urban centers, large numbers of police, in some cases using armored personnel carriers, had to be deployed at the venues of the primaries to prevent fighting between thugs paid by rival candidates. In many cases they had to use tear gas to quell the fights.”).
\item \textsuperscript{68} Id at p. 9 (noting that “since 2003 elections, there has been a rise in the kidnaping of opponents, assassination of would-be candidates and other political figures, and violent disruption of political meetings and campaigns of rivals.”).
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a chilling account of violence that plagues the Nigerian political process:

Political violence has become a central part of political competition across much of Nigeria and it takes many forms — from assassinations to armed clashes between gangs employed by rival politicians. This violence is most often carried out by gangs whose members are openly recruited and paid by politicians and party leaders to attack their sponsors’ rivals, intimidate members of the public, rig elections, and protect their patrons from similar attacks.\(^{69}\)

The triple blight of greed, effrontery and ethnic irredentism invest the electoral process with a troubling level of violence rarely experienced in established democracies.\(^{70}\) Politics in Nigeria are not for the faint of heart. Professor Richard Joseph provided an accurate assessment of the Nigerian electoral process when he stated that “in Nigeria, however, party politics as a relentless struggle to procure individual and group benefits via the temporary appropriation of public offices eventually reduces the electoral process to a Hobbesian state-of-war.”\(^{71}\) Anybody who is neither prepared for nor ready to orchestrate violence is advised not to venture into politics. Most Nigerians heed the advice and keep off, afraid to venture into a political arena dominated by ambitious, cruel and often heartless killers who have no qualms about doing whatever is necessary to win elections.\(^{72}\) The Nigerian electoral process has been distorted and turned into a blood sport, or as tactlessly described by

\(^{69}\) Human Rights Watch Criminal Politics, supra note 37 at 17.


\(^{72}\) Describing electoral violence and the response of politicians to violence, two scholars noted that:

Democratic elections in Nigeria have become known for violence. The 2003 elections witnessed a number of kidnapings, assassinations and violent clashes between party supporters. . . . The response to the violence of elites and politicians was to arm themselves — politicians surrounded themselves with armed guards; candidates from the ruling party used armed policemen as guards and escorts; while others hired unemployed youths, whom they provided with arms.
President Obasanjo, “a do or die affair.” Electoral violence is often ferocious, sometimes deadly, as candidates and their godfathers in their desperation are prepared to go to the lurid extreme of killing their opponents or anyone who in their view presents an obstacle to them. Rather than acting like candidates for elective offices in a democracy, candidates diminish into gladiators in a bloody competition marked by absence of rules and lack of respect for one another. The detritus of violence orchestrated by politicians is there for everyone to see: senseless murder and destruction of lives and property have become regular features of the Nigerian electoral landscape. Losers at the last elections hope to prevail at the next election and therefore are more determined to do whatever is necessary to win. They learn from their experience that the inability to defend their turf leads to failure, and subsequently resolve to defend themselves at the next election. This resolve, perhaps more appropriately, revanchism, leads to a pernicious dynamic in which every election becomes a front to refight old wars and implement new and better violent strategies to defend themselves.

The desperation of politicians is fueled by the quick and easy wealth amassed by elected office holders in Nigeria. Nigeria operates a semi-socialistic economy where the government controls a disproportionate percentage of the economy. Political power therefore provides limitless opportunities

Hazen & Horner, supra note 46 at 59.

73 Kolade Larewaju, Nigeria: Obasanjo Explodes – April Polls Do or Die for PDP, VANGUARD, Feb. 11, 2007 available at http://allafrica.com/stories/200702110015.html (Reporting that President Obasanjo declared that the April elections would be a do or die affair for the country and his ruling PDP).

74 For a chilling account of politically motivated murders of prominent politicians in Nigeria between 1999 and 2006, see Sam Smah, supra note 70 at 76–78.

75 DIAMOND, THE SPIRIT OF DEMOCRACY supra note 59 at 71. (“As the election neared, political chieftains became warlords, raising private militias to do electoral battle.”).

76 Michael Bratton, Vote Buying and Violence in Nigerian Election Campaign, Afrobarometer Working Paper No. 99, p. 1 (2008). (In Africa, elections are struggles over the access to the resources controlled by the state, which are the biggest prize in society. Given these high stakes, politicians resort to a variety of means— whether fair or foul – to
for the acquisition of wealth and the ability to reward cronies and supporters with government contracts and plum jobs. The struggle for power therefore takes on a logic of its own because Nigerian politicians believe that electoral defeat “often threatens individual livelihoods.” Contests for power often turn savage as candidates are prepared to do anything to attain power. As Professor Alemika aptly observed:

A consequence of prebendalism is that politics and electoral competition becomes means of corrupt accumulation, as access to the state guarantees opportunities for illicit private enrichment, thereby turning competition for political power into a warfare that threatens the credibility of elections and triggers electoral violence in African countries.  

Politicians osmotically know that violence is a viable and potent instrument of electoral victory. Therefore “the various factions of the African ruling classes, including incumbent regimes, employ violence as a vehicle for either maintaining or acquiring political power.” They also know from experience that it is utopian, perhaps naive to expect the electoral process to function without glitches and efforts by other candidates and officials of the electoral commission to skew the process. They are therefore prepared to employ violence to achieve victory and are often untroubled by the human and material costs of their violence. All the candidates set out to upstage their opponents using violence, intimidation and thuggery to rig and manipulate the electoral process in their favor. Human Rights Watch offers a first hand account of the creative use of thugs by politicians:

During the 2007 elections, Rivers State politicians employed many of the same gangs that had been hired to rig the 2003 polls, and those


78 Klay, supra note25 at 155.
gangs employed the same violent tactics to keep voters from trying to exercise their mandate. Group of thugs chase away many voters when they did attempt to vote and interfered with the tallying of votes in other places. In some areas, hired thugs stuffed ballot boxes, while officials fabricated results for some communities without even bothering to open up the polls. The result was another landslide victory for the ruling PDP, and elections that were even less credible than the fraudulent poll of 2003.  

Since Nigeria attained independence in 1960, all elections have been characterized and marred by violence. Violence is often sponsored by politicians protecting what they view as their political turf. Candidates, either through firsthand knowledge or anecdotes, know that violence is necessary to show strength and send a message to opposing candidates that they are prepared to match violence with violence. Any signs of weakness will easily be exploited by opposing candidates.

For many Nigerians, losing an election carries grave implications. Failure to attain power signals a descent into irrelevance and financial ruin, a cataclysmic loss akin to filing for bankruptcy. Professor George Ayittey correctly captured the consequences of losing an election in Africa when he stated that “since politics is the gateway to fabulous wealth, the competition for power is ferocious. Defeat can mean exile, jail or starvation.” Chiedozie Ogbonnia, a Nigerian scholar and political scientist, paints a gruesome portrait of election losers in Nigeria:

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79 Human Rights Watch, Criminal Politics, supra note 37 at 15-16.

80 See Larry Diamond Class, Ethnicity and Democracy in Nigeria, 190-228 (1988) (describing the 1964 federal election crisis in Nigeria.).

81 Sam Smah, supra note 70 at 66. (noting that unlike other parts of the world, attempting and losing an election in Nigeria means to be expelled from political life. . . . Once an individual’s chances are scuttled by his opponents for whatever reason, he or she becomes completely irrelevant).

82 George Ayittey, Personal Views: Africa’s Shady Politicians are at root of Continent’s Destitution, available at www.telegraph.co.uk/france/2771748.
[A] Nigerian politician’s victory marks the end of the good times for his opponent. Meticulous measures are deployed to ensure that the “vanquished” would hardly resume social and economic buoyancy that would enable him [to] challenge the “victor” in future. All enemies of the vanquished quickly become allies of the victor. Such allies are empowered to regularly infuriate, irritate, excoriate, humiliate, psych out, and politically emasculate the vanquished. Sometimes part of the policy of the elected person is to ensure that his opponent does not enjoy a breathing space throughout his tenure and thereafter.\(^{83}\)

Victors and losers subscribe to the ideology of violence as a viable electoral tool. Neither incumbents nor their opponents believe they can win without upgrading, violently if need be, the other candidates. The panache and chances of success are often measured by the level of violence they can muster and orchestrate. Whether intended or as part of blustering, candidates lace their campaign speeches with coded messages of their readiness to match violence with violence to reinforce their images as tough candidates who can play rough. Buoyed and bolstered by thugs, they approach and treat elections like war in which all is fair and without ground rules, where the end justifies the means.\(^{84}\) Losing candidates who feel robbed and cheated also use violence to protest and register their resentment and disapproval.\(^{85}\) Ultimately, elections degenerate into competitive violence among the candidates, most of whom campaign not for votes, but to outdo and outlast their opponents in the show of supremacy and superior election-rigging skills.

The grotesque apotheosis of violence has disturbing consequences for the electoral process.

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83 Ogbonnia, \textit{supra} note 24 at 155.

84 President Obasanjo, while addressing a seminar organized by the INEC-Civil Society Forum on November 27, 2003 stated that “I have said that we prepare for elections as if we are going to war.” Quoted by Victor Adetula, \textit{Electoral Act 2006, Civil Society Engagement and the Prospect of Political Finance Reform in Nigeria}, in \textit{MONEY AND POLITICS IN NIGERIA}, \textit{supra} note 70 at 19.

85 International Crisis Group Nigeria’s Elections: Avoiding A Political Crisis, \textit{Africa}, \textit{supra} note 67 at 9. (noting that those cheated in the electoral process have little confidence they can find justice in the election tribunals. Such lack of confidence in the institutions statutorily established to redress injustice lead many otherwise law abiding politicians and their supporters to take the law into their own hands, often violently.).
Politicians run their campaigns as if they are preparing for war: the accumulation of huge sums of money and an impressive buildup of thugs, most of them armed, used to defend their turf, intimidate opponents and help rig elections.\(^{86}\) Politicians get their oomph through the ability to orchestrate violence. Rather than feeling embarrassed by allegations of electoral impropriety, politicians view such allegations as compliments, as further proof of their ability to control and dominate the political process. Orchestrating violence also carries much cachet. As architects of electoral violence, chief thugs enjoy celebrity status in the society and are often applauded and held up as models of strength. Violence confers the toga of strength and attracts immediate and clear rewards for both the architects and foot soldiers. Its architects are celebrated and affectionately called “godfathers.”\(^{87}\) The recruitment of thugs has been relatively easy because of the crushing economic hardships in Nigeria. Citizens, especially the youth, drudging through life trying to eke out a living, become ready and willing agents of politicians who often reward them handsomely for carrying out their instructions.\(^{88}\) With every election cycle, new leaders emerge more determined and more audacious in their bid to attain power by any means possible. The foot soldiers in previous elections who carried out dastardly acts of violence on behalf of their leaders turn out as candidates and play the roles of chief architects in their

\(^{86}\) \textit{Human Rights Watch Criminal Politics,} supra note 37 at 17; \textit{International Crisis Group Nigeria’s Elections: Avoiding a Political Crisis,} Africa Report No. 123 March 2007 at p. 9 (noting that “since 2003 elections, there has been a rise in the kidnaping of opponents, assassination of would-be candidates and other political figures, and violent disruption of political meetings and campaigns of rivals.”).

\(^{87}\) For a detailed discussion of the shenanigans of godfathers in Nigerian politics, their dastardly means of seeking and maintaining power and the adverse effects of their activities on the democratic process, see John Ayoade, Godfather Politics in Nigeria, in \textit{Money and Politics in Nigeria,} supra note 70 at 85-96.

\(^{88}\) \textit{Id.} at 11 (“widespread illiteracy and poverty make the lower socio economic classes readily available to be drafted into odd jobs, including acts of political violence. A majority of the foot soldiers of electoral violence are drawn from the teen and adolescent age groups. . . . Beyond these “general duty thugs” are the “more specialized killer gangs,” in virtually every urban center who are ready to kill provided the price is right. The price varies, depending on the profile of the targeted personality.”).
own campaigns of violence, dishing out orders and orchestrating violence.\textsuperscript{89}

Electoral violence not only poses significant threats to the lives of candidates, it also affects citizens’ participation in the political process. Fear of violence has paralyzing effects on citizens, most of whom are scared to actively express their views or to openly support candidates of their choice. Some citizens with so much to contribute to the political process are scared to engage in party politics aptly described by some well-informed scholars as “perilously rough and at times lawless.”\textsuperscript{90} Because the competent and capable citizens are scared to participate in politics, the Nigerian political scene is often populated by shady characters, criminals, and ambitious and cruel politicians who have no qualms about doing whatever it takes to win elections. Professor Collier captured this phenomenon when he observed that “if being honest and competent does not give you an electoral advantage, then the honest and competent will be discouraged. Crooks will replace the honest as candidates.”\textsuperscript{91}

Outside the political arena, electoral violence has also spawned the psychology of helplessness, a mood of despair among the citizens already reeling under the pressures of crime and violence inflicted by hoodlums, vigilante groups and ethnic militias.\textsuperscript{92} Electoral campaigns often lead to violent

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\textsuperscript{89} Describing how goons in the former elections emerged as candidates and authority figures in subsequent elections, two scholars noted that “the weapons provided during the 2003 elections were still held by those armed groups, who grew in power during the intervening four years, enabling them to use their fire power to influence the political process themselves rather than merely taking others from politicians.” Hazen & Horner, \textit{supra} note 46 at 7.

\textsuperscript{90} Richard L. Sklar, Ebere Onwudiwe, & Darren Kew, Nigeria; \textit{Completing Obasanjo’s Legacy}, 17 J. DEM. 100 (2006)

\textsuperscript{91} Collier, \textit{DEMOCRACY IN DANGEROUS PLACES}, \textit{supra} note 6 at 27.

\textsuperscript{92} For insecurity in Nigeria, see JENNIFER M. HAZEN & JONAS HORNER, \textit{SMALL ARMS, ARMED VIOLENCE AND INSECURITY IN NIGERIA: THE NIGER DELTA PERSPECTIVE} (2008); Robert I. Rotberg, Nigeria: Elections and Continuing Challenges, in \textit{BEYOND HUMANITARIANISM: WHAT YOU NEED TO KNOW ABOUT AFRICA AND WHY IT MATTERS} 29, 33 (Princeton N. Lyman & Patricia Dorff eds., 2007) (Thus far (since Obasanjo became Nigeria’s civilian president in 1999), Nigeria is remarkably less secure than when he took office. Its external borders are unchallenged, but nonstate actors and a variety of indigenous insurgent groups continue to attack (rather brazenly) either the nation-state or the governments of individual states. . . . Additionally, crime against persons, including murder, rape, and robbery, has
confrontations between candidates and rival parties in which innocent citizens caught in the crossfire suffer needlessly. Electoral violence has exacted significant tolls on innocent citizens. It has led to purposeless loss of lives, mindless destruction of property and decimation of businesses and religious outfits.93 The din of electoral politics is getting louder, more vicious and definitely more dangerous. Unchecked, electoral irregularities will undercut the legitimacy of government, engender citizens’ apathy toward the democratic process and ultimately frustrate efforts to deepen democracy.94

Another problem is that election-induced violence often spirals into the larger society, even after the conclusion of elections. Politicians who sponsor violence often have no way of controlling either their goons or the arms once elections are over. Some of the goons, unable to find meaningful employment after elections, use the arms provided by politicians to terrorize and harass citizens. Haze and Horner accurately captured this dynamic:

Gangs were hired and armed by politicians to fight their political opponents, steal ballot boxes and generally rig the vote but the gangs kept the weapons, were not given jobs by politicians as promised, and have since used the guns to develop criminal enterprises. The shift to criminal activities appears to be a response to having arms and not having economic opportunities. Militants abandoned by their patrons following the elections still had guns and used them. In some cases, these groups continued to act under the direction of politicians. In other cases, they were seemingly left to their own
grown in scale and viciousness.”).

93 HUMAN RIGHTS WATCH CRIMINAL POLITICS, supra note 37. (describing the violence and carnage resulting from the 2007 elections).

94 Peter Lewis, Troubled Election Outcomes as a Threat to Democracy: A Global Perspective, in ELECTORAL REFORM: BUILDING CONFIDENCE FOR THE FUTURE, supra note 3 at 14 (“when the public faces repeated episodes of election rigging, political violence and disorderly administration, their fundamental trust in the institution and processes of electoral rule may rapidly dissipate. The most obvious liability of troubled elections is that political choices are foreclosed. As a consequence, many voters come to believe that their political will is being unjustly denied. The taint of misconduct in a controversial election can reduce confidence in the process and cast a shadow on the legitimacy of the ruling party or the winning candidate.”).
devices and have since developed into much stronger and better armed groups.  

The Influence of Godfathers

Because of the nature of Nigerian politics, especially the huge cost of running for elective offices, very few candidates emerge on their own without a sponsor or godfather ready to do whatever it takes to secure victory for their candidate.  

Political godfathers are political barons “who deploy a vast array of resources — financial and political contacts, and networks, and even traditional social capital — to support their preferred candidate.”  The presence of godfathers in the Nigerian political process creates further anxieties in an already charged process. Godfathers see and treat elections as financial investments and are prepared to go to any lengths to ensure that their candidates emerge victorious.  Godfathers have the resources, contacts, and more importantly, the desire and willingness to engage in any and all kinds of activities to achieve their aim.  Political godfathers munificently fund the campaign activities of their candidates, including the retention and payment of goons who do the dirty chores of assaulting opponents, intimidating rival candidates, disrupting

95 Hazen & Horner, supra note 46 at 14.

96 See Hanson, supra note 56 (describing godfathers as “political elites who sponsor candidates with the understanding that they will reap financial benefits once the candidate takes office.”).

97 For an interesting study of political godfatherism in Nigeria, see John A.A. Ayoade, Godfather Politics in Nigeria, in MONEY AND POLITICS IN NIGERIA, supra note 70 at 90.

98 Afeaye Anthony Igbe & O.J. Offiong, Political Assassinations in Nigeria: An Exploratory Study 1986–2005, African Journal of Political Science & International Relations, Vol. 1, 10 (2007) (“Nigerian politicians see their venture into politics as a form of business enterprise, a quick way of making money with less effort. During the electioneering process or campaign, they somewhat invest by way of sponsoring candidates for elections and would go to any length in ensuring that their candidates win the election (even if it meant assassinating their opponents) because it is only when their candidates get into power that they would be able to reap the dividends of their investment.”).

99 Ayoade, supra, note 87, at 90. (“to be a successful godfather, a person must have all, or nearly all of the following attributes: he must have political connections, security connections, a private security outfit, a reputation for unorthodox (sometimes anti-social) behavior and money or access to money.”).
elections in areas where their candidate stands no chance of winning, assassinating opponents, rigging elections, and corrupting officials of the electoral commission. Candidates, once elected, are in return expected to do the bidding of their godfathers, including granting the godfather access to the coffers of the state and a major role in the office occupied by them. Agbaje and Adejumobi admirably summarized the role and place of godfathers in the Nigerian political process:

The immediate consequence of monetized electoral politics is the emergence of political barons – political entrepreneurs, who invest in election candidates for higher financial and political returns. Political barons hold neither political office nor party positions. They often constitute informal leaders who are more powerful than the party chiefs and formal office holders. They sponsor candidates, control the internal party nomination process, finance electoral campaigns, rig elections on behalf of their candidates, corrupt election officials, and sometimes change the names of candidates after elections have concluded. They are virtual king makers.

Godfatherism has distorted the electoral process, disfigured the democratic process, undermined party stability and created perverse incentives for political office holders to engage in corrupt activities. Politicians whose victory depends on the machinations of the godfather often have problems asserting their independence and often submit to importunate demands by their godfathers. This may be one of the reasons why Professor Collier noted that “incumbent politicians have won elections by methods that require them to misgovern.” Political godfathers emphasize and enthrone wealth over ideas and visions for deepening democracy. Their activities constrict the political space to only the wealthy, thus

100 See HUMAN RIGHTS WATCH, CRIMINAL POLITICS, supra note 37.
101 Agbaje & Ademujobi, supra note 4 at 40.
102 See Ayoade, supra note 87.
103 Collier, DEMOCRACY IN DANGEROUS PLACES, supra note 6 at 49.
denying vast majority of Nigerians the opportunity to seek political power.\textsuperscript{104}

Godfathers are above the law and typically engage in brazen and well-publicized acts of lawlessness to demonstrate their superiority.\textsuperscript{105} The activities of godfathers, especially their penchant for hounding elected officials to reward them with access to the coffers of the state, undermine both public confidence in the democratic process and the ability of the state to maintain law and order. The idea of elected officials, especially state governors, deferring to and sometimes taking orders from local thugs charitably referred to as godfathers conjures negative images in the minds of citizens and causes elected officials to forfeit both respect and legitimacy. Transparency, accountability and good governance – central ideals of democracy – are readily sacrificed by elected officials under enormous pressures to please their godfathers. As Professor Ayoade rightly observed, “the quid pro quo between godfather and godson creates poor resource allocation and heightens the per capita cost of government. . . . The antic of godfathers . . . vulgarizes the total administrative process thus reducing the legitimacy of government.”\textsuperscript{106}

Some elected officials, upon attaining power, try to extricate themselves from the grip of their godfathers. Such attempts to defang the godfather often results in chaos as godfathers rarely give up without a fight.\textsuperscript{107} Some of the chaos in major cities can be attributed to the struggle for power between godfathers and their prodigal godsons who fail to honor the agreement that brought them to

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\textsuperscript{104} Sklar et. al, supra note 90 at 101 (“Decades of avaricious military rule have left the Nigerian political landscape dominated by powerful “godfathers” who sit atop vast patronage networks at the local, state and federal levels. Political outcomes are primarily a function of titanic struggles among these magnates, who bargain among themselves – and at the expense of the impoverished greater public – within a political context of multiple ethno religious divisions.”)

\textsuperscript{105} HUMAN RIGHTS WATCH CRIMINAL POLITICS, supra note 37.

\textsuperscript{106} Ayoade, supra note 87 at 94.

\textsuperscript{107} HUMAN RIGHTS WATCH CRIMINAL POLITICS, supra note 37 at 17.
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power.\textsuperscript{108} Whether it is the godson doing the bidding of the godfather or fighting to shake loose from importunate godfathers, godfatherism has undermined the integrity of the electoral process and has proven to be a veritable source of violence and social disequilibrium in Nigeria.\textsuperscript{109}

Ethnicity and the Electoral Process

Another factor that creates problems for the electoral process is ethnic irredentism. Ethnicity is, and always has been, a key part of the electoral process in Nigeria.\textsuperscript{110} Ethnic irredentism has a long provenance and a fairly rich history of securing electoral success for its protagonists. Its dates back to the colonial era when political elites struggling to fill the vacuum created by the departing colonial administrator viewed ethnicity as the mantra, the spring box from which to launch their quest for power.\textsuperscript{111} Ethnicity proved a valuable and easy source of generating support and was cynically manipulated by politicians to secure electoral victory.\textsuperscript{112} Political elites, unable to offer ideas and proposals for moving the country forward, relapse to what has historically worked for them in the past—appeal to ethnic sentiments. The manipulation of ethnic sentiments by Africa’s political elites

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\item \textsuperscript{108} \textit{Id.}
\item \textsuperscript{109} \textit{Id.} Ayoade, supra note 87 at 88
\item \textsuperscript{110} DIAMOND, supra note 80 at 41. (“From the first significant elections in 1951 to the final, fraudulent and brutal confrontation in 1964 and 1965, the regional political classes used ethnicity as an electoral weapon against each other and against lower-class challengers from below.”).
\item \textsuperscript{111} INTERNATIONAL IDEA DEMOCRACY IN NIGERIA, supra note 36 at 92-3 (“the Nigerian political elite who inherited the powers of the colonialists at independence in 1960 continued this manipulation of ethnic differences for their own selfish interests. In the process, they succeeded in creating the false impression that various politicians and political parties were champions of the interest of the ethnic formations for which they spoke and the struggles of these parties for political dominance represented the struggles of their various ethnic groups for ascendance in society. They covertly and openly used emotive ethnic symbols and played on negative feelings arising from alleged ethnic conflict of interest as a means of mobilising mass support for their own personal interests.”).
\item \textsuperscript{112} Diamond, supra note 80 at 101.
\end{itemize}
led one scholar to argue that:

The state and its custodians are the chief architects of ethnic polarization and division. Amid the crisis of legitimacy in which most African states are engulfed, the manipulation of ethnicity has become a major weapon in the arsenal of the ruling class. Since they are incapable and unwilling to promote a national agenda based on ethnic inclusion, the ruling faction or fraction of the ruling classes divide Africans by among other things, making the state an ethnic one.¹¹³

One of the major consequences of appeal to ethnicity is that it soured the relationship among the ethnic groups in Nigeria. Because of appeals to ethnic sentiments, ethnic groups increasingly view each other more as competitors rather than component parts of the same country. This mindset generated tensions and suspicions that continue to frustrate attempts to promote national unity and consolidate democracy.¹¹⁴ Ethnic tensions among the ethnic groups further complicate an already charged and overheated electoral process. Ethnic tensions that crackle through the nation find outlets in the political process, especially in elections for national elective positions.¹¹⁵ Elections are where the toxic forces of ethnicity and politics collide and produce consequences that threaten both the electoral process and the nation’s political stability.¹¹⁶ Elections aggravate already existing ethnic tensions in the society and feed the atomistic impulse of ethnic minority groups who already feel


¹¹⁴ Sklar et.al, supra note 90 at 102. (“In the absence of other viable categories for the protection of group interests, one ethnic group’s apparent political gain is viewed by others as a potential loss. This zero-sum prospect creates an incentive for elites to maximize their ethnic group’s positions, which in turn makes other groups feel insecure and forces them to follow suit. Consequently, Nigerian politics occurs within a broader context of ethnic insecurity and an ethnic calculus of who’s up, who’s down? in terms of relative power within the federation.”).

¹¹⁵ Peter Lewis, Identity, Institutions and Democracy in Nigeria, Afro Barometer Working Paper No. 68 p. 1 (2007) (“since the transition to democratic rule in 1999, ethnic identity and mobilization have been prominent features of the political landscape with serious consequences for political stability.”).

¹¹⁶ Mojed Olujinmi Alabi, Electoral Reforms and Democratic Consolidation in Nigeria: The Electoral Act 2006, CEU Political Science Journal, Vol. 4 No. 2, 278 at 281 (2009) (“in their dysfunctional role, elections, particularly in pluralist, heterogeneous and highly segmented societies, may hasten the dissolution of primary ties and reinforce
marginalized by the dominant ethnic groups. Antipathies generated by years of ethnic conflict and distrust occlude citizens’ visions of electoral politics and affect their assessment of candidates.\textsuperscript{117} Such antipathies often provide the catalyst for both electoral violence and fraud. Most citizens care more about electing candidates from their ethnic group than the candidates’ views or vision for Nigeria.\textsuperscript{118} This is so because most citizens generally believe that “only leaders from their own ethnic group can be trusted to defend and protect the interests of their ethnic group.”\textsuperscript{119} Their beliefs prove well founded, given the enormous resources and benefits that disproportionately accrue to ethnic groups that produce national leaders, especially the president, senate president and speaker of the house.\textsuperscript{120} There is also a widespread understanding in Nigeria that access to wealth and the enjoyment of modern amenities like drinking water, good roads and hospitals depends on electing leaders from one’s ethnic group.

Poverty and unequal and often inequitable distributions of the nation’s resources that favor centripetal forces rather than serve as a factor for cohesion and harmony.”\textsuperscript{117}

\begin{itemize}
\item David Horowitz has convincingly demonstrated in several studies that ethnicity significantly affects the voting behavior of citizens in multi ethnic societies. See for example, David Horowitz, Democracy in Divided Societies, 4 J.DEM. 18 (1993); Donald Horowitz, Ethnic Groups in Conflict (1985); Donald Horowitz, A Democratic South Africa? Constitutional Engineering in a Divided Society, 96 (1991) (noting that under conditions of free elections, groups in polarized societies will line up behind ethnically based political parties representing their respective groups.).
\item Collier, Democracy in Dangerous Places, supra note 6 at 26 (“Some voters are going to vote for or against the incumbent regardless of performance because of their ethnic identity. Identity is the basis for most voting in the bottom billion. Their societies are usually divided into competing ethnic groups and as a result ethnicity is by far the easiest basis on which to organize political loyalty.”).
\item Hazen & Horner, supra note 46 at 7 (“Elections are also about representation. In addition to holding the economic reins of the country, the presidency also provides a significant symbol of ethnic and religious representation in a country with over 250 ethnic groups, and significant Muslim and Christian population. The origins of the president are viewed as important because of the perception that the group or groups that the president represents benefit during his time in power. As such, elections are more about candidates’ origins than their political platform.”)
\end{itemize}
ethnic groups prime citizens to believe that their fate and access to the nation’s wealth depend on their ability to elect their kinsmen.\footnote{121} Their belief proves well-founded because it has been documented that “access to power may determine economic opportunity, resource distribution, and physical security.”\footnote{122} Preserving ethnic privilege is often the catalyst for electoral irregularities. Citizens concerned about losing political posts to rival ethnic groups will stop at nothing to ensure the election of their kinsmen. Candidates, on their part, exploit and deepen ethnic differences, blithely stoke the anxieties of an already agitated ethnic group and move them to blindly support them.\footnote{123} Ethnicity, as stated by Professor Kwesi Kwaa Prah, “has been consistently mobilized in Africa by elites, as an instrument, to justify the pursuit of leadership interests and access to resources to the point of resorting to conflict in order to achieve these ends.”\footnote{124} Appeals to ethnicity are often artful, sometimes brazen and blatant, thus further fueling the tensions and fears among the ethnic groups. Appeals to ethnic sentiments resonate with the citizens and often eclipse their assessment of the other candidates. Discussing the harmful effects of ethnicity on the electoral process, Professor Collier stated that:

Ethnic politics seems likely to contaminate the content of election

\footnote{121} Daniel N. Posner, Institutions and Ethnic Politics in Africa, 256 (2005) (“Africa is a region whose poverty and weak government institutions lead citizens to view the state as a resource to be consumed by the ethnic kin of those who control offices.”).


\footnote{123} Kwame A. Ninsis, Introduction: The Contradictions and Ironies of Elections in Africa, Africa Development, xxxi, No. 3 1, 5 (2006) (“the truth is that in most African countries, elections provide opportunity for manipulating the prevailing ethnic, religious and regional divisions to achieve victory . . . primordial identities like ethnicity and religion have become party of the ideology of domination by which the political class manipulates the electorate to enhance their electoral fortunes.”).

campaign. Policy choices get crowded out by identity. . . . Playing on ethnic fears and hatreds is truly the politics of the gutter. Unfortunately it works.... Not only were politicians willing randomly to adopt either a campaign message that they would provide good national governance or a message that they would provide ethnic favoritism, but once the results were subject to statistical analysis, it became clear that favoritism was more effective at pulling the votes.125

Even election officials place a premium on ethnicity and often engage in illegal schemes to ensure the success of the candidates from their ethnic group. As ethnic anxieties over access to power intensify, it becomes increasingly difficult to conduct fair elections. Aggressive ethnic identification has become so disruptive that most of the ethnic strifes, including civil wars, have their ancestry in contested election results.126 A free and fair election, the bedrock of constitutional democracy, is gravely imperiled by fear-driven politics deviously orchestrated by politicians who stoke the embers of ethnicity to attain power. Too much emphasis on the ethnic background of candidates distorts citizens’ evaluation of the candidates and limits the chances of electing good leaders.

An Operational Assessment of the Nigerian Electoral Process

Nearly all elections in post independent Nigeria have been marred by a plethora of irregularities ranging from rigging and vote padding to violence.127 For example, the regional elections in 1964 and 1965 organized by Prime Minister Tafawa Balewa’s regime were marred by

125 Collier, DEMOCRACY IN DANGEROUS PLACES, supra note 6 at 56.

126 Muna Ndulo, The Democratization Process and Structural Adjustment in Africa, 10 IND. J. GLOBAL LEGAL STUD. 315, 352 (2003) (“Unfortunately, many elections in Africa have been disputed and have sometimes led to conflict rather than the advancement of democracy.”).

widespread irregularities including violence, fraud and intimidation. The 1979 and 1999 elections were relatively fair, free and witnessed less irregularities and violence because of the presence of the military that signaled its intentions to deal ruthlessly with perpetrators of violence and other irregularities. But the 1983 elections organized by President Shehu Shagari led government to witness massive irregularities committed by the ruling National Party of Nigeria, (NPN), often with the help or tacit acquiescence of the Federal Electoral Commission. Similarly, the 2003 elections conducted by President Obasanjo’s government were marred by large scale and widespread fraud and irregularities. Describing the 2003 elections, Professor Udogu accurately captured the prevailing sentiments in both Nigeria and abroad regarding the conduct of the elections. He stated that:

It is safe to say that the context and character of the 2003 national elections followed the same pattern as previous ones . . . They have been corrupt, violent, chaotic, and always left the country in a state of national malaise and angst.  

The 2007 General Elections

In a country with a long and dubious history of electoral irregularities, the 2007 general elections in Nigeria stands out as the *vade mecum* for electoral fraud. The 2007 general elections

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132 Rotimi T. Suberu, *Nigeria’s Muddled Election*, 18 J. DEM., 9,... (2007) (stating that if the 2003 general elections were hardly credible, the 2007 election was blatantly fraudulent. Most observers described it as the ugliest that they had ever witnessed in Africa or beyond); Joel E. Starr, What Do You Have For Me Today?: Observing The 1999 Nigerian Presidential Election, 35 STAN J. INT’L L. 389, 390 (1999) (stating that the 1999 Nigerian presidential election was an exercise in organized fraud where principle made way for payoff).
uncovered a gaggle of electoral irregularities at levels never before witnessed in Nigeria. Lydia Polygreen, an international journalist, correctly reflected the sentiments widely shared by most Nigerians and international election observers regarding the 2007 general elections in Nigeria. She stated that “Nigeria took a giant step backward last month. Its state and national elections displayed a disastrous mix of fraud and bungling even worse, by most accounts, than the seriously marred elections in 1999 and 2003.”

The 2007 election was the first time a civilian administration would hand over power to another civilian administration without prompting or assistance from military invigilators. Citizens, therefore, hoped that the 2007 election would mark a turning point in Nigeria’s quest for political stability and democratic consolidation. The hopes of conducting fair and free elections were quickly dashed when President Obasanjo tactlessly and irresponsibly declared that the 2007 election “is a matter of do or die” for the ruling party, the Peoples Democratic Party. President Obasanjo’s drivel left no one in doubt that the ruling party was girding for an all-out assault on the electoral

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133 Report of the Electoral Reform Committee, supra note 12 at 19 (noting that the 85-year-old history of Nigeria’s elections shows a progressive degeneration of outcomes. Thus, the 2007 elections are believed to be the worst since the first elections held in 1922.).


135 Betraying a Democratic Legacy N.Y. TIMES April 25, 2005 (“last Saturday’s presidential election should have marked a major consolidation of democracy in Nigeria, Africa’s most populous country and biggest oil producer: the first free choice of one elected civilian leader to succeed another. Instead, it was an ugly travesty .... not just procedurally flawed, but completely lacking democratic plausibility.”).

136 Suberu, supra, note 132 at 95. (what should have been a milestone for democracy threatens instead to become a millstone, as electoral process riddled with corruption and malfeasance raises doubts about prospects for democratic stability and consolidation).

137 Kolade Larewaju, Nigeria: Obasanjo Explodes – April Polls Do or Die for PDP, VANGUARD, Feb. 11, 2007 available at http://allafrica.com/stories/200702110015.html (Reporting that President Obasanjo declared that the April elections would be a “do or die” affair for the country and his ruling PDP).
process. It also provided a valuable x-ray into the mindset of the president as a retrograde despot willing to do anything to win elections. The “do or die” statement was all the more disappointing because it was not the vaporizing of some party official trying to mobilize party loyalists and supporters. It came from a president sworn to uphold the law, the nation’s top citizen who should embody and reflect the nation’s democratic values. The nation quickly discovered that “do or die” referred to by President Obasanjo was not just a campaign rallying cry, but the ruling party’s policy. The ruling party displayed its capacity for breathtaking fraud and irregularity and engaged in unprecedented and surreal acts of electoral malpractice. Professor Michael Bratton provided an accurate summation of the 2007 election in Nigeria:

Nigeria’s 2007 elections were deeply flawed. . . . dueling lawsuits, boycott threats, and shifting alliances between opportunistic political parties and factions created a chaotic atmosphere of uncertainty. Election preparations – such as a delayed voter registration exercise – were woefully inadequate and questions soon arose about the impartiality and competence of the Independent National Election Commission (INEC). These concerns were borne out on polling days April 14, and 21, 2007. Voting for President and National Assembly failed to take place in certain polling stations in half dozen states in the southeast and northeast due to the non-delivery of electoral materials. In numerous other locations across the country, ballot papers were misprinted or arrived late. In the southern Niger Delta zone, armed militias brazenly stole ballot boxes or substituted pre-stuffed containers of their own. Despite guarantees from the Inspector General of Police that public security would be assured, opposition candidates were harassed or arrested, voters were turned away from polling places by gangs of young thugs, ballot secrecy was violated by party workers and police, and some 300 persons

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138 Collier, DEMOCRACY IN DANGEROUS PLACES, supra note 6 at 37 (“everyone understood what “do or die” meant: it meant no-holds-barred.”).

139 President Obasanjo’s despotic tendencies are hardly surprising, given his background as a former army general who ruled Nigeria for a period (1976-1979) during the military interregnum.


Last weekend’s state and local elections in Nigeria were a demonstration of how not to hold a democratic election. Ballot boxes were stuffed, some polling places opened only hours before they were scheduled to close, and in some communities no voting took place at all because of a lack of supplies and rampant intimidation.
were killed in election related violence. INEC announced an overwhelming victory for the ruling party Peoples’ Democratic Party (PDP), but polling station results often bore little resemblance to actual turnout or voter intention.\footnote{141}

Opposition parties still reeling from the 2003 electoral losses discovered that the ruling party, Peoples Democratic Party, (PDP) had replicated all the despicable techniques and scurvy tricks that ensured its victory in 2003.\footnote{142} Candidates from opposition parties squawked about what they described as daylight robbery by the ruling party with the active participation of officials of the electoral commission and security operatives including the police and the army.\footnote{143} The ruling party’s presidential candidate, Yar Adua, single handedly picked by President Obasanjo, was declared the winner despite valid and verifiable claims of irregularities.\footnote{144} The presidential election fraud was so masterfully executed that opposition candidates did not even come close. Yar Adua was declared the winner with 70\% of the votes while other candidates, more than ten, combined for the remaining 28\%.\footnote{145} The declaration of Yar Adua as the winner came as no surprise because Nigerians know from

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\item \footnote{141} Michael Bratton, Vote Buying and Violence in Nigerian Election Campaigns, \textit{supra} note 24 at p. 2-3.
\item \footnote{142} International Crisis Group Nigeria: Failed Elections? Failing State? 3 (2007) electoral malpractices include: intimidation of voters and, in some cases, election observers and monitors; under age voting; hoarding of election materials by INEC officials, including ballots and result sheets; ballot-box stuffing by dominant parties, often with the connivance of INEC and security officials; theft of ballot boxes and ballot papers; announcement of results where there was no voting, especially in the South East, South South and North East; refusal to make result sheets available to party agents, thus denying aggrieved candidates the chance to use them in arguing their petitions at election tribunal; diversion of ballots and result sheets so that powerful politicians could falsify results; deliberate refusal to give certain polling stations adequate voting materials; and various partisan acts by INEC and security agents.
\item \footnote{143} Describing the 2007 general elections, Richard Dowden, an international journalist stated that: Obasanjo described the vote as a “do or die election.” The ruling party, the army, local government, the police and secret police collaborated in what must go down as one of the most blatantly stolen elections in the history of democracy. They set about it with brazen vigor, stealing and stuffing ballot boxes, intimidating opposition voters, buying votes and bribing officials. Much of it was in full view of observers and journalists.
\item \footnote{144} Lydia Polgreen, \textit{Governing Party Wins in Nigeria, but Many Claim Fraud}, \textit{N.Y. Times}, April 24, 2005 at A3.
\item \footnote{145}\textit{International Crisis Group Nigeria: Failed Elections, Failing State, \textit{supra} note 142.}
\end{itemize}
history and experience that incumbents or candidates sponsored by them simply do not lose elections in Nigeria.\textsuperscript{146} Having set the process in place to rig and manipulate elections, ruling party candidates approached their reelection bids with chutzpah, secure in the knowledge of a favorable outcome. They hoped for and expected a coronation and were often blissfully unperturbed by the prospects of losing elections. Lydia Polgreen aptly described the ruling party’s attitude toward the 2007 elections: It has become apparent that the governing Peoples Democratic Party, or PDP, simply seized the apparatus of democracy — ballots, boxes, inks and tally sheets — and rigged its way to victory in a number of places.\textsuperscript{147}

Any different result is unimaginable and so far has never happened in Nigeria, and indeed most parts of Africa.\textsuperscript{148} Nigerian leaders believe in and thrive on their sense of invincibility. Their confidence comes from their enormous powers and control of resources to skew and manipulate elections to achieve preordained outcomes.\textsuperscript{149} Discussing electoral fraud and the unfair advantages enjoyed by incumbents over opposition parties, Professor Paul Collier stated that:

Electoral fraud has been disturbingly common in low income countries. The key crooked tactics are voter bribery, voter intimidation and ballot fraud. In each of them the incumbent has an advantage. Bribery needs money, but as long as the national budget is leaky, the president has more of it than opponents. With sufficient money, voters can be bribed individually, or the local big man can be bribed to deliver votes wholesale; often entire villages vote for the same candidate. Voter intimidation needs forces of violence, but the president likely has the police and the army. Ballot fraud

\textsuperscript{146} TOYIN FALOLA & MATHEW M. HEATON, A HISTORY OF NIGERIA, 271-2 (2008). (“The 2007 elections also demonstrated dangerous levels of political corruption. The transfer of power to Yar Adua was a foregone conclusion. He came from the same party as Obasanjo, the PDP, which dominated the government and therefore was able to control the electoral process and outcome.”).

\textsuperscript{147} Lydia Polgreen, Democracy in Nigeria Falters but is far From Dead, N.Y.TIMES, May 3 2007.

\textsuperscript{148} See notes 30 and 31 supra and accompanying text.

\textsuperscript{149} See pages 7-11 of text supra.
needs the subservience of election officials who may well be presidential placemen.\textsuperscript{150}

Similarly, candidates for national and state offices presented or supported by the ruling party won handily, or more appropriately, were declared winners with few exceptions in states like Abia and Imo, where the PPA won the governorship elections and some seats in the state and national assemblies.\textsuperscript{151} The PPA, led by Orji Kalu, former Governor of Abia State, confronted and shattered PDP’s myth of invincibility in both Imo and Abia states. Some future historian or neophologist will one day study Orji Kalu, a maverick and smart politician with a masterful awareness of electoral landscape and his PPA’s ultimately winning strategy against Africa’s most dominant party, the PDP.

The Independent National Election Commission

The Independent Election Commission (INEC) is a body established by the Constitution and charged with organizing, undertaking and supervising all elections to the offices of the President and Vice President, the Governor and Deputy Governor of a state, as well as to the Senate, the House of Representatives and the House of Assembly of each state of the federation.\textsuperscript{152} The INEC failed to appreciate that it is an independent commission charged with fairly, objectively and impartially

\textsuperscript{150} Paul Collier, \textit{The Trouble With Elections}, WALL ST. J., June 16, 2009.


\textsuperscript{152} \textsc{Constitution} art. 153(f) (1999) (Nigeria). Besides organizing elections, INEC is charged with other important functions including: registration of political parties, the monitoring and audit of political party expenditure, the registration of voters, the determination of periodical revision of the sizes of the various levels of election constituencies, the monitoring of the political campaign and the enactment of by-laws and guidelines to regulate all the matters that fall within its sphere of competence. For a detailed analysis of the powers and functions of the Independent National Electoral Commission, see \textsc{Offor} \textsc{Nz}e \textsc{D. Amuchaezi & Chudi Onwuasoanya, The Judiciary, Politics and Constitutional Democracy in Nigeria} [1999 - 2000] 77-99 (2008).
conducting elections. Biddable INEC officials, supervising an archaic and tamper prone voter registration and voting system, created limitless opportunities for irregularities which politicians, especially those from the ruling party, exploited with vigor and brazenness. The INEC scandalously dwindled into a despicable cat’s paw for the ruling party and unabashedly helped it to orchestrate the greatest electoral fraud in the history of Nigeria, and perhaps in the continent of Africa. The illusions of honesty and impartiality projected by INEC and its cohorts failed to stack up to the credible and empirically verifiable evidence of massive fraud and irregularities uncovered by both international and domestic election observers.

Most of the results announced by INEC were either questionable or patently incorrect. One of the zanier instances of electoral malpractice was the declaration by the INEC that the ruling party, Peoples Democratic Party (PDP) won the Ondo South senatorial seat despite the fact that the party presented no candidate because of pending litigation involving the two aspirants to the party’s nomination. A similar and perhaps even more egregious example of INEC’s perfidy occurred in the Anambra State Governorship elections. The electoral commission announced that the ruling party’s governorship candidate, Andy Uba, had more votes than the number of registered voters in the

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153 Herskovits, supra note 26 (“the elections themselves proved to be as Nigerian observers put it, “a charade.” They were not just flawed: they followed the downward trajectory of Nigeria’s sad electoral history in which millions of people who want democracy are betrayed by their leaders.”).

154 E.U ELECTION OBSERVATION MISSION, NIGERIA 2007: FINAL REPORT; PRESIDENTIAL, GUBERNATORIAL AND STATE HOUSE OF ASSEMBLY ELECTIONS 1 (2007) (“the 2007 state and federal elections fell far short of basic international and regional standards for democratic elections. They were marred by very poor organizations, lack of essential transparency, widespread procedural irregularities, substantial evidence of fraud, widespread voter disenfranchisement at different stages of the process, lack of equal conditions for political parties and candidates and numerous incidents of violence.”).

155 Dayo Johnson, Nigeria: Olajumoke Wins Ondo North Senatorial Election, VANGUARD, April 25, 2007 available at http://allafrica.com/stories/200704250038.html (Reporting that in the Ondo South Senatorial district, the PDP won the election with 318,153 votes despite a court case involving two claimants of the senatorial seat).
The embarrassed officials of the commission quickly amended the result to shave off the excess votes but retained enough to still declare the ruling party’s candidate the winner. In some cases, the electoral commission announced results in wards where by all accounts voting did not take place because officials of the commission either did not show up or failed to deliver voting materials. In a scathing but accurate account of the INEC’s role in the 2007 general elections, the International Crisis Group Report stated that:

Widespread electoral malpractice and the staggering scale of falsified results were possible because of serious shortcomings within the regulatory agencies, most notably the Independent National Electoral Commission (INEC). Vigorously manipulated by the presidency, INEC virtually abdicated its responsibility as impartial umpire. Inefficient and non transparent in its operations, it became an accessory to active rigging. Similarly, the massively deployed police and other security services helped curb violence but largely turned blind eyes to, and in some cases helped in the brazen falsification of results.

Citizens and international observers have come to view the electoral commission as an inefficient government controlled establishment given to dishonest and illegal practices to privilege the government and the ruling party. The electoral commission’s craven complicity in electoral fraud

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156 INTERNATIONAL CRISIS GROUP NIGERIA: FAILED ELECTIONS, FAILING STATE?, supra note 142 at 4.

157 Id.

158 HUMAN RIGHTS WATCH CRIMINAL POLITICS, supra note 37 at 15 (“electoral officials, alongside the very government agencies charged with ensuring the credibility of the polls, reduced the elections to a violent and fraud-riddled farce. . . . . electoral officials reported massive turnout figures in areas where no voting took place at all.”)

159 INTERNATIONAL CRISIS GROUP NIGERIA: FAILED ELECTIONS, FAILING STATES, supra note 142.

160 Peter Takirambudde, African Director at Human Rights Watch, expressed the view that fairly reflects the prevailing public and international sentiments about the role of the Electoral Commission and the Federal Government in the Nigerian 2007 elections:

Instead of guaranteeing citizens’ basic right to vote freely, Nigerian government and electoral officials actively colluded in the fraud and violence that marred the presidential polls.

frustrated the wishes of the masses, most of who went to the polls to reject a profligate government and its coterie of corrupt officials.\textsuperscript{161} In most cases, the commission was complicit in or an accessory to the legerdemain that occurred during elections.\textsuperscript{162}

The Commission’s role in the 2007 election has been excoriated by virtually all domestic and international observers, opposition parties and scholars.\textsuperscript{163} Yet the commission remains in a comatose state of denial, implausibly proclaiming its impartiality and defending its Kafkaesque bungling of the 2007 general elections.\textsuperscript{164} It indignantly and arrogantly refused to acknowledge problems with the election. Facing a deluge of damning and media scrutiny, commission officials engaged in lame and sophistc rhetoric to justify their clearly inaccurate declaration of election results. The concocted, implausible and misleading account of its conduct in the 2007 elections, especially its efforts to defend demonstrably doctored results, served only to inflame revulsion and public disgust.\textsuperscript{165} INEC’s jejune attempts to explain the impossible were greeted with contempt, derision and skeptical harrumping by generally disgusted citizens. Ruling party candidates lustily celebrated election results and praised the INEC for doing a good job even when it was clear that they attained victory via fuzzy

\textsuperscript{161} Lydia Polygreen, \textit{supra}, note 144. (almost 70 percent of Nigerians did not believe elections would allow them to remove objectionable leaders).

\textsuperscript{162} The legerdemain worked in several ways and was admirably catalogued by Professor Jibrin Ibrahim in \textit{a special report prepared for the United States Institute for Peace}. Electoral frauds listed by Professor Ibrahim include compilation of fictitious names on voters’ registers, illegal compilation of separate voters’ lists, illegal printing of voters’ cards, illegal possession of ballot boxes, stuffing of ballot boxes, falsification of election results, illegal thumb-printing of ballot papers, voting by children, illegal printing of forms used for collation and declaration of results, deliberate refusal to supply election materials to certain areas, announcing results in places where no elections were held, unauthorized announcement of election results, harassment of candidates, agents and voters, change of list of officials, and box-switching and inflation of figures. \textit{UNITED STATES INSTITUTE OF PEACE: SPECIAL REPORT: NIGERIA’S 2007 ELECTIONS: THE FITFUL PATH TO DEMOCRATIC CITIZENSHIP} (2007).

\textsuperscript{163} See for example EU Election Observation Mission report, \textit{supra} note 142 at 1. (“INEC, which was financially dependent on the executive, was responsible for administrative failures on a nation wide scale. It did not prepare well for the elections and experienced widespread lack of confidence among election stakeholders in relation to its capacity and impartiality. Deadlines were missed throughout the pre-election period and it lacked transparency in its decision and conduct.”).

\textsuperscript{164} See e.g. Chuks Okocha & Sufuyan Ojeipo, \textit{Iwu – I’ve No Regrets Over April Polls}, \textit{THIS DAY}, Oct. 17, 2007 available at westlaw 2007 WLNR 20404574 (reporting Independent National Election Commission Chairman Maurice Iwu as saying that “the election was successful by any sober analysis and its outcome reflects the intent of the Nigerian electorate.”); Tunde Oyedoyin, \textit{Iwu Defends Self}, \textit{INEC at London}, \textit{GUARDIAN}, Dec. 16, 2007 (quoting Iwu as saying that “INEC was totally independent during the entire process.”).

\textsuperscript{165} Chijoke Ogham–Emeka, \textit{Defending Iwu’s Janjaweed Elections}, This Day March 18, 2008 available at \textit{www.allafrica.com/stories/200803180241.html} (“the selection provokingly called “election” was simply an outrage! Yet after this globally-acclaimed fraud INEC adds insult to injury by attempting to rationalize a charade.”).
and partisan computations of election results by the INEC. The ruling party, PDP, used every opportunity to asseverate that the electoral commission was fair and impartial and that the results accurately reflected the wishes of the electorate. The attitude of the ruling party, especially its praise of the conduct of elections and minimization of irregularities, seems consistent with the attitude of winners in highly contested elections.

Election Petitions

INEC’s unscrupulous practices and epochal partisanship diminished its standing before the public, set the stage for complaints and allegations of abuse and ultimately and more fundamentally led to an avalanche of petitions by lawyers on behalf of candidates who felt cheated and robbed by INEC. The cases are at various stages of adjudication by Election Tribunals charged with hearing election cases, or at the Court of Appeal, the final stop for all election petitions except for presidential elections. Some have been resolved after the exhaustion of the appellate process, while others are still pending either before the tribunal or at the Court of Appeal. Some results were voided by the tribunal and as a result, fresh elections have been ordered. Others were reversed with the losing

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166 Chris Albin-Lackey & Ben Rawlence, The Whole Concept of African Democracy is at Risk, available at www.hrw.org. (Reporting that “President Obasanjo is holding firm that his successor Umaru Yar’Adua was legitimately elected inspite of overwhelming evidence to the contrary.”).

167 Devra C. Moehler & Staffan I. Lindberg, Narrowing the Legitimacy Gap: The Role of Turnovers in Africa’s Emerging Democracies, Afro Barometer Working Paper, No. 88, p. 6 (2007) (“It is plausible to expect that citizens who emerged from election victorious will tend to believe that most irregularities were unintentional, the proper candidate won, and the system is legitimate. In contrast, losers are more likely to assume that flaws were deliberate and consequential.”).

168 U.S. STATE DEP’T COUNTRY REPORT on HUMAN RIGHT PRACTICES IN NIGERIA, 2008 at 9 (2009) (“following the elections, election tribunals received over 1,250 legal motions filed across the country to overturn the results of individual elections for all levels of government posts including the Presidency.”).


170 US. STATE DEP’T COUNTRY REPORT, supra note 168. (“by years end several tribunals had concluded their deliberations, resulting in the nullification of nine local-level elections, six senatorial elections, and five gubernatorial elections.”).
candidates declared winners by the tribunals. Similarly, the Appeal Courts have issued different orders ranging from overturning the lower tribunals’ decisions and ordering fresh elections to upholding the judgment of the election tribunal. The Presidential Election Tribunal dismissed the petitions filed by other candidates challenging President Yar’ Adua’s election. The Supreme Court subsequently affirmed the decision of the Presidential Election Tribunal.

Candidates who know firsthand the shenanigans of the INEC view the commission with perpetual suspicion and distrust. Their visceral reaction is to reject any results announced by the INEC. They would rather have the courts decide the outcome of elections. It is not surprising therefore that the courts are playing uncommonly active roles in the electoral process in Nigeria. Winners are increasingly emerging not by the results declared by the INEC but by judicial pronouncement. For example, the governors of Anambra, Edo, Ondo and River states owe their current positions to the judiciary that overturned the results declared by INEC. Election tribunals have played and continue to play significant, even pivotal roles in the Nigerian electoral process. This

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171 See e.g. Johnson, Ondo Governorship Election — Tribunal Declares Mimiko Winner, Vanguard, July 26, 2008 available at http://allafrica.com/stories/200807280668.html (Reporting that the Election Tribunal nullified the election of Ondo State Governor Dr. Ayagu and declared the petitioner, Dr. Mimiko, the winner).

172 See e.g Chuks Okocha & Ernest Chinwo, Appeal Court Unseats Imoke, THIS DAY July 15, 2008 available at http://allafrica.com/stories/200807150473.html (Reporting that the Court of Appeal sitting in Calabar nullified the election of the Cross Rivers State Governor, Liyel Imoke, and ordered fresh elections within ninety days); Mohammed Sosanya and Adebola Akinola, Appeal Court Upholds Marks Election, DAILY TRUST, July 16, 2008 available at http://allafrica.com/stories/200807160456.html (Reporting that the Appeal Court sitting in Jos confirmed the election of the Senate President, David Mark).


led the Economist to editorialize that:

For most of Nigeria’s post independence history, its politicians were more wary of losing office by a coup or assassination than by adverse vote in a free election. These days, it is the courts they are worried about. Election tribunals that were set up to investigate last April’s flawed elections have so far ordered six governors, over a dozen senators and scores of local government officials to leave office for various electoral shenanigans.176

Election Tribunals, and especially the Court of Appeal, have corrected the errors and mischief perpetrated by INEC. The Supreme Court has also interpreted the laws in pragmatic but often controversial ways to ensure that candidates are not deprived of the fruits of their victory. The Supreme Court’s decision in Peter Obi’s case177 was a remarkably bold decision that signaled the court’s intention to ensure that legal technicalities did not frustrate the will of the people as reflected in their votes. The Supreme Court literally interpreted section 180(2) of the constitution, which provided a four year tenure to read that four-year tenure began on the date a governor is sworn in and not with the election cycle.178 The court ruled that the tenure of Peter Obi, who took his oath on March 17, 2006 after protracted litigation, will end on March 17, 2010.179

The Supreme Court’s decision in Amechi’s case was even more radical and dramatic.180 The PDP substituted Amechi, who clearly won the party’s governorship nomination with another candidate favored by the party hierarchy, Celestine Omehia. After the election in which the new candidate contested and won, the Supreme Court ruled that Amechi, who did not contest the election,


178 Id.

179 Id.

was the proper candidate and declared him the duly elected governor of Rivers state. Explaining the rather bold and curious order of the court, Justice Oguntade stated that:

Having held as I did that the name of Amaechi was not substituted as provided by law, the consequence is that he was the candidate of the PDP for whom the party campaigned in the April 2007 election not Omehia and since PDP was declared to have won the said elections, Amaechi must be deemed the candidate that won the election. In the eyes of the law, Omehia was never a candidate in the election, much less the winner.\textsuperscript{181}

Relying on the courts to settle election matters that are best kept out of the judicial process carries some implications for both the judicial system and the nation. It moves the judiciary into the political process, a task for which it is ill suited to perform. In some cases, losing candidates seek to use the judiciary to nullify the citizens’ choice. Some candidates use the judiciary as part of their strategy to attain power. Losing candidates who have the resources disingenuously challenge the election results in the hopes of manipulating the judiciary to overturn the will of the people. The judiciary, generally known in Nigeria to be corrupt, often aids these candidates to achieve their objectives. Various Election Tribunals in the country have rendered decisions that have no plausible bearing on the law and the facts. The Court of Appeal, the final arbiter of all election petitions except the presidential elections, continues to reverse such clearly wrong decisions issued by Election Tribunals.

\textbf{Consequences of Electoral Irregularities}

Electoral irregularities carry very real and practical consequences for the candidates, the society and the democratic process. The nation suffers because electoral irregularities fatally

\textsuperscript{181} Id.
undermine efforts to consolidate democracy. Leaders who assume power through compromised elections often feel no obligation or sense of responsibility to neither the nation nor the citizens. Candidates suffer in distinct and very personal ways. Their resources, time, efforts and at times their lives are squandered by a fraudulent and often violent process that deprives them of the opportunity to serve the nation. Losing or being robbed of victory inclines them to lose interest in the democratic process. Citizens whose choice and preferences are negated also bear the brunt of a deformed electoral process that leaves them bitter, frustrated and often forlorn of hope of achieving their dreams of living in a truly democratic society. Underscoring the relevance of the elections in the country’s quest for democratic consolidation, Professor Victor Adetula correctly stated that:

The electoral system of a country is the critical institution which shapes and influences the rules of political competition for state power because it determines what parties look like, who is represented in the legislature, how accountable these representatives are to the electorate and above all who governs. It is good to know that the way an electoral system operates determines the degree of public confidence and support for the democratic system itself.182

The integrity of the electoral process can only be preserved if the enabling institutions and processes function effectively, efficiently and honestly. It is no secret that democratic institutions in Africa are beset by crippling deficiencies that render them unreliable, inefficient and corrupt.183 In such an environment, Professor Collier argues that “in the absence of supporting institutions elections have proved to be more decorative than functional, a veneer beneath which the autocratic rule of the pre

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182 Victor A.O. Adetula, Money and Politics in Nigeria: an Overview, in MONEY AND POLITICS IN NIGERIA, supra note 70 at xviii.

183 U.N DEV. PROGRAMME [UNDP] HUMAN DEVELOPMENT REPORT 2002: DEEPENING DEMOCRACY IN A FRAGMENTED WORLD 65 (2002) (“Democratic institutions in many countries – especially newer democracies – are overburdened and lack the means to do their jobs . . . Oversight and regulatory agencies lack well-trained staff. And bureaucrats are underpaid, overworked or both.”).
1991 era continues little abated.\textsuperscript{184} The major consequence that flows from electoral irregularities is that citizens are not governed by elected representatives as mandated by the constitution and democratic imperatives. They are, rather, governed by illegitimate and unresponsive rulers who finagle their way to power through fraud and violence. Leaders who assume power through fraudulent elections govern “not by popular acceptance but by the agency of terror.”\textsuperscript{185}

Nigerians know very well the dangers of elected officials who feel no sense of responsibility to the citizens. The corruption and arrogance that plague political elites in Nigeria can be traced to the sense of electoral invincibility engendered by their ability to manipulate and rig elections.\textsuperscript{186} Professor Epiphany Azinge traces a nexus between electoral irregularities and corruption:

When election is marred by irregularities, mal practices and other fraudulent misconducts, not only is the legitimacy of the government arising from the election put in question, the likelihood of adherence to the best practices for governance is foreclosed. A corruptly enthroned government is bound to have people of like mind in the parliament and as ministers. Such administration is likely to encourage all forms of corruption.\textsuperscript{187}

Unlike established democracies where the fear of losing elections provides powerful incentives for elected officials to govern responsibly and pay attention to public opinion, African leaders remain untroubled by public opinion. They know that in the end, what assures them of

\textsuperscript{184}Collier, \textit{supra} note 1 at 138.

\textsuperscript{185} \textsc{Wole Soyinka Climate of Fear: The Quest for Dignity in a Dehumanized World} 43 (2004).

\textsuperscript{186} \textsc{Human Rights Watch, Politics as War: The Human Rights Impact and Causes of Post-Election Violence in Rivers State, Nigeria}, 2 (2008) (“Since the end of military rule in 1999, democracy in Nigeria has been illusory, with elections stolen openly and voters systematically intimidated into acquiescence, . . . The governments that seized power through those fraudulent exercises have shown little sense of accountability to their constituents.”).

\textsuperscript{187} Epiphany Azinge, Constitution, Corruption and Good Governance, paper presented at the World Congress of Constitutional Law, Athens, Greece, 11–15th June 2007 at p. 5.
reelection is not the peoples’ judgment but their ability to manipulate the electoral process to achieve favorable outcomes. Two scholars accurately captured the consequences of electoral irregularities perpetrated by Nigeria’s ruling People’s Democratic Party:

The PDP’s proven ability to manipulate and control the results of elections has dire implications for the future governance of the country as well. With such strong PDP control, Nigeria seems to be moving towards the establishment of what amounts to a one party state, in which the avenue to power comes not through contesting elections but through appeasing officials within the dominant party. Under such circumstances, there is little accountability in government and little incentive for the PDP to rule in the best interest of the citizens. The “rentier state” mentality seems likely to continue, as government officials can continue to use oil revenues derived from foreign sources to maintain their power by any means necessary.

After describing the Nigerian electoral process as flawed, Human Rights Watch concluded that “governments who seize power through those fraudulent exercises have shown little sense of accountability to their constituents.” Unburdened by the adverse consequence of their conduct, they develop and pursue self interested ventures, often at the expense of public good. The disconnect from the citizens is a recipe for dictatorship and the source of bad governance that has disfigured Africa. Shorn of reelection incentives, elected officials behave as they please and pursue their selfish interests at the expense of their duties and loyalties to the nation and the citizens. The essence of constitutional democracy is a representative self government, i.e., leaders chosen by the citizens in a free, fair and

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188 Remi Aiyede, The Role of INEC, ICPC and EFCC in Combating Political Corruption, in MONEY AND POLITICS IN NIGERIA, 39, 41 (Victor A.O. Adetula ed. 2008) (“In Nigeria, corruption has made election results to have very little or nothing to do with the performance in office of politicians. Precisely because performance is not a critical factor in electoral outcome, the incentive to perform is very weak. And because corruption is effective in achieving electoral victory, the incentive to resort to corrupt practices is very high.”).  

189 TOYIN FALOLA & MATHEW M HEATON, A HISTORY OF NIGERIA, 276-277 (2008).  

credible election. Electoral fraud that enables leaders to ignore the wishes of the people is the antithesis of democratic government. Candidates who cannot secure the peoples’ mandate through elections impose themselves on the people through fraud and other electoral irregularities. Electoral irregularities dilute the most potent tool available to citizens to ensure accountability. Leaders no longer fear the wrath of the people and feel less accountable to them because they know that elections can be manipulated to retain power regardless of the peoples’ votes.

Electoral irregularities deprive citizens of the most fundamental power they have to elect their leaders. Nigerians have painfully realized their lack of power to choose their leaders because far too often:

Electoral choices are made by political barons outside the orbit of electoral norm, rules and procedure. In such circumstances, winners and losers have often been determined before the contest and voters merely go through the charade of confirming choices already made.

Electoral fraud greatly dampens public confidence and interest in the democratic process and leaves citizens forlorn of hope for a better future. When attaining power through fraud and other

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191 The benchmark for credible elections was eloquently stated by Larry Diamond who observed that: Elections are only democratic if they are truly free and fair. This requires the freedom to advocate, associate, contest and campaign. It also requires a fair and neutral administration, a widely credible system of dispute resolution, balanced access to mass media and independent vote monitoring. Larry Diamond, The Democratic Rollback: The Resurgence of the Predatory State, Foreign Affairs March/April 2008.

192 HUMAN RIGHTS WATCH; CRIMINAL POLITICS, supra, note 27 at 2 (2007) (“many of Nigeria’s ostensibly elected leaders obtained their positions by demonstrating an ability to use corruption and political violence to prevail in sham elections. In violent and brazenly rigged polls, government officials have denied millions of Nigerians any real voice in selecting their leaders.”).

193 Agbaje & Adejumobi, supra note 4 at 37 (footnotes omitted).

194 The 2007 election was so flawed that the International Crisis Group declared that “Nigeria’s democracy has derailed. The 2007 general elections were supposed to consolidate, facilitate the peaceful resolution of its many internal conflicts and bolster its stature as a leading peace maker and peace keeper in Africa. Instead, the conduct and outcome deepened long-running political crises, pushed the country further down the road to failure as a
irregularities becomes the norm, citizens lose interest in both elections and the entire democratic process.

democratic state and weakened its position as a broker of peace across the continent.”
INTERNATIONAL CRISIS GROUP NIGERIA: FAILED ELECTION, FAILING STATE, supra note 142 at 1.
Electoral irregularities cast a pall of illegitimacy over the government. Professor Michael Bratton argued that “elections confer legitimacy: having voted for a government, citizens are more willing to comply with it, thus reducing the costs of enforcing public policies, especially unpopular ones.” The converse is also true. Having voted against a government that finagled its way to power by fraud, citizens are less likely to support the government and will be far less inclined to embrace its policies and programs. Leaders who assume power through rigged elections are often unable to galvanize and inspire the citizens or even to check the excesses of their obstreperous cronies who did the dirty work for them. More fundamentally, and far too often, electoral irregularities provide notorious tinder for chaos and civil unrest. Most of the civil unrest and violence in Africa have their ancestry in contested elections.

Africa’s bold democratic aspirations are often marred by electoral fraud and other irregularities that deny citizens the right to choose and control their leaders. Electoral fraud erodes public trust and

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195 INTERNATIONAL CRISIS GROUP, NIGERIA: FAILED ELECTIONS, FAILING STATE?, Id. (“while elections are designed to produce leadership that represents the people’s will and commands their respect, these [2007 Nigerian general elections] produced a government of doubtful legitimacy.”).  
197 Suberu, supra, note 132 at 96. Discussing the 2007 elections, Suberu notes disapprovingly that “electoral corruption could wind up exacting a price in blood if it aggravates or impedes the solution of existing regional conflicts that include spiralling insurgency among the Ijaw of the oil rich Niger Delta, Islamist pressures in the Muslim north, and autonomist agitations among the Igbo and Yoruba in the south east and southwest respectively.”  
199 ROBERT A. DAHL, A PREFACE TO DEMOCRATIC THEORY, 3 (1956) (noting that if ordinary citizens cannot exert a relatively high degree of control over their leaders, then the minimal threshold of democracy has not been reached.).
support for the government and leads to citizens’ disinterest in the democratic process. Elections are too important to the democratic process and indeed national stability to be allowed to degenerate into a pandemonium orchestrated by venal politicians and corrupt INEC officials. To sustain the hopes of consolidating democracy, African countries must conduct credible and fair elections in which citizens’ choices of leaders are not disturbed by electoral fraud or manipulation.

Reforming the Electoral Process

Conducting credible elections remain Africa’s direct, perhaps only route to democratic consolidation. A credible election is the best antidote for bad governance and executive hubris that make democracy precarious and difficult to consolidate. Conducting credible, free and fair elections in Africa represent a grueling challenge, and it will get more difficult with future elections. Each election has proven more problematic than the one before. Without fundamental reform of the electoral process, the same fraudulent practices and irregularities that deformed past elections will repeat themselves, perhaps in far more destructive and destabilizing levels. As more citizens seek power, the level of competition and desperation will also increase, thus providing further impetus for electoral shenanigans and violence. Unless drastic measures are taken, the Nigerian electoral process risks further degeneration into the banality of a war zone with no ground rules, no respect for humanity of the combatants, nor concern for the interests of the nation.

Unless something is done, elections in Nigeria will continue to be conducted under dubious and questionable circumstances, aided in substantial part by INEC officials who act more like partisans than impartial umpires. The ultimate challenge for Nigeria is to create a culture and an environment where citizens submit to the electoral process without efforts to manipulate, rig or skew results and

Bruce Fein, *Nigeria’s Rule of Law Challenges*, WASH TIMES, July 15, 2008, at A22. (noting that “citizens will shortchange willing obedience to their government if their governors were elected by fraud, violence or other manipulations in contravention of popular sovereignty.”).

Joseph, *supra* note 35 at 95-96 (noting that the national election held over the last decade (1999, 2003, and 2007) became successively less fair, less efficient, and less credible.).
where the INEC operates with uncompromising thoroughness, fairness and impartiality. Creating such a culture requires changes that will limit opportunities and reverse the perverse incentives that lead to electoral irregularities. Accomplishing these goals requires a pragmatic and protean approach that will induce both necessary individual and systemic changes necessary to conduct elections that meet universally accepted standards. Nigeria needs serious and sustained efforts to transform INEC into a truly independent commission that can conduct credible, free and fair elections. This challenge can be met by designing a tamper-proof voter registration and voting mechanism, and a transparent electoral process organized and supervised by competent and honest officials. Reform efforts must focus on the following five important issues: updating an archaic and unsatisfactory voter registration system, prosecuting perpetrators of electoral fraud, subverting the culture that engenders electoral misconduct, improving the mechanism for resolving electoral disputes and controversies, and reclaiming the institutional integrity and credibility of the INEC.

Integrating Modern Technology

Voter registration is in disarray, crippled by corruption and archaic, tamper-prone procedures. Voter registration has always been problematic in Nigeria for a variety of reasons. The primary reason is the absence of accurate statistical records of births and deaths in Nigeria. It is therefore difficult, if not impossible to ascertain the true identities of voters, their ages, and their domiciles. Election officials rely on information provided by citizens, which for the most part is either

202 Levan Pitso Titi & Adebo B., Elections in Nigeria: Is the Third Time a Charm?, Journal of African Elections, Vol. 2 No. 2, 30, 33 (2004) describing the voter registration process in Nigeria, the authors noted that “voter registration suffered several setbacks that affected enfranchisement and therefore confidence in the electoral process. Problems included logistical delays, insufficient staff training, the lack of security at registration centers, poor voter education campaigns and other flaws.”
inaccurate or completely false. The net result of an unsatisfactory and defective registration system include: the registration of under aged and ineligible voters, and double registration and padding of the registry by corrupt election officials with fictitious names supplied by parties and their candidates.\textsuperscript{203} The second cause of accuracy defects is the attitude of politicians and political parties toward voter registration. The struggle for power begins with registration of voters. It is the first opportunity for parties and their candidates to flex their muscles. Politicians, avid to exploit the inadequacies of the current registration procedure; shamelessly and audaciously make the registration of voters the capstone of their strategies for rigging elections. As two scholars put it, “the manipulation of the voter registration process either through multiple registrations, registration of underage persons, and denial of registration to opposition supporters or inflating the voters’ register constitute a major step in election rigging.”\textsuperscript{204} Buoyed by the perverse incentives of an archaic system, politicians engage in various forms of fraudulent practices to gain unfair advantages over their opponents, including the padding of the registration registry with fictitious names.

The credibility of the electoral process depends on a credible voter registration process.\textsuperscript{205} Conducting elections without ensuring the integrity of the voter registration process is nightmarishly difficult and has frustrated every attempt to conduct credible elections in Nigeria. Conducting elections without correct and tamper-proof voter registration is an exercise akin to building a house of

\begin{itemize}
  \item \textsuperscript{203} Agbaje & Ademujobi, \textit{supra} note 4.
  \item \textsuperscript{204} \textit{Id.} at 34.
  \item \textsuperscript{205} Undp Deepening Democracy, \textit{supra} note 183 at 70 (“improving voter registration and rolls and setting up
cards on quicksand. It surely will collapse with consequences to the builder and the system that built it. Credible elections begin with an authentic voter registration process that accurately identifies voters and matches their names with photographs and other pieces of identification.

independent electoral commissions are cornerstones of a free and fair system.”).
The current electoral process in Nigeria is needlessly archaic, slow and disorganized, thus providing room for fraud and other irregularities. Elections stripped of modern technology and conducted by biddable and corrupt officials will always be chaotic. Nigeria has the resources to invest in modern technology, but it prefers to use an outmoded and error prone manual voting system controlled and organized by dishonest and often corrupt officials. Manual hand counting of ballot forms is often arbitrary and susceptible to error, fraud and abuse. The lack of modern tamper proof facilities enables INEC officials to skew the process in any direction that suits their preferences. The Nigerian experience has shown that manual voting — paper thumb printed and stuffed into compromised boxes at insufficiently supervised polling booths is not a recipe for credible elections. Transporting several ballot boxes to and from locations scattered across the state makes it difficult to maintain the integrity and safe custody of the boxes. Ballot boxes have been known to be switched and stuffed in advance and otherwise tampered with. Election day specters – long lines at the voting stations, questionable voter registration, late arrival of voting materials, incorrect collations of results — are traceable in large measure to the archaic system that creates limitless opportunities for irregularities, which candidates and complicit election officials exploit with vigor and brazenness.

The first step is to invest in the right technology and provide equipment that will ensure that voter registrations and election results are tamper proof. Efforts must be made to introduce voter registration procedures that will ensure the integrity of the electoral process by screening out bogus, ineligible and double registrants. Efforts should also be made to ensure that only eligible voters are allowed to vote and that their votes are correctly recorded and accurately tabulated. Some of the

206 See Jibrin Ibrahim, supra note 32 at 36.

207 Id.
problems can be eliminated or at least significantly curtailed by introducing electronic voting machines with automated ballot counting and tabulation capabilities. Such a prospect involves huge capital outlay and extensive training of election officials to ensure that officials charged with conducting elections have the necessary training and expertise to manipulate complex voting machines.

Prosecuting Electoral Fraud

The next step will be to aggressively prosecute all those involved in electoral irregularities. Most electoral irregularities – fraud, forgery, vote tampering, and violence – are specifically proscribed and punishable by the Electoral Act. But these proscriptions do not affect the calculations of political elites because sanctions are rarely imposed on those who violate election laws. The Electoral Reform Committee found that “it is significant to note that despite the well documented acts of electoral malpractices, no Nigerian has ever been convicted and punished for electoral offences since independence.” Nigeria can dramatically emphasize the seriousness of electoral crimes by aggressively identifying and punishing those who engage in electoral misconduct. The main impetus for electoral fraud is that the electoral process has turned into a consequence free zone where perpetrators of electoral fraud are rarely investigated and punished. There are few isolated arrests and prosecutions of electoral fraudsters, as electoral laws prohibiting irregularities are rarely investigated and prosecuted. Citizens waiting for comeuppances for electoral fraud have been

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208 Part viii, sections 124–139 of the Electoral Act 2006 contain a mélange of electoral offences including: improper use of voters card, bribery and conspiracy, voting by unregistered voters, undue influence, wrongful voting and false statements, disorderly conduct at elections.

209 REPORT OF THE ELECTORAL REFORM COMMITTEE, supra note 12 at 23.
dismally disappointed. The lack of sanctions for election infractions catalyzes flagrant violations by candidates seeking to level the playing field by matching fraud with fraud. When electoral fraud is ineffectively investigated and insufficiently punished, electoral fraud proliferates as emboldened candidates and their cohorts at the INEC and the Nigerian Police ply their fraud without fear of reprisals. Discussing the sources of electoral violence, Human Rights Watch stated that:

   Alongside the gangs themselves, the individuals most responsible for the abuses they commit are politicians and party officials – from all parties – who sponsor and at times openly participate in acts of violence. The architects, sponsors, and perpetrators of this violence generally enjoy complete impunity because of both powers of intimidation they wield and the tacit acceptance of their conduct by police and government officials.

The absence of sanctions not only betrays voters and candidates who play by the rules but also makes electoral fraud more probable. When citizens and candidates watch crooked and corrupt candidates rewarded rather than punished for their electoral transgressions, then the incentive to engage in similar practices increases. Politicians all over the world face similar temptations to engage in illegal conduct that will secure victory for them, but Nigerian politicians yield more easily to those temptations because of the ineffectiveness of institutions designed to sleuth out and sanction perpetrators of electoral irregularity. As Dr. Robert Pastor rightly observed, “candidates in a consolidated democracy stay within the rules not because they are better leaders than Nigerians but because they know that they will pay a heavy price for violating the rules and they are likely to be caught.”

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210 For an excellent analysis of electoral irregularities in Nigeria see INTERNATIONAL CRISIS GROUP, NIGERIA: FAILED ELECTIONS, FAILING STATE (2007) the ICG noted that “in an atmosphere of almost total impunity a thriving market for political violence has developed. The rules of supply and demand for political assassination, kidnapping and other strategies of intimidation are freely applied throughout the country, those willing to enter the competitive market have to prove their competency and added value by using distinct tactics and technology.” Id. at 11.

211 HUMAN RIGHTS WATCH, CRIMINAL POLITICS, supra note 37 at 17.

212 Robert Pastor, Transitional Democracies: The Imperative of Electoral Reform, in Electoral Reform: Building
Any attempt to deepen democracy will be marginally effective, if at all, unless electoral irregularities are addressed. The effort to ensure free and fair elections must be complimented by adequate mechanisms to sleuth out and punish fraudsters and criminals who distort and manipulate the electoral process. Efforts must be made to investigate electoral irregularities at all levels – local governments, state and federal, and to immediately prosecute all those involved in electoral fraud. It is not enough to punish the goons who carry out the fraud or violence. Sanctions should extend to the candidates who recklessly urge, aid and abet their supporters and thugs to engage in violence. It is beguilingly simple to blame electoral violence on the activities of thugs who view political thuggery as a viable means of surviving in an economy drowning under soaring inflation, unemployment, corruption and crushing poverty. The simple truth is that electoral violence is often orchestrated by political elites too blinkered to allow the process to function freely and fairly. They confect the scheme, and the thugs merely carry out their instructions, sometimes overzealously going beyond their mandate.

The incentive to engage in electoral fraud will shrink once citizens know that electoral fraud will draw swift and condign punishment. The Electoral Reform Committee recommended that “all offences committed within the electoral context should be prosecuted expeditiously. The prevailing atmosphere of impunity with regard to election offences should be ended by prosecuting and holding accountable those responsible for electoral offences.” Punishing fraudsters will also reaffirm and

Confidence for the Future, supra note 3 at 49.

213 INTERNATIONAL CRISIS GROUP NIGERIA FAILED ELECTIONS FAILING STATE 14 (2007) (noting that arrests and prosecutions seem to be focusing on those who were apprehended at the scenes of violence with little attention to those who masterminded the acts.).

214 REPORT OF THE ELECTORAL REFORM COMMITTEE, supra note 12 at 56.
reenergize the government’s commitment to rid the electoral process of irregularities.\textsuperscript{215} Recommending the prosecution of those who commit electoral offences, the International Crisis Group noted that prosecutions “done evenhandedly, would reduce the impunity that has marred Nigeria’s history and threatens to undermine citizen confidence in the country’s political institutions.”\textsuperscript{216}

Subverting the Culture that Engenders Electoral Misconduct

Electoral irregularities are profound and pervasive, but they are in most cases the manifestations of a decadent culture. Seekers of elective offices ultimately incarnate and reflect the nation’s disturbing pathology: a culture irredeemably fastened to the pursuit of self aggrandizement and the glorification of power regardless of costs and consequences to others and the nation. Citizens highly distrustful of government institutions and processes are socialized to view violence as a legitimate part of conflict resolution. It is therefore not surprising that citizens seem content to condone and even accept violence as part of the electoral equation. Elections graphically illustrate the decrepit state of Nigeria’s political culture. An all-too-common mixture of greed and naked quests for

\textsuperscript{215} Wole Soyinka advocates the setting up of a judicial commission to investigate the conduct of the recent election “to arrest and send for prosecution those whom they find guilty of having abused the trust of the nation.” A similar suggestion was offered by the International Crisis Group, which argued that “all crimes committed within the electoral context must be investigated and where appropriate prosecuted expeditiously.” See INTERNATIONAL CRISIS GROUP: FAILED ELECTION, FAILING STATE, 14 (2007).

\textsuperscript{216} INTERNATIONAL CRISIS GROUP NIGERIA: FAILED ELECTIONS, FAILING STATE ? Id. at 14.
power lead to desperation and the win-at-all-cost mentality which ultimately lead to violence and other irregularities including fraud and forgery. The rabid and obsessive focus on attaining power and the perverted mindset with which Nigerians approach the electoral process led Dr. Toyin Falola, one of Nigeria’s leading political scientists to lament that:

The future of Nigeria is unpredictable. It is abundantly clear that politics is no more than a grand orchestration of a cabal – military and civilian — motivated by the narrow desire of acquiring power for its sake. Nigerian leaders do not care about law and order. . . . To this ruthless cabal, democracy is about the use of violence, the destruction of opponents, and the looting of treasuries. . . . The guns used by the military have now been handed over to their civilian successors to implement a gun-barrel democracy.217

The sources of electoral irregularities and violence are rooted in a culture where prosecution alone will not make much difference. Citizens in a degenerate country without a framework of moral values and primed to view violence as a legitimate tool for conflict resolution merely extend to the electoral process what works for them in other areas of life. Violence, fraud, and dishonesty are part of the narrative of their existence which produce tangible benefits and results, often without consequence or even risk of sanctions. Punishment in and of itself will not sanitize the electoral process and rid it of the miscreants who engage in electoral crimes. Punishment alone will not deracinate irregularities from the electoral process because electoral irregularities are not tied to specific individuals whose incapacitation will clean up the process. Even if all those involved in electoral irregularities are jailed, a new group will emerge and engage in electoral fraud with gusto. As the cliché goes, “it is easier to go after the wasp net than to go after individual wasps.”

Some of the electoral irregularities originate from the dysfunctions in the society—greed, corruption, lack of respect for rules—and are mere superficialities of a decadent culture. Any effort to inspire good electoral behavior or to deter electoral irregularities must be expanded to include programs to confront and subvert the underlying social factors that lead to electoral irregularities. Punishing perpetrators of electoral fraud will help, but subverting the culture that spawns irregularities should be accorded greater priority. Electoral irregularities, the partisanship of the electoral commission and the obsessive desire for power have set in motion a dynamic in which candidates believe that electoral success can only be attained by fraud and violence. This dynamic can be negated and possibly reversed not necessarily by punishing those involved in electoral fraud, but more importantly by strengthening democratic values, educating citizens, and by helping them to build the character and discipline necessary to resist efforts by political elites to dragoon them into committing electoral fraud. Training is vitally important because most of the goons who commit electoral fraud are innocent citizens, typically callow youths and unemployed tatterdemalions, who merely respond to the perverse incentives of a dystopian environment served up by political elites and their votaries.

Education and socialization may help the youths sucked into the vortex of violence crocheted by corrupt and desperate politicians to extricate themselves.

Education might alter the current mindset that glamorizes electoral fraud and those who deform the electoral process. Reinforcing the values of honesty and integrity may help citizens to

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218 INTERNATIONAL CRISIS GROUP, NIGERIA’S ELECTIONS: AVOIDING A POLITICAL CRISIS. Africa Report No. 123, March 28, 2007, at p. 11 (“widespread illiteracy and poverty make the lower socio-economic classes readily available to be drafted into odd jobs, including acts of political violence. A majority of the foot soldiers of electoral violence are drawn from the teen and adolescent age groups.”).
develop the strength and character to treat political elites and their goons who orchestrate electoral fraud and violence with the contempt they invite and deserve. The proper and most effective response is to complement punishment with efforts to subvert the culture that condones, encourages and even justifies electoral misconduct. Electoral irregularities stem from a much deeper problem, far bigger than errant and illegal activities of goons who perpetrate electoral fraud. The problem is the pathology that engenders aberrant electoral conduct exacerbated by the lack of efforts to institute changes that will transform the society and help citizens overcome debilitating traits that lead to extra legal conduct. The ultimate goal is to build a culture and an environment where all the parties – citizens, candidates and election officials – allow the electoral process to function as intended that is fairly, honestly and objectively without efforts by anybody to obtrude.

The failure to address the underlying social forces that contribute to electoral irregularities will lead inevitably to unsatisfactory results. Efforts to sanitize the electoral process and cleanse it of violence and other irregularities must apply the right mix of sanctions and socialization that wean citizens away from the culture that condones and even celebrates electoral misconduct. The right mix of prosecution and education may persuade citizens finally to refrain from electoral irregularities. Any programs initiated to inspire appropriate electoral conduct or to deter irregularities must be expanded to reach all segments of the society, from foot soldiers, the goons who carry out orders to the political elites, on whose behalf and in whose name these crimes are committed. Until Nigerians are educated and socialized to view electoral irregularities as crimes that distort the electoral process, deny citizens the right to elect their leaders and threaten the nation’s stability, electoral irregularities will continue. The mindset that leads Nigerians to accept electoral fraud must be altered through education, and in appropriate cases, criminal prosecution. Efforts must be made to stop the
glorification of electoral violence by treating its chief architects with the disdain and obloquy they richly deserve.

Improving the Mechanism for Adjudicating Election Petitions

Because of the pivotal, even dispositive role played by election tribunals, it is essential to commit resources and design appropriate framework that will improve their efficiency and increase public confidence in their work. Election petitions following the last elections were numerous, prolonged and provided painful reminders of the inefficiencies of the nation’s judicial system. Nigerian politicians are chronic fault finders who instantly reject election results declared by INEC. The visage of losing candidates graciously conceding defeat and congratulating the winning candidate so typical in the United States and other mature democracies is unheard of in Nigeria. Candidates quickly reject the results and rush to the election tribunals to contest what in their minds is an incorrect result. Elections in Nigeria rarely end with the declaration of results by the INEC: the courts typically have the last say in deciding who the winners are.\textsuperscript{219} Virtually all elections in Nigeria from local government positions to the presidency are challenged by the losing parties.\textsuperscript{220}

Relying on the courts to correct the errors and fraud committed by the election commission has thrust the judiciary into the role of vindicators of the public will. The judiciary is expected to put an end to the chaos caused by the ineptitude or complicity of the INEC. How well and how quickly the judiciary discharges this function will determine the strength of our constitutional democracy. The portents of facilitating speedy resolution of electoral disputes through tribunals are not encouraging. At present, election tribunals designed to produce speedy resolution of election controversies are

\textsuperscript{219} See pages 45-48 of text \textit{supra}.

\textsuperscript{220} \textit{Id.}
dismally slow and inefficient. The hope that election tribunals would swiftly resolve election controversies has turned out to be a sham, as tribunals are beset by the same crippling deficiencies that disable traditional courts from engaging in the fair, impartial and efficient dispensation of justice. Election tribunals and even more disastrously, the Court of Appeal take inordinate lengths of time to resolve election petitions. Some election petitions take more than two years to resolve.\textsuperscript{221} Others are still unresolved nearly two years after elections. Protracted litigation produces and prolongs political instability and makes it difficult for the incoming administration to prepare and arrange an orderly transition.

The current problems with the effectiveness and efficiency of election tribunals are traceable to two factors. The first is section 132(2) of the Constitution, which provides that a presidential election should be held not earlier than 60 days and not later than 30 days before the expiration of the term of office.\textsuperscript{222} This provision is problematic, given the history of elections in Nigeria. No election result in Nigeria has gone without judicial challenge mounted by the losing parties all the way to the final appellate court. To expect the process to play out within 60 days is ludicrous. The second problem is that Nigeria’s judicial process is notoriously slow and beset by technical and procedural difficulties that cripple its efficacy.\textsuperscript{223} Given the massive information and data, and the prolonged and often protracted arguments and motions mounted by lawyers, every Nigerian knows that the 60-day period is grossly insufficient for an election petition to be resolved.

Two remedial options present themselves. The first is to amend the constitution to enable

\textsuperscript{221} See pages 47-50 of text supra..


INEC to conduct elections in enough time for election petitions to be resolved before the swearing in date of May 29.\(^{224}\) The second is to empower the judiciary to design an abbreviated procedure that will enable it to resolve election petitions speedily, justly and fairly. Section 148 of the Electoral Act provides that “an election petition and an appeal arising therefrom. . . shall be given accelerated hearing and shall have precedence over all other cases or matters before the Tribunal or court.”\(^{225}\) Despite this provision, it is common knowledge that election petitions in Nigeria drag on for months and sometimes years before they are resolved. For example, it took the APGA governorship candidate in the 2003 elections, Peter Obi, three years to reclaim his mandate as the Governor of Anambra State.\(^{226}\) It took Buhari two years to seek justice in the 2003 presidential election.\(^{227}\)

Delays in resolving electoral disputes also create considerable difficulties for the parties, especially candidates trying to unseat incumbent office holders. As Professor Gyimah-Boadi observed, “delays in resolving electoral disputes also provide perverse incentives for parties and candidates to focus on being declared winners by hook or by crook and to use control over state power and incumbency to ward off post election challenges.”\(^{228}\) Most losing candidates are alarmed and justifiably frightened by the prospect of challenging election results against vastly more well-financed defenses mounted by

\(^{224}\) See Alabi, \textit{supra} note 53 at 294 arguing that INEC “ought to ensure adequate interval between election and swearing in dates to accommodate election petitions. It is unrealistic for the INEC to allow only five weeks between the date of the presidential election and the date of swearing in the declared winner. Experience has shown that election petitions could not be disposed of within such a short period.”

\(^{225}\) Electoral Act 2006

\(^{226}\) Oke Epia, Ngige Out, Obi In, Thisday, March 15, 2006 available at www.allafrica.com/stories/200603166310.html (reporting that the Court of Appeal declared Peter Obi the winner of the April 2003 gubernatorial elections in Anambra state)

\(^{227}\) Buhari v Obasanjo [2005] 13NWLR (PT.941) 298.

\(^{228}\) Gyimay-Boadi, \textit{supra} note 25. at 27.
incumbents, especially sitting governors with unfettered access to public funds. As the International Crisis Group put it, “now sworn in, the new state executives control resources and coercive instruments that give them great advantages over petitioners.”

There is no reason why it should take the Nigerian judiciary nearly two years to resolve the 2003 presidential election petition, and more than six months to resolve the 2007 presidential election petitions. Either or both options could be simultaneously pursued to ensure that citizens’ choices are not frustrated by long, drawn-out proceedings that keep elected candidates out of office. The Electoral Reform Committee recommended a time limit for the disposing of election petitions. The Committee recommended that an election tribunal must deliver its judgment in writing within one hundred and twenty days from the date of the election. It further suggested that an appeal from the decision of an Election Tribunal should be heard and disposed of within sixty days after the judgment of the election tribunal. It may be better to simultaneously amend the constitution to give INEC enough time to conduct elections and also introduce abbreviated procedures that will make for a speedy resolution of election petitions. It took the United States Supreme Court less than two weeks to resolve the 2000 election dispute involving Vice President Gore and the Republican candidate George Bush because the Supreme Court required the parties to comply with an abbreviated schedule.

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232 REPORT OF THE ELECTORAL REFORM COMMITTEE, supra note 12 at 73.

233 Id. at 74.
The judiciary can devise a system for expeditiously resolving election petitions that will put an end to the madness and uncertainty precipitated by delays in deciding the winners of contested election results. Election tribunals should be revamped and well equipped to enable them to function efficiently and effectively and to issue decisions within a specified period of time, preferably in enough time to allow the appellate process to commence and end before May 29. In any case, alternatively or concurrently, election dates can be pushed back to give more time for the judicial process to resolve election petitions before the official May 29 date for swearing in elected officials.

Reclaiming the institutional Integrity of the INEC.

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234 Then Governor Bush, dissatisfied with the decision of the Florida Supreme Court, filed a request for review in the United States Supreme Court and sought a stay of the Florida Supreme Court decision. The U.S Supreme Court granted a review and issued a stay on December, 9 and ordered the parties to file their briefs within 48 hours. The case was argued on Monday, December 11 and decided on Tuesday, December 12. See Bush v Gore 531US 98 (2000).
Citizens view the INEC through the corrosive lorgnette of corruption and incompetence and what they see is an unflattering image of an inept, inefficient government bureaucracy that cannot be trusted to fairly and impartially conduct elections. The 2007 general elections thoroughly exposed INEC’s proclivity to help the ruling party to asphyxiate opposition parties and their candidates. Citizens reject and revile the INEC for its craven capitulation to the ruling party and its inability to conduct free and fair elections. Most of INEC’s weaknesses are self inflicted, resulting chiefly from the desire of its officials to cash in on their appointment. The INEC officials traded in their independence and integrity for filthy lucre served up by compromised politicians. They readily acted as satellites to bribe giving candidates and engaged in a montage of illicit activities to benefit their patrons. The International Crisis Group’s assessment of INEC resonates with Nigerians. It stated that:

Widespread electoral mal practices and staggering scale of falsified results were possible because of serious shortcomings within the regulatory agencies, most notably the Independent National Electoral Commission (INEC). Vigorously manipulated by the presidency, INEC virtually abdicated its responsibility as impartial umpire. Inefficient and non transparent in its operations, it became an accessory to active rigging.

Governmental support or assurance is the lure that encourages officials of the commission to engage in fraud and other irregularities to privilege the ruling party. In the last two elections in 2003 and 2007, INEC showed disturbing signs of its partiality and desire to privilege and advantage the ruling party. INEC greatly damaged its reputation and did greater damage to the democratic process by its


precipitate and gratuitous jump into the political vortex. Worse still, INEC officials have been patronizingly haughty and unwilling to acknowledge problems with elections. Their audacity is staggering, given the fairly obvious and easily demonstrated evidence and accounts of irregularities. Efforts must be made to restore the credibility of INEC, badly damaged by its officials who acted more like partisans than neutral umpires. As shown during the 2007 elections, expecting an electoral commission disturbingly prone to corruption and manipulation by the government and the ruling party to conduct credible elections is chimeral and nothing but sheer fantasy. INEC is often in lockstep with the ruling party, doing whatever it can to please the ruling party either due to a direct request by the party or on INEC’s own initiative as a concession to the sensibilities of the party. INEC’s partisanship does not have to be inferred. It repeatedly demonstrated its desire to privilege the ruling party and often made no efforts to disguise its partiality and lack of objectivity. INEC’s conduct lends credence to the shibboleth that an electoral system is often as good as the human agencies that operate it. INEC’s dalliance with the ruling party has shattered its credibility and exposed it to public contempt. INEC, as presently structured and constituted, is a thin reed on which to hang the nation’s hopes for credible elections.

Citizens are unhappy about INEC’s partisanship but they are more gravely disturbed by the system that makes INEC dependent upon the government. The badly discredited and widely despised

237 Discussing the obvious partiality of the Independent Electoral Commission, Professor Suberu stated that:
Such partisan abuse of a nominally independent body was possible because of its parallel existence as a subordinate presidential or federal executive body. The naming of the chairman and twelve national commissioners is effectively in the hands of the president (subject to senate confirmation) INEC’s resident electoral commissioners . . . are direct presidential appointees. Despite efforts in the National Assembly to guarantee INEC’s budgetary autonomy, INEC still depends directly on funds from the federal executive. Under Maurice Iwu, a professor of pharmacy whom Obasanjo had nominated for the chairman’s post in 2005, INEC not only helped the president and hampered his foes, but also turned a hostile eye on foreign election observers and domestic monitors alike.

Suberu, supra note 132 at, 98-9.
INEC needs several things to reclaim its credibility. The first is to remove the powers to appoint INEC’s chairman and key officials from the president. The power of appointing the INEC chairman vested in the president, a candidate in the election INEC is charged with conducting, easily lends itself to abuse. The appointing power vested in the president is predicated on the implicit and gravely flawed assumption that the president will exercise his powers guided solely by the best interests of the nation. Recent experience reveals that commission members appointed by the president often do not disguise their fealty to the appointing authority. Instead of acting as a neutral umpire, the INEC was vibrant with partisanship as electoral commissioners and other INEC officials unabashedly displayed bias for the ruling party. Some turned into a cats paw for the ruling party, helping it to rig and manipulate election results.\(^{238}\)

Few people who owe their appointments to the ruling party can deal fairly, objectively, and impartially with elections in which the appointing authority is a candidate. To pretend otherwise, as the President and his party stalwarts do, is mere wishful thinking and even pure fantasy. The conduct of INEC officials during the 2003 and 2007 elections cogently demonstrate the vacuity of the assertion that an INEC chairman appointed by the president can be fair and impartial. Abundant evidence exists to demonstrate that appointees of the president often prove incapable of disenthraling themselves from him. Rather, they view themselves as vassals of the ruling party, helping the president and other ruling party candidates to influence the outcome of elections. Explaining how the

\(^{238}\) Peter Takirambudde, African Director at Human Rights Watch, expressed a view that fairly reflects the prevailing public and international sentiments about the role of the Electoral Commission and the Federal Government in the Nigerian 2007 elections:

Instead of guaranteeing citizens’ basic right to vote freely, Nigerian government and electoral officials actively colluded in the fraud and violence that marred the presidential polls.

ruling party influences elections, Professor Klay Kieh stated that:

One method is that the incumbent would appoint an election commission that consists of members who are subservient to the interests of the incumbent regime and its associated faction or fraction of the ruling class. . . .Having accepted “payoffs” an election commission then embarks upon corrupting one or several of the aspects of the electoral process.\textsuperscript{239}

The president’s powers to appoint the INEC chairman causes INEC to forfeit its independence and fosters partiality, even partisanship by a body that is supposed to be fair, neutral and impartial. Removing the president’s powers of appointing the INEC Chairman significantly enhances the prospect of having an INEC that can assert its independence and resist overtures and pressures by the ruling party to skew elections. Securing the independence and impartiality of INEC is central to the quest for free and fair elections. Justice Ogebe of the Court of Appeal got it right when he observed that “it is in the interest of our electoral process that INEC and its officials should remain as neutral as possible in the election cases as their primary responsibility is to conduct free and fair elections regardless of who wins.”\textsuperscript{240} The President’s retaining of the powers to appoint the INEC Chairman is guaranteed to produce a hobbled institution beholden to the ruling party and unable to fairly and impartially conduct elections. The appointment of the INEC chairman by the President does not augur well for a process that should be and must be seen by the public to be impartial. The commission will continue to pander to government interests unless an effort is made to cut its tether from the government. One way to disenthrall the commission from the government is to change the mode of appointing members of the electoral commission.

\textsuperscript{239} Kieh, \textit{supra} note 25 at 150.

\textsuperscript{240} Haruna v Modibbo [2004] 16 NWLR 487, 569.
President Yar Adua, on August 28, 2007, took the appropriate and desirable step of empanelling an Electoral Reform Committee headed by Justice Uwais, former Chief Justice of Nigeria, to “examine the entire electoral process with a view to ensuring that we raise the quality and standard of our general elections and thereby deepen democracy.”\textsuperscript{241} The Electoral Reform Review Committee, after extensive deliberations, submitted its report to the President in December of 2008.\textsuperscript{242} One of the major findings of the Committee was that the INEC lacked the requisite independence and recommended taking the powers of appointment away from the presidency.\textsuperscript{243} The Electoral Reform Committee recommended, among other things, that the appointment of the Chairman and members of INEC be handled by the National Judicial Council.\textsuperscript{244}

The government flatly rejected this recommendation and insisted on retaining the powers to appoint the chairman of INEC. Rejecting the committee’s recommendation, President Yar Adua imperiously declared that “what matters is not who appoints INEC chairman but the integrity and capability of who is appointed.”\textsuperscript{245} The government’s rejection of the recommendation of the review committee will, in the view of an already suspicious public, confirm the government’s apathy toward electoral reforms. Rejecting a sensible proposal that would ensure the independence of the INEC damages the credibility of the president and his promises to reform the electoral process. Such capricious rejection of the Constitution Review Committee’s decision sustains the insidious notion

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\item \textsuperscript{241} Report of the Electoral Reform Committee, \textit{supra} note 12.
\item \textsuperscript{242} \textit{Id.}
\item \textsuperscript{243} \textit{Id.}
\item \textsuperscript{244} \textit{Id.} at 116.
\item \textsuperscript{245} Chesa Chesa, Yar Adua Insists on Appointing INEC Boss, Daily Independent, May 13, 2009, available at \url{www.allafrica.com/stories/200905130427.html}
\end{itemize}
that the ruling party is only concerned about retaining power at all costs, regardless of the nation’s political stability. Political parties and candidates who have to face the real and dreadful prospects of contesting elections organized by a commission led by a federal government appointee are correctly alarmed by the decision of the federal government. In an environment where the protean powers of incumbency make the playing field uneven and unfair to the opposition, an INEC chairman appointed by the President further tilts the process against the opposition. Removing the powers to appoint the INEC chairman from the president will help the INEC maintain and assert its independence, and hopefully, its impartiality and objectivity.

Though the Yar Adua administration set up the review committee, its enthusiasm for real changes remains opaque. The fear percolating in the society is that the government is uninterested in reform that will level the playing field. The government’s reluctance to accept the recommendations of the Election Reform Committee emanates from the fact that such a reform may have implications for the ruling party. The ruling party’s arrogance and powers are inspired and energized by its control of the electoral process, especially the powers to appoint INEC officials and security operatives who safeguard elections. Public suspicions about the President’s commitment to electoral reforms were confirmed when the President rejected the recommendations of the review committee, which suggested removing the power to appoint INEC chairman from the president.

The appointment of commission members should be handled by an ad hoc committee comprising of the Chief Justice of the Federation, the President of the Court of Appeal, the Chairman of the Nigerian Bar Association and four randomly selected members chosen from the pool of candidates nominated by local nongovernmental organizations, professional bodies and religious organizations. To preserve the integrity of the committee, ensure its independence, and to avoid their
becoming ensconced in office, members should serve for only one election circle. Commission members appointed by the *ad hoc* committee with operational funds approved by the Senate will be in a better position to conduct elections without undue pressures to favor the ruling party. Transferring the powers of appointment away from the presidency will unhitch the INEC from the ruling party’s political apparatus and enable the Commission to operate with the requisite degree of autonomy and independence necessary to live up to its name. An Electoral Commission extricated from the stronghold of the Presidency should be able to conduct elections with fairness and objectivity untainted by the need to placate powerful interest groups, especially those from the ruling party.

The second way to reclaim INEC’s integrity is to detoxify the INEC and rid the commission of corrupt and biddable officials who lack the integrity and sometimes the basic competence to do the nation’s important business of organizing credible elections. Part of the subliminal and growing fear about INEC’s partiality can be traced to the background of its members. The last two INEC chairmen have been men with relatively little experience or expertise in managing an enterprise as nebulous and unwieldy as national elections. The first was a physics professor. The second and the current chairman, Maurice Iwu, a pharmacologist by training also has very little to contribute to the organization. Both men were too unfamiliar with the electoral process and too compromised to organize credible elections. They ostensibly were appointed more for their loyalty to the President than their competence or even familiarity with the electoral process. Clinging to the old mode of appointing INEC officials despite its proven and repeated problems merely reinforces the poisonous suspicion that the present administration intends to continue using INEC as a cat’s paw to rig and manipulate elections.

Removing appointment powers from the President will presage the changes needed to make INEC
more independent, less partisan and more effective. The next step will be to ensure that INEC officials, commissioners and returning officers have the background, character, and training necessary to conduct credible, free and fair elections. An INEC whose membership is determined by an independent body and staffed with honest officials with the integrity, knowledge and expertise to conduct elections with fairness and scrupulous impartiality will energize the society, confer credibility upon the electoral process long known for fraud, and mark a new epoch in Nigeria.