

## **A CRITICAL EXAMINATION OF THE LEGAL AND INSTITUTIONAL FRAMEWORKS ON THE PROTECTION OF ELECTORAL RIGHTS IN NIGERIA\***

### **Abstract**

*An election is one of the bulwarks of democracy because it gives the citizens who are qualified the opportunity to vote for candidates of their choice and the opportunity to contest an election. The Electorates in exercising their franchise become major stakeholders in the electoral process. However, if the people lose confidence in the electoral process, democracy as a system of popular participation in government will become a sham. Therefore, for democracy to thrive, a State must by means of its laws create and develop a robust and strong institutions and system capable of providing and protecting electoral rights of her citizens. This study aims to examine the legal and institutional framework for the protection of electoral rights in Nigeria as well as to identify the inherent problems in this legal framework. This work founded upon doctrinal research examined the 1999 Constitution of the Federal Republic of Nigeria, the Electoral Acts 2022 and other laws as well as institutions put in place to ensure the enjoyment of free and fair elections. It found that there exist copious laws; yet the protection of these rights during elections in Nigeria is a big problem due to political selfishness, violence and a lack of enforcement of the laws designed to safeguard electoral rights. The study recommended among others that for the protection of the rights of electorates to be complete and efficacious, the government, law enforcement agents and the judiciary must ensure the enforcement and protection of the rights of the Nigerian electorates. It was concluded that while there are problems in protecting voters' rights in Nigeria, there are ways to make it better as recommended, as this is important for a fair, democratic and peaceful society.*

**Keywords:** Electoral Rights, Voters Rights, Fundamental Rights, Electorate, Democracy, Nigeria

### **1. Introduction**

Electoral rights refer to the legal rights and privileges that allow individuals to participate in the electoral process, which includes the right to vote in elections and to stand as a candidate for public office. These rights are fundamental to democratic systems and are designed to ensure that citizens have the opportunity to influence the government and the decision-making process. These rights combine with traditional legal system seek to protect the essential rights of a country's subject. Elections are expected to be a vehicle for advancing and celebrating fundamental human rights, particularly civil and political rights; political competition that is characterized by confidence, transparency, and accountability and that allows voters to make informed political decisions; and respect for the following basic freedoms: expression, access to information, association, assembly, and movement; as well as adherence to the rule of law.

The electoral process is one of the bulwarks of democracy with Electorates as major stakeholders in the process. The aim of an electoral process should be free and fair where the candidate with the highest votes wins. However, the voters who vote during an election must know their rights and roles in making the electoral process credible. Credible elections can be said to have been conducted when the Electorates' rights are protected during the electoral process. Electoral rights violations are perpetrated by political actors to purposefully influence the process and outcome of elections, and it involves coercive acts against humans, property, and infrastructure. It can happen in all parts of the electoral cycle, including the announcement of elections, party primaries, and voter registration, and it can be promoted by both state and non-state actors. Just like other forms of electoral malpractice, such as tampering with the registration process, vote buying or electoral fraud, electoral rights violations aim to manipulate the electoral process. The forms of such electoral rights violations typically include political exclusion, whether it be exclusion from candidature (via attacks on candidates), from campaigning (via attacks on or obstruction of campaign events), from the provision of electoral information (via attacks on media outlets, election observers, and NGOs involved in voter education), from electoral participation and free electoral choice (via intimidation, coercion, and/or the displacement of voters). Electoral rights are fundamental rights. The Electorates are key stakeholders in electioneering and play pivotal roles in electing their leaders. They exercise their civil duties in exercising their franchise and should be protected against violations.

The primary objective of this study work is to critically appraise the legal framework for the enforcement of electoral rights in Nigeria. To achieve this, this work shall examine Nigerian domestic laws as well as international legal instruments of which Nigeria is obliged to give effect to so as to ascertain the scope of its provisions and guarantee of electoral rights. This work shall further analyze the challenges encountered in the current legal framework for the protection of electoral rights in Nigeria, examine the existing remedies to effective and efficient protection of electoral

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rights in Nigeria and proffer effective recommendations toward efficient guarantee and protection of electoral rights in Nigeria. Before then let us examine briefly the conceptual analysis and theoretical framework of this short essay.

## 2. Conceptual Clarifications

### Election

Election in a simplest perception is the formal process of selecting a person for public office or of accepting or rejecting a political proposition by voting.<sup>1</sup> Elections make a fundamental contribution to democratic governance. This is because direct democratic government must be conducted through representatives.<sup>2</sup> Elections enable voters to select leaders and to hold them accountable for their performance in office.<sup>3</sup> Elections are generally understood to refer to the process of choosing people for particular jobs by voting. In the political realm, elections are conceived as a formal expression of preference by the governed, which are then aggregated and transformed into a collective decision about who will govern, who should stay in office, who should be thrown out, and who should replace those who have been thrown out. It is simply the process of elite selection system. In the word of Jinadu<sup>4</sup> 'election' encapsulates the mediating institutional and psychological process and anchor for citizens, as adults in an organized and routinized manner to express their choice among those who seek public political office.

The conceptualization of election in the political realm rests squarely on the concept of liberal democracy. It is almost impossible to comprehend the theory and practice of democracy without linking it to the process of election. In the view of Lindbergh<sup>5</sup> every modern vision of representative democracy entails the notion of elections as the primary means of selecting political decision makers. Thus, election is 'the heart of democratic order' and a hall mark of democracy. To buttress this view, Bratton<sup>6</sup> aptly captured the significance of election to democracy while reorganizing the fact that 'elections do not in and of themselves, constitute a consolidated democracy, but they remain fundamental not only for installing democratic governments, but as a necessary requisite for broader democratic consolidation. According to Shively<sup>7</sup> elections are 'institutional mechanism that implements democracy by allowing citizens to choose among candidates or issues'.

Elections have technical and social significance. In the technical sense, they are the process through which an office is assigned to a person by an act of volition that requires the simultaneous expressions of many people's opinions. In the social sense, an election is the process by which a person is linked to an office through the due participation of the people. Elections have the potential to confer legitimacy, moderate descent, engender compliance and heighten citizen efficacy. Elections are especially crucial for eliciting consent from those citizens who would prefer alternative rules and policies within the political process. In essence, both the process and the outcome of the election should reflect the consent and aspiration of the people as organized electorate. This implies that apart from being a routine, periodic, democratic exercise, election must be competitive, transparent, free and fair as well as credible in order to live up to its democratic essence and merits. Also, election is a symbol of sovereignty, it serves the purpose of investing government with political authority and legitimacy. It ensures that citizens retain power to hire and fire political leaders. To achieve this, an election must be free and fair or at least perceived to be so. The structures and process of election must be guided by democratic ideas and principles. At the structural level, there must be minimum prerequisites: a competent and relatively autonomous and impartial electoral body to administer the conduct of elections, an impartial judiciary to interpret electoral laws and adjudicates electoral matters, a visible press and an electoral system acceptable to all parties to an election. An election therefore, is not simply casting of votes during the polling day but a sum total of processes that come before and after it. It should however be noted that election should not be viewed as periodic one-time event but as a set of events and decisions leading to elections that have long lasting consequences once the proverbial dust is settled. Nevertheless, the possibility of controlling leaders by requiring them to submit to regular and periodic elections help provides an efficient and legitimate solution to the challenges of succession in leadership and thus, contributes to the continuation of democracy.<sup>8</sup>

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<sup>1</sup>Webb pauldavid, gibbins, roger and eulau, Heinz: election' Encyclopedia Britannica, 18 march 2024 <https://www.britanica.com/topic/election-political-science>. Accessed 25 march 2024

<sup>2</sup><https://conwama.gov/index.cfm?p=p.107> Accessed 25 march 2024

<sup>3</sup>Webb pauldavid, gibbins, roger and eulau, Heinz, (n.1)

<sup>4</sup> L. A. Jinadu, Political Science, Elections and Democratic Transition, fragment of an Autobiography and some Conjectures in Onu A, and Momoh A. (eds) elections and democratic consideration in Nigeria, proceeding of 23<sup>th</sup> annual conference of political science association of Nigeria.

<sup>5</sup> Lindberg, S.T. (2004). 'The Democratic Qualities of Competitive Elections: Participation, Competition and Legitimacy in Africa'. Journal of Communication and comparative Politics. Vol.42 No. 1. Pp61-1053

<sup>6</sup> Bratton, M. (1998) 'Second Elections in Africa'. Journal of Democracy, 7(1), pp. 51-56.

<sup>7</sup> Cited by Adebisi, OluwashinaMoruf, "Kudos or Knocks": Assessing the Performance of INEC in the 2015 General Elections In Nigeria, available at <<https://www.inecnigeria.org/wp-content/uploads/2019/02/Conference-Paper-by-Oluwashina-Adebisi.pdf>> accessed 27/03/24

<sup>8</sup>Olu A. (2003) 'Political Orientation' (Gashua Yoke Lamp Printing Press) p. 43

## Electorate

Electorate refers to citizens who have the legal right to vote in an election, or people who are eligible to vote in a particular election.<sup>9</sup> The word; electorate can be used interchangeably with the word; voter and both words refer to the eligible group of persons entitled under the Constitution of an independent State to vote or elect persons who are contesting for political offices.<sup>10</sup>

## Voting Rights and Electoral Rights

Voting rights, also known as suffrage, pertain to the rights of citizens to participate in elections.<sup>11</sup> These rights are crucial for ensuring that citizens have a say in who represents them and the policies that govern them. They are often enshrined in a country's constitution and are protected by various laws. The term 'electoral rights' may encompass the rights related to the process of elections beyond just the act of casting a vote. This includes the method and rules of counting votes to determine the outcome of elections and might also cover rights related to standing for election, accessing the electoral roll, and engaging in electoral campaigns.<sup>12</sup> Electoral rights are the legal and constitutional rights of citizens to participate in the electoral process, either as voters or candidates. Electoral rights include the right to vote, the right to stand for election, the right to form and join political parties, the right to campaign and express political opinions, and the right to access electoral information. Electoral rights are considered essential to the functioning of a free and fair democracy, as they provide citizens with the power to shape the direction of their nation and hold elected officials accountable. Electoral rights also encompass the concept of equal representation. It means that each vote carries the same weight, and elected officials are chosen based on the majority's choice.<sup>13</sup> This ensures that the government reflects the will of the people it governs. Electoral rights are most effective when the electoral process is inclusive and accessible to all eligible citizens.<sup>14</sup> This means providing support and accommodations for individuals with disabilities, as well as removing barriers that may hinder certain groups' ability to vote.

## Republican Theory

The republican theory of democratic governance simply entails a state of governance in which supreme power is held by the people and their elected representatives, and which has an elected or nominated president rather than a monarch.<sup>15</sup> The republican theory believes in a system of governance by the whole population or all the eligible members of a state, typically through elected representatives.<sup>16</sup> It is 'distinctive' and involves a 'rich array of popular controls,' and nothing less than popular control over government will suffice.<sup>17</sup> The republican tradition is committed to both a 'mixed Constitution' with equal and separate political power and a 'mixed order' that disperses control.<sup>18</sup> The citizen must have the civic virtue to surveys and contest policy in order to provide accountability.<sup>19</sup> Pettit's model of institutional design implements this 'dual process' of short-term 'popular influence' and long-term 'popular direction' that together constitute his 'dual aspect' model of democratic governance. Republican theorists argue that the state's primary purpose is to promote the common good, as opposed to serving the interests of a ruling elite. Thus Republican theory emphasizes the importance of the common good, civic virtue, and active citizen participation in a self-governing society. Active citizen participation in politics is a fundamental aspect of Republican theory. Citizens are expected to be engaged in the governance of their community or state.<sup>20</sup> It is rooted in the writings of classical

<sup>9</sup><https://www.collinsdictionary.com/dictionary/english/electorate> Accessed 25 March 2024.

<sup>10</sup>Singh, Laitonjam, Electoral Rights: Concept and Theory (October 16, 2013). Available at SSRN: <https://ssrn.com/abstract=2341060> or <http://dx.doi.org/10.2139/ssrn.2341060> Accessed 25 March 2024.

<sup>11</sup>Duignan, Brian. 'Voting rights'. Encyclopedia Britannica, 3 Mar. 2024, <https://www.britannica.com/topic/voting-rights>. Accessed 25 March 2024.

<sup>12</sup>ELECTORAL JUSTICE: <https://www.idea.int/sites/default/files/publications/chapters/electoral-justice-handbook/electoral-justice-handbook-overview.pdf>, Singh, Laitonjam, Electoral Rights: Concept and Theory (October 16, 2013). Available at SSRN: <https://ssrn.com/abstract=2341060> or <http://dx.doi.org/10.2139/ssrn.2341060>

<sup>13</sup> The Right to vote: Study Guide, University of Minnesota Human Right Center 2023: Access on <http://hrlibrary.umn.edu@2.37pm>, 10<sup>th</sup> April, 2024

<sup>14</sup> Ibid

<sup>15</sup>Alan Thomas, (2016) Review of Philip Pettit, *On the People's Terms: Republican Theory and Model of Democracy*, Cambridge: Cambridge University Press, 2012. Pp. 347. Ethics 127(1) Bradford Cokelet University of Kansas,

<sup>16</sup>Ibid see also1. Pettit P. Republican Political Theory. In: Vincent A, ed. *Political Theory: Tradition and Diversity*. Cambridge University Press; 1997:112-131.

<sup>17</sup> Alan Thomas.n.15

<sup>18</sup>Ibid, see also Nicolás Carrillo-Santarelli on the Virtuousness of Certain Refusals to Comply with Legal Demands Prompted by Other Normativities, *Dikaion* 32, no.11 (Nov 2023): 1–52.

<https://doi.org/10.5294/dika.2023.32.1.22>

<sup>19</sup>Pettit, Philip, 2012. *On the People's Terms: Republican Theory and Model of Democracy* Cambridge: Cambridge University Press.340

<sup>20</sup>D'Entrevés Maurizio Passerin, 'Hannah Arendt', *The Stanford Encyclopedia of Philosophy* (Fall 2022 Edition), Edward N. Zalta & Uri Nodelman (eds.), URL = <<https://plato.stanford.edu/archives/fall2022/entries/arendt/>> accessed 24 September 2023 .

philosophers like Aristotle<sup>21</sup> and Cicero but has been developed and adapted by various political theorists throughout history. Republican theory has influenced modern political thought, particularly in discussions about democracy, civic engagement, and the protection of individual liberties.<sup>22</sup> The republican theory is relevant to this work as it provides basis for a democratic culture where citizens are allowed to freely choose their leaders through periodic free and fair elections. To this end the freedom to participate in an election becomes a right that accrues to all eligible members of a political society. To the extent this right is available to citizens of a state underscores the democratic culture of such state. Let us hereunder consider the legal and institutional framework on electoral rights in Nigeria.

### **3. Legal and Institutional Framework for the Protection of the Rights of Electorates**

#### **Legal Framework**

##### ***Constitution of Federal Republic of Nigeria 1999 (as amended)***

The Constitution of Nigeria makes elaborate provisions for electoral rights; these rights as provided by the Constitution are as follows:

- a. **Right to Political Participation:** The Constitution provides that participation of people in their government shall be ensured in accordance with the provisions of the Constitution.<sup>23</sup> This ensures political participation and equal access to public offices for all citizens. According to the Supreme Court in *INEC v Musa*<sup>24</sup>  
By virtue of section 40 of the Constitution, every person, including public office holders and civil servants have the freedom to assemble freely and associate with other persons to form and belong to any political party, or trade union or any association for the protection of his interests. This section has made no exception and there is no proviso therein limiting its application to civil servants or public officers.
- b. **Right to Freedom of Expression:** The Constitution guarantees the right of freedom of expression.<sup>25</sup> This right is really crucial for political activities and electoral discourse as it gives the citizens the right to vote for any candidate of their choice.
- c. **Right to Peaceful Assembly and Association:** The Constitution ensures the right to peaceful assembly and association.<sup>26</sup> This right is essential for political gatherings and the formation of political parties. This right also ensures that every citizen can freely associate and belong to any political party of their choosing.
- d. **Right to Freedom of Movement:** Section 41 of the 1999 Constitution of the Federal Republic of Nigeria guarantees the right to freedom of movement. This right allows citizens to be able to participate in electoral processes all around the country.
- e. **Right to be treated fairly and equally:** The Constitution prohibits the discrimination on the basis of ethnicity, religion, sex, or political opinion.<sup>27</sup> This right makes sure that equal opportunities in political participation is accessible and available to every citizen of Nigeria.
- f. **Right to vote and contest Election:** The Constitution provides that the government of a state shall ensure that every person who is entitled to vote or be voted for at an election to House of Assembly shall have the right to vote or be voted for at an election to a local government council.<sup>28</sup>

##### ***Electoral Act 2022***

The Act provides among others for the following rights of the voters:

- a. **Right to be accredited for voting:** Section 47(1) of the 2022 Electoral Act of Nigeria states that any person intending to vote in an election shall present himself with his voter's card to a presiding officer for accreditation at the polling unit in the constituency that his name is registered. This section ensures that every citizen has the right to accreditation before every election.<sup>29</sup> This is a form of reinforcement of the right to vote guaranteed under section of 132(5) of the CFRN which provides;  
Every citizen of Nigeria who has attained the age to vote, that is, 18 years and above, and residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house,

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<sup>21</sup> Miller Fred, 'Aristotle's Political Theory', *The Stanford Encyclopedia of Philosophy* (Fall 2022 Edition), Edward N. Zalta & Uri Nodelman (eds.), URL = <<https://plato.stanford.edu/archives/fall2022/entries/aristotle-politics/>> accessed 24 September 2023.

<sup>22</sup> Lovett Frank, 'Republicanism', *The Stanford Encyclopedia of Philosophy* (Fall 2022 Edition) <<https://plato.stanford.edu/archives/fall2022/entries/republicanism/>> accessed 24 September 2023.

<sup>23</sup> Section 40 CFRN 1999

<sup>24</sup> (2003) 3 NWLR (Pt 806) p.

<sup>25</sup> Section 39 CFRN 1999

<sup>26</sup> Section 40 CFRN 1999

<sup>27</sup> Section 42 CFRN 1999

<sup>28</sup> section 7(4) CFRN 1999

<sup>29</sup> Section 47(1) of the Electoral Act of Nigeria, 2022

shall be entitled to registered as a voter for that election.<sup>30</sup> Similarly, such electorate who has been duly registered shall be entitled to vote at an election to the office of president.<sup>31</sup> For such registered voter to exercise his right to vote, he or she must have been duly accredited.<sup>32</sup> The hallmark of accreditation of voters is to ensure a free, fair and hitch free elections. In situations where the number of votes cast is higher than the number of accredited voters, it is concluded that the election is not free and fair. In the case of *Ezeoga Jonathan & Anor v INEC & Ors*<sup>33</sup> the court ruled out the elections results for Amagu polling unit because the total votes cast was at a total of two hundred and eighty-three (283) whereas the number of accredited voters was at a total of eighty-three (83) persons only.

- b. Right to challenge issue of ballot paper: the Act provides that a candidate or polling agent may challenge the right of a person to vote on such grounds.<sup>34</sup>
- c. Right to a transparent voting system (open balloting): The Act guarantees that every election under the Act shall be by open secret subject to Section 63 of the Act.<sup>35</sup> It also provides that all ballots at an election under the Act as a polling station shall be deposited in the ballot box in open view of the public.<sup>36</sup>
- d. Right of physically challenged voters: For voters who are visually impaired and incapacitated, they have right to be assisted: The Electoral Act ensures that voters with any visual impairment, or who suffers from any other physical disability may be accompanied into the polling unit by a person chosen by him or her.<sup>37</sup> This person must be granted permission to enter the polling booth with the disabled person by the Presiding officer.<sup>38</sup> The Act also provides that the Electoral Commission is responsible for taking care of the needs of disabled people by providing what they need such as braille, electronic devices etc. in order to let them be part of the electoral process and exercise their electoral rights.
- e. Review of electoral results declared under duress: According to Section 65 of the Electoral Act 2022, INEC now has the power to, within seven days, review a declaration and return decision made by a returning officer where the Commission determines that the said declaration and return was not made voluntarily or was made under duress or contrary to the provisions of the law, regulations, guidelines and manual for the election. Such decision of the returning officer may also be reviewed by an election tribunal or court of competent jurisdiction in an election petition proceeding. This provision makes the use of coercive behaviour counterproductive.
- f. Legalization of the Smart Card Reader: Section 47 of the Electoral Act 2022 gives legislative backing to the use of Smart Card or any other technological device by the presiding officer for the accreditation, verification, confirmation or authentication of the particulars of an intending voter. The Act further provides that where a smart card reader or any other technological device deployed for accreditation of voters fails to function in any unit and a fresh card reader or technological device is not deployed, the election in that unit shall be cancelled and another election shall be scheduled within 24 hours.<sup>39</sup>
- g. The introduction of Electronic Transmission of results through the National Electronic Register of Election Results: Electoral Act 2022, by virtue of its Section 62, mandates the Commission to compile, maintain and update, on a continuous basis, a register of election results to be known as the National Electronic Register of Election Results which will be a distinct database or repository of polling unit results, including collated election results, of each election conducted by the Commission in the Federation.<sup>40</sup>
- h. Early commencement of Campaign season: Rather than the initial campaign period of 90 days period before Election Day for campaigning in public by any political party, Section 94 of the new Act now allows public campaign to commence as early as 150 days before polling day and end 24 hours prior to the Election Day. This provision enhances the attainment by citizens of the right to vote and to be voted for guaranteed by the constitution.
- i. Substitution of candidate in the event of death: Section 34 of the Electoral Act 2022 empowers the political party to conduct a fresh primary election where a nominated candidate dies after the time for the delivery of nomination paper but before the commencement of the poll. It further provides that if it is an election into a legislative House, the election will start afresh and the political party whose candidate died may, if it intends to continue to participate in the election, conduct a fresh primary within 14 days of the death of its candidate

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<sup>30</sup> Section 77(2) of the Constitution.

<sup>31</sup> Section 132(5) of the Constitution.

<sup>32</sup> S. 47(1) of the Electoral Act, 2022

<sup>33</sup> (2023) EPT/EN/GOV/01/2023

<sup>34</sup>Section *ibid*

<sup>35</sup> Section 50(1) of the Electoral Act of Nigeria, 2022

<sup>36</sup> Section 50(4) of the Electoral Act of Nigeria, 2022

<sup>37</sup> Section 54(2) Electoral Act 2022

<sup>38</sup> *Ibid*

<sup>39</sup> Section 47(3) Electoral Act, 2022

<sup>40</sup> Section 62(2) Electoral Act, 2022

and submit the name of a new candidate to the Commission to replace the dead candidate. However, where it is for Presidential or gubernatorial or Federal Capital Territory Area Council election, the running mate will continue with the election and nominate a new running mate. In every other instance, the political party must duly inform INEC who shall in turn, countermand the poll in which the deceased candidate was to participate and appoint some other convenient date for the election within 14 days. This reinforces citizens/voters right to choose candidates of their choice.

- j. Electoral offences: In order to ensure that these rights of the voters are highly protected, the Electoral Act 2022 in sections 114 to 129 clearly created electoral offences and punishment for such contraventions.<sup>41</sup>

### ***Independent National Electoral Commission Guidelines 2023***

Pursuance to constitutional powers of the INEC, the INEC made rules in the form of guidelines for the conduct of election in Nigeria. Section 5 of the Guidelines 2023 clearly stipulates the conditions for eligibility to vote. It provides thus:

A person is eligible to vote at an election conducted by the Commission if: (i) he/she is a Nigerian; (ii) he/she is registered as a voter; (iii) his/her name appears on the Register of Voters; and (iv) he/she presents a valid Permanent Voter's Card (PVC) at his/her Polling Unit.

In other to safeguard the rights of the voters and ensure that no qualified voter is unnecessarily disenfranchised, Section 18 of the INEC Guidelines 2023 provides thus:

(a) In accordance with Section 47 (2) of the Electoral Act 2022, a person intending to vote shall be verified to be the same person on the Register of Voters by the use of the Bimodal Voter Accreditation System (BVAS) or any other device approved by the Commission, in the manner prescribed in these Regulations and Guidelines. (b) Any poll official who fails to verify voters in the manner prescribed by the Commission shall be deemed to be guilty of dereliction of duty and shall be liable to prosecution.

In order to show that the right of the electorates to vote is paramount and should not be denied, sections 27 and 28 of the Guidelines 2023, provides thus: A voter who by accident spoils his/her ballot paper such that it cannot be used for voting may present it to the Presiding Officer and if satisfied that the ballot paper is spoiled, the Presiding Officer shall issue another ballot paper to the voter in place of the spoiled ballot paper and the spoiled ballot paper shall be marked 'cancelled' by the Presiding Officer, and recorded in the appropriate form in the PU booklet.

### ***International and Regional Legal Instruments***

Regarding electoral rights, the ICCPR 1966 recognizes the following rights of the electorates. It, guaranteed the Right to Peaceful Assembly<sup>42</sup>, The Right to Freedom of Association<sup>43</sup> and the Right to Vote and be voted for<sup>44</sup> Also the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1981 provides for the right to free Participation by every citizen in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. It also guarantees the Right to Assemble Freely and the Right to Freedom of Association.

### ***Institutional Framework for the Protection of Electoral rights in Nigeria***

The Nigerian Constitution also created institutions with responsibilities for the protection of electoral rights. It also empowered the National Assembly with the power to establish governmental bodies and institutions for the purpose of securing and providing citizens especially the electorates with the relevant access and opportunities for exercising their right to vote and to be voted for elective offices. These institutions are discussed below.

### ***Independent National Electoral Commission (INEC)***

Section 153(1)(f) establishes INEC as an institution for the handling of all election related matters, including protecting the rights of the electorate. Section 2 enlists the functions of the Commission to include:

- a. To conduct voter and civic education
- b. To promote knowledge of sound democratic election processes; and
- c. To conduct any referendum required to be conducted under the provisions of the 1999 Constitution or an Act of the National Assembly.

Section 9(1) provides that the Commission shall conduct the registration of persons qualified to vote and the preparation, maintenance and revision of the register of voters for the purpose of any election. The existence of this

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<sup>41</sup> Section 114, 115, 116-129 Electoral Act, 2022

<sup>42</sup> Article 21 of the ICCPR 1966

<sup>43</sup> Section 40 CFRN 1999

<sup>44</sup> Article 25 (b)

specific function sets the INEC as an institutional framework which plays a significant role in protecting the rights of the electorate.

### ***The Judiciary***

The Judiciary in Nigeria is established by the 1999 Constitution of the Federal Republic of Nigeria. The Constitution vests the judicial powers of the Federation in the Courts. The judiciary in Nigeria plays a crucial role in protecting the electoral process by adjudicating on electoral disputes, ensuring compliance with electoral laws, and safeguarding the integrity of the democratic system. This includes cases related to election results, allegations of irregularities, and challenges to the eligibility of candidates. The judiciary provides a forum for aggrieved parties to seek redress and ensures that disputes are resolved fairly and in accordance with the law. The judiciary has the authority to review and, if necessary, overturn decisions made by electoral bodies. This ensures that electoral processes adhere to legal standards and constitutional principles. For example, courts can review the decisions of the Independent National Electoral Commission (INEC) to confirm the legality and fairness of electoral actions.

### ***National Human Rights Commission***

National Human Rights Commission is a federal government institution established as a body corporate with perpetual succession and a common seal with the capacity to sue and be sued in its own name.<sup>45</sup> The Commission shall monitor and investigate all alleged cases of human rights violations in Nigeria and make appropriate recommendations to the Federal Government for the prosecution and such other actions as it may deem expedient in each circumstance; assist victims of human rights violations and seek appropriate redress and remedies on their behalf.<sup>46</sup> The NHRC monitors the entire electoral process, including voter registration, political campaigns, polling, and the announcement of election results. This oversight helps ensure that human rights, including the right to participate in government through free and fair elections, are respected throughout the electoral cycle.<sup>47</sup> In the event of human rights violations during elections, such as violence, intimidation, or discrimination, the NHRC has the authority to investigate and document these incidents.<sup>48</sup> This includes violations that may impact the ability of citizens to freely exercise their electoral rights. The NHRC engages in public awareness campaigns and educational programs to inform citizens about their electoral rights.<sup>49</sup> This includes information on the right to vote, the right to be free from discrimination in the electoral process, and the right to political participation. Based on its findings, the NHRC can make recommendations to relevant authorities, including INEC, on measures to enhance the protection of electoral rights. Additionally, the NHRC can advocate for policy changes and legal reforms to strengthen human rights protections in the electoral system.<sup>50</sup> The NHRC has the power to take legal action, where necessary, to ensure accountability for human rights violations related to the electoral process.<sup>51</sup> This may involve bringing cases to court or recommending legal actions against individuals or entities responsible for violating electoral rights. The NHRC collaborates with various stakeholders, including civil society organizations, to promote a human rights-based approach to elections. By working with these partners, the NHRC contributes to a collective effort to protect and uphold electoral rights in Nigeria. In summary, the NHRC in Nigeria serves as an essential institutional framework for protecting electoral rights by monitoring, investigating, educating the public, making recommendations, and taking legal action when necessary. Its activities complement the efforts of other institutions, such as INEC, to ensure that elections are conducted in a manner that respects and upholds the human rights of all citizens.

### ***Public Complaints Commission***

The Public Complaints Commission also called (Ombudsman) was established by the Public Complaints Commission Act 1975. The Public Complaints Commission (PCC) in Nigeria serves as an institutional framework that plays a role in protecting electoral rights indirectly. While its primary function is to address complaints and grievances against administrative injustices, it can also handle issues related to electoral processes. The Public Complaints Commission has the authority to investigate complaints from individuals who feel that their rights, including electoral rights, have been violated due to administrative actions or omissions. Electoral processes are often administratively managed. The PCC, by addressing complaints related to administrative actions, contributes to ensuring fairness, transparency, and justice in electoral procedures.

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<sup>45</sup> S.1(2) National Human Right Commission Amendment Act, 1995 published in the official Gazette: FRN, (Iagos) 1995

<sup>46</sup> See section 5 and 6 of the National Human Rights Commission Amendment Act

<sup>47</sup> Ibid

<sup>48</sup> Ibid

<sup>49</sup> Ibid

<sup>50</sup> Ibid

<sup>51</sup> Ibid

### ***Non-Governmental Organizations***

'Non-governmental organizations (NGOs)' includes myriads of organizations that are independent of the state, such as trade unions, associations of students, traders and the like. NGOs have mandates that revolve around the protection and promotion of some species of human rights. In order to determine the specific areas or kinds of human rights promoted and protected by any given NGO, the mandate of the organization is decisive.<sup>52</sup> Mandates are however dynamic, they change with an organization's growth and shifting purposes as well as in response to the evolving global context of its activities. Non-Governmental Organizations (NGOs) play a crucial role in Nigeria's institutional framework for protecting electoral rights.<sup>53</sup>

NGOs engage in advocacy efforts to raise awareness about electoral rights and the importance of free and fair elections. They educate the public on their rights, the electoral process, and the significance of civic participation. NGOs conduct voter education programs to inform citizens about the electoral process, voter registration, and the importance of their participation in elections. This helps empower voters to make informed decisions and exercise their electoral rights effectively. NGOs often act as election observers, monitoring various stages of the electoral process to ensure transparency, fairness, and adherence to electoral laws. They may observe voter registration, campaigning, polling, and counting processes to identify and report any irregularities.

NGOs may provide legal support and advocacy for individuals or groups whose electoral rights have been violated. This can involve challenging unfair electoral practices, advocating for legal reforms, or even participating as *amicus curiae* (friends of the court) in legal cases related to electoral rights. NGOs work on building the capacity of electoral stakeholders, including election officials, civil society members, and political parties.<sup>54</sup> This contributes to the overall improvement of the electoral system, enhancing its fairness and efficiency. NGOs engage with policymakers to influence the development of electoral laws and policies.<sup>55</sup> They advocate for reforms that strengthen the electoral process, protect voters' rights, and ensure the independence and effectiveness of electoral institutions.<sup>56</sup> NGOs mobilize the public to actively participate in the electoral process.<sup>57</sup> This includes encouraging voter registration, turnout, and civic engagement. By mobilizing citizens, NGOs contribute to the overall legitimacy of the electoral system. NGOs conduct research on electoral processes, voter behaviour, and election-related issues. They document their findings and share this information with the public, policymakers, and international organizations, contributing to evidence-based discussions and decision-making.<sup>58</sup> In summary, NGOs serve as vital components of Nigeria's institutional framework for protecting electoral rights by advocating for fair electoral practices, providing education and support, monitoring elections, and actively engaging with stakeholders to promote a robust and inclusive electoral system.

### ***The Police and Other Law Enforcement Agencies***

The Nigerian Police Force is a creation of the Constitution.<sup>59</sup> The Police plays a crucial role in the protecting of the rights of the electorate. The structure and duties of the police is provided by the Police Act<sup>60</sup> it is the primary law enforcement agency responsible for maintaining public order and ensuring the security of citizens during elections.<sup>61</sup> The Nigerian Police Force plays a crucial role in protecting electoral rights in Nigeria as part of the broader institutional framework overseeing elections.

The police are responsible for maintaining law and order during electoral processes. They ensure that citizens can exercise their electoral rights in a secure and peaceful environment, free from intimidation or violence. The police provide security at polling stations, collation centers, and other election-related venues. Their presence helps deter criminal activities, ensuring that voters feel safe and can freely participate in the electoral process. The police investigate and prevent electoral offenses, such as voter intimidation, ballot box snatching, and other forms of electoral malpractice. By enforcing the law, the police contribute to creating an atmosphere where citizens can express their electoral choices without fear. The Nigerian Police Force works in conjunction with other relevant agencies<sup>62</sup> to enforce electoral laws. This includes ensuring compliance with regulations on campaigning, voter registration, and

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<sup>52</sup> S.I. Omotonmasan, L.O. Odia: the role of the Non-Governmental Organizations in Community Development; Focus on Edo State-Nigeria. Research Gate; found on <http://www.researchgate.net@4.43pm>, April, 2024.

<sup>53</sup> Ibid

<sup>54</sup> Ibid

<sup>55</sup> Ibid

<sup>56</sup> Ibid

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> CFRN 1999

<sup>60</sup> Section 4 (a-i), S. 5(1)-(3) Police Act 2020

<sup>61</sup> Ibid

<sup>62</sup> E.g. the Nigerian Military, the Department of State Security (DSS) the civil defence and other paramilitary groups.



the conduct of political parties. The police respond to security threats that may arise during the electoral process promptly. This could include addressing public disturbances, handling disputes, and managing any incidents that could disrupt the smooth conduct of elections. The police are responsible for the safety and security of election officials, ensuring that they can carry out their duties without interference or intimidation. The visible presence of the police during elections contributes to building public confidence in the electoral process. When citizens trust that law enforcement is committed to ensuring a fair and peaceful election, they are more likely to participate without fear. It is important to note that while the Nigerian Police Force and other Law Enforcement Agencies play a significant role, the effectiveness of the overall institutional framework for protecting electoral rights also relies on the cooperation of other institutions, such as the Independent National Electoral Commission (INEC), the judiciary, and civil society organizations. A collaborative effort among these entities is essential for the successful conduct of free and fair elections in Nigeria.

#### **4. Challenges to the enforcement of Electoral rights in Nigeria**

##### **Violence during Elections**

It is no news that elections in Nigeria over the years has been riddled with incidence of violence including issues of snatching of ballot boxes by touts, destruction of election materials, various forms of assault on innocent voters some of which leads to injuries and sometimes death in extreme cases. These incidents of violence against voters have overtime led to a reduction of persons willing to exercise their rights for fear of their safety. Thus, Nigeria 'epidemic of political violence has human rights implications beyond its immediate toll on human lives. As the UN human rights committee has spelt out, fundamental to fair elections.<sup>63</sup>

##### **Incidences of Vote Buying and Bribery**

Another common issue is the buying of votes by political candidates, wherein an individual is paid paltry sums to vote a particular candidate. This action of payment for votes does not allow for free elections that reflects the actual state of mind of the masses as there is financial inducement to vary their choice of voting candidates. Worthy of note is also the payment of electoral officers to manipulate election figures even after the votes have been cast and counted thereby affecting the integrity of the election results in general. The degree of its prevalence and escalations in Nigeria is noted in elites' politics and continued to be more pronounced as in subsequent election years such that is left unchecked, will ruin Nigeria democracy.<sup>64</sup>

##### **Ignorance of the Electorates on their Rights**

Many voters are not aware of their rights as members of eligible electorates thereby making them prone to various forms of harassment or mishaps during voting processes and even after same. It is therefore important to create awareness and educate voters on the rights and reliefs available to them. Their inability to know their rights also transcends to why most of Nigeria voters stay back at home during elections without knowing that votes are key to the type of policy that government would initiate. Thus, Ilya Soncin, a political analyst of the CATO Institute Send; 'Democracy demands informed electorates.<sup>65</sup>

##### **Attitude of Individuals to Courts**

Many individuals exhibit a reluctance to taking their grievances regarding elections and incidences related to the courts. This attitude in turn leads to these grievances not being addressed and the individual suffering as a result of this.

##### **Cost of Litigation**

Due to the current economic situation and the cost of engaging legal practitioners, many persons are reluctant in pursuing their rights in court even when it has been infringed. In turn, this leads to an individual's rights being violated regardless of the fact that they know a means of possibly enforcing same. These costs come in form of legal fees, court fees and expenses<sup>66</sup>

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<sup>63</sup> See Human Rights Committees, General Comment 25(57) Adopted by the Committee at its 1510<sup>th</sup> meeting, July 12, 1996, UN Doc CCPR/C/21? Rev.1? Add.7 para 1G = Accessed at Human Rights Watch:<http://www.hrw.org/africa4.htm@12.09pm> July 15, 2024.

<sup>64</sup> Ejikeme Jombo Nwungwu, Onyinyeomachukwu Uwaechia: Vote Buying During 2015 and 2019 General Elections: Manifestation and Implications on Democracy Developments in Nigeria 2022 accessed on <http://www.tandfonline.com@12.20pm>, 15<sup>th</sup> May, 2024.

<sup>65</sup> Soni Akoji: Get Informed – Ignorance is not A Bliss: The cable July 28, 2014 accessed at <https://www.Thecable.ng@12.31pm> 15<sup>th</sup> May, 2024

<sup>66</sup> Mark Diji; Kiojare Raro-Edo: The cost of litigation in Nigeria: Evaluating the time spent in Court: Resource Legal accessed @ <https://www.rosewoodlegal.com>>12.45pm 15<sup>th</sup> May, 2024.

### **Unavailability of Necessary Voting Materials**

Issues of lack of voting materials such as ballot papers, ballot boxes, card scanners and other necessary items are still recurrent as at the last concluded general elections. This lack inadvertently disenfranchises eligible voters and the totality of the elections will not be a true representation of the people's choice. The 2023 general election suffered this in some areas. In Bayelsa for instance, angry voters crowded INEC's Yenegwa office to protest their inability to vote due to lack of sensitive materials<sup>67</sup>

### **Inadequate Security Personnel during Elections**

The incidences of violence and electoral crimes are a direct effect of inadequate security officials who are in good capacity to carry out their duties of keeping the voters and voting materials safe. There are also recorded incidences of compromised security officers who aid hoodlums in rigging the elections. These challenges can only be resolved by conscious effort of the security agencies to maintain law and order during the conduct of elections.

## **5. Conclusion and Recommendations**

This work sets out to review the extant legal frameworks for the protection of rights of electorates in Nigeria. This work finds that the existing Laws and institutions are fairly adequate in ensuring that the rights of electorates to vote and be voted for among other rights are protected. There is still the issue of enforcement and implementation so as to stamp out violence in elections that have orchestrated high rate of thuggery. It appears that the laws are recognized only in the breach and the institutions are weak and ineffective. Based on the foregoing, this study sets out to advance comprehensive solutions to address these seemingly intractable problems of violations of the rights of the electorates in Nigeria. Rights of electorates as provided in the Electoral Act 2022 and the Constitution among other laws play key roles in society remolding and enhancing democracy. Therefore, the protection of rights of electorates during and after electioneering period is very important to the growth of any nation. When the rights of men and women to vote and be voted for are guaranteed and protected, it fosters democracy, free and fair elections, equity, equality, justice and fairness in the policy. This is because humans are engine room of society's growth and advancement and should be given free hands in electing their leaders. It is therefore to the advantage of the country to ensure that electorates are not subjected to inhuman, degrading, and oppressive treatment during and after exercising their civil responsibilities. It is my considered conclusion that all regimes must respect the rule of law and the provisions of Electoral Act 2022. It is only in that way that the fundamental rights guaranteed to individuals by the constitution and other laws will be meaningful. The role of judiciary should be to safeguard the fundamental rights of the citizens including the electoral rights and to sustain the democratic process. Commenting on the role of the judiciary in the democratic process, *Kayode Eso (JSC as then was)* said in the case of *Ariori v Elemo*<sup>68</sup>

Having regard to the nascence of our constitution, the comparative educational backwardness, the socio-economic and cultural background of the people of this country and the reliance that is being placed and necessarily have to be placed, as a result of this background on the courts, and finally, the general atmosphere in the country, I think the Supreme Court *has a duty to safeguard* the fundamental rights in this country which, from its age and problems that are bound to associate with it, is still having an experiment in democracy.

It is not in doubt from what we have examined, that there are efforts by the Nigerian constitution and Electoral Act 2022 to provide for the fundamental rights of the electorates. The main aim of the fundamental rights of the electorates is enjoyment of free and fair elections which come with their right to vote and be voted for, and strict compliance with the law. The court in Nigeria from the inception of this country has existed to adjudicate on the enforcement of these rights, particularly the right to vote and be voted for, the right to join political party of their choice. However, the problem that has hampered the enforcement of fundamental rights of the electorates in Nigeria is not the availability of the courts, but persistent violation of same by those in government. These problems include prolonged period of military rule led to exacerbation of disobedience of court orders by agents of the executive branch of government, outright brutality of the citizens by thugs and law enforcement agents in the name of crime prevention during elections and lastly, state security and other state sponsored violation of human rights, in addition to the above, poverty ravaging most Nigerians and over bearing influence of corruption on the part of those who are supposed to assist in the enforcement of the rights of voters, notably the Police, National Human Rights Commission has worsened the problem for enforcement of human right to operate effectively in Nigeria. Poverty and illiteracy in the country should be tackled and reduced drastically. Related to the above are the issues of other vices like corruption, executive immunities, ouster clause of the jurisdiction of courts, lack of independence of judiciary. Agents of rights enforcement in Nigeria, namely; the Attorney General, the police, the special and private prosecutors have been both identified and explained. The mode of enforcement of rights and whom they shall be enforced against have also been humanly explained for even the layman to understand. Despite the above mentioned measured to ensure compliance and peace

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<sup>67</sup> Punch Newspaper, 26 February, 2023 accessed @ <https://www.punch.ng.com>

<sup>68</sup> R. ARIORI AND OTHERS v. MURAINO B. O. ELEMO AND OTHERS (SC 80/1981) [1983] 1 (21 January 1983); <https://old.nigerialii.org/ng/judgment/supreme-court/1983/1>> ACCESSED 27/03/24

in the society, reckless infractions and distortions of the fundamental rights of the electorates are pitifully confirmed in civilian regime especially during elections. This occurred despite the international and domestic frameworks for the protection and promotion of electoral rights in Nigeria as already discussed in this work. It is the view of this work that for the electoral rights enforcement to operate effectively in Nigeria, the following factors should seriously be addressed:

1. Our judges should show more activism in their decisions bordering on the rule of law and electorates' rights violations whether the case involves the government or citizens. The Supreme Court's attitude in the case of *Musa v INEC &ors*<sup>69</sup> is most commendable. It expanded and pronounced on rights of citizens to join any political party of their choice. The above decision is a precedent for other courts in Nigeria.
2. The rules of procedure of courts should be simplified in cases involving the enforcement of rights of electorates in Nigeria so as to guarantee speedy enforcement of the rights of electorates.
3. Seminars, conferences and workshops on how to enforce the rights of electorates should be frequently organized for the Judiciary, Police, National Human Rights Commission, Independent National Electoral Commission and other Stakeholders involved in election and enforcement of human rights in general.
4. For the protection of rights of electorates to be complete and efficacious, the economic empowerment of men and women must be given serious attention so as to totally stamp out thuggery during and after elections.

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<sup>69</sup>Inec& Anor. v Musa &Ors (2003) LLJR-SC