

NATIONAL HUMAN RIGHTS COMMISSION

**AN INDEPENDENT REVIEW OF EVIDENCE OF GROSS VIOLATIONS OF THE
RIGHTS TO PARTICIPATE IN GOVERNMENT, TO PUBLIC SERVICE, AND TO
FAIR TRIAL THROUGH THE ELECTION PETITION PROCESS IN NIGERIA 2007 &
2011**

INITIAL REPORT

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This Initial Report for the **End Electoral Impunity Project** is the product of teamwork, which makes some acknowledgement necessary.

The preparation of this Report was undertaken by the Technical Working Group (TWG) headed by Professor Nsongurua Johnson Udombana. The other members of the TWG comprised, Professor Muhammed Mustapha Akanbi; Professor Oluyemisi Bangbose; Professor Ifeoma Enemu; Professor Mohammed Tawfiq Ladan; and Dr Solomon Ukhuegbe. Their research assistants (Ms. Favour Irabor; Mr. Mohammed Hussaini, Mrs. Anthonia Ugowe, Mr. Gabriel Arishe, Mr. Onyeabor Emmanuel, Mrs. Alero Akeredolu) deserve acknowledgment.

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ABBREVIATIONS

AC – Action Congress

ACHPR – African Charter on Human and Peoples’ Rights

Anor. – Another

ANPP – All Nigeria Peoples’ Party

AP – Accord Party

CA – Court of Appeal

CFRN – Constitution of the Federal Republic of Nigeria, 1999

EU – European Union

FRN – Federal Republic of Nigeria

FWLR – Federated Weekly Law Report

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

INEC – Independent National Electoral Commission

JCA – Justice of the Court of Appeal

LGA – Local Government Area

NGO – Non-Governmental Organization

NHRC – National Human Rights Commission

NJC – National Judicial Council

NWLR – Nigerian Weekly Law Report

NWLR – Nigerian Weekly Law Report

Ors. – Others

PDP – Peoples’ Democratic Party

PPA – Peoples’ Progressive Alliance

SAN – Senior Advocate of Nigeria

TWG – Technical Working Group

UDHR – Universal Declaration of Human Rights

UN – United Nations

WRN – Weekly Report of Nigeria

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I. EXECUTIVE SUMMARY

“There is indeed a heavy dose of public policy content involved in election petitions and *that is also why both the Constitution and the Electoral Act have made elaborate provisions to ensure that those who harbour criminal tendencies are not only excluded, but if discovered, prosecuted for even daring at all to pollute the system and steal the people’s mandate.* So, where a candidate is alleged to have ‘stolen’ the people’s mandate, it is not sufficient for him to simply drop the mandate and scamper off, the law and the Society must still call him to account for his alleged criminality if any”.¹

1.01 Democracy and therefore elections are grounded in the right of citizens to effectively participate in their government. This right encompasses both the right of Nigerian citizens over the age of 18 to vote and the right of qualified Nigerians to be duly elected to public office. In Nigeria, however, elections have historically been akin to organised crime. This is because during Nigerian elections, multiple actors pursue pre-determined outcomes through common enterprise rather than allowing the people’s vote to determine the country’s political leadership. This behaviour is unlawful, criminal and unconstitutional. Such enterprise violates the constitutional rights of Nigerian citizens to participate in their own government and to determine who governs them by casting their individual ballot. Yet, the country has historically condoned such behaviour; indeed, the political, judicial and legal authorities have been both unwilling and unable to ensure accountability for them. This habitual failure of accountability for the violation of the right to participation in Nigeria in turn undermines the rights to fair trial and to a legal remedy, entitlements that are entrenched in Nigerian law. It also compromises the credibility of elections as the most acceptable means of conferring legitimacy to those who govern. Additionally, it damages the credibility of the judiciary and legal process, resulting, as concluded by a Presidential Panel in 2011, in a clear “loss of confidence in justice administration”² relating to elections. The lack of lawful remedies for electoral violations and manipulations has resulted in unrelenting impunity. Modern elections in Nigeria are synonymous with insidious violence

¹ *Umar Sani Ebini & Anor. v. Patrick Ashagu Ebiny & Ors.*, Petition Nos. EPT/NS/007/07 & EPT/NS/011/07 (unreported) (emphasis added).

² Federal Republic of Nigeria, *Main Report of the Federal Government Investigation Panel on 2011 Election Violence and Civil Disobediences*, (Sept. 2011) [“Lemu Report”], para. 2.7.

and political office-seekers are expected to “embrace or resort to self-help and vengeful tactics in settling their grievances.”³

1.02 The problem of electoral impunity in Nigeria is not a novel one. A 1986 judicial commission of inquiry into the operations of the Federal Electoral Commission (FEDECO) that at the time administered elections in Nigeria concluded that, “indeed, it can be claimed with a large measure of truth, that rigging of elections has become part of our political culture.”⁴ It also complained that failure to ensure accountability through “the abuse of the *nolle prosequi* and pardons” had “encouraged lawlessness both in 1979 and 1983 election periods.”⁵

1.03 Twenty-two years later, the Presidential Committee on Electoral Reform Chaired by

“[T]he 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” – Uwais Committee Report, paragraph 2.1(b).

former Chief Justice, Mohammed Lawal Uwais, observed 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.*”⁶

Specifically, the Committee lamented that “impunity ... has marred Nigeria’s electoral process to date”⁷

and concluded that there was a “prevailing atmosphere of impunity with regard to election offences.”⁸ Furthermore, the Committee continued, “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.”⁹ Nigeria’s Supreme Court confirmed this in a case arising from the 2007 elections in Osun State, south-west Nigeria, noting that “the stark

³ *Ibid.*

⁴ Federal Republic of Nigeria, *Report of the Judicial Commission of Inquiry into the Affairs of the Federal Electoral Commission (FEDECO) 1979-1983*, Main Report, Nov. 1986 [“Babalakin Commission Report”], para 10.10.

⁵ *Ibid.* para. 10.18; see also 8.39(iii) “In 18 states including Abuja, where figures are available, a total of 2,135 offences were recorded, out of which 805 offences charged to court. Of the 805 offences charged to court, 399 of them (50%) were convicted.”; “...[A]fter the Military take over, instructions went out to all the State Police Commands to drop all the remaining cases involving electoral offences. That was the explanation offered in all the States for the rather large number of cases awaiting trial or under investigation.”

⁶ Federal Republic of Nigeria, *Report of the Presidential Committee on Electoral Reform*, para. 2.1(a) (emphasis added) [“Uwais Committee Report”].

⁷ *Ibid.* para. 2.6.1.

⁸ *Ibid.*

⁹ *Ibid.* para. 2.1(b).

realities of the Nigerian situation particularly as it relates to the attitude of the political class which sees election into any position as a matter of life and death and consequently ready to do anything possible to attain the ambition.”¹⁰

1.04 This Report provides evidence of the extensive pattern of judicially sanctioned criminality in the 2007 election cycle as part of the continuing narrative of the long history of elections as organised crime in Nigeria. The crimes committed are as diverse as the individuals and institutions implicated. Cases of unlawful substitution of candidates by political parties and INEC, inflation of the numbers of ballots cast, forgery of election returns, and intimidation of voters and election officials at polls are among some of the common crimes. The footprint covers all of Nigeria; each of the six geographical zones is well-represented.

1.05 To fully understand the scope of the malady of electoral crimes, the story must begin with judicial records from over three decades ago and the names of the people involved. In one notable case from over three decades ago, the Babalakin Commission reported in the Oranmiyan North 1 Constituency in what is now Osun State that “the 1979 voters register for the area contained 48,216 names. In 1983 the figures jumped to 214,500! ...Two factors were said to be responsible: a) Mr. Stephen Ajibade, FEDECO Administrative Secretary ...”¹¹

1.06 The practice of falsifying election results is still very much alive today. In a 2007 case from Kano State in north-west Nigeria, the Tribunal complained that INEC wanted it “to tacitly endorse *abracadabra*.”¹² In Anambra State, south-east Nigeria, during the 2007 elections in a ward where only 2089 voters were registered, INEC declared over 7226 votes.¹³ In this case, the tribunal found that INEC had been involved in the “generating of results for an election that did not hold.”¹⁴ In Ekiti State in south-west Nigeria, the Resident Electoral Commissioner announced as valid returns, results “which she declared as fake.”¹⁵ In another Anambra case, the Tribunal accused named INEC officials of generating “results for an election that did not hold as

¹⁰ *Senator Hosea Ehinlanwo v. Chief Olusola Oke, Peoples' Democratic Party & INEC*, (2008) 16 NWLR (Pt. 1113), 357 at 411.

¹¹ Babalakin Commission Report, *op cit.*, para 9.02(i)

¹² *Rtd. Cpt. Ahmed Haladu Bichi & PDP v. Alhaji Ibrahim Muazzam & Ors.*, Petition No. EPT/KNS/HR/29/07, (unreported), p. 19.

¹³ *Chief (Mrs.) Edith Ejezie v. Hon Ralph Okeke & Ors.*, Petition No. EPT/AN/NAF/HR/13/2007 (unreported).

¹⁴ *Ibid.*

¹⁵ *Dr. John Olukayode Fayemi v. Olusegun Adebayo Oni & Ors.*, (2010) 17 NWLR (Pt. 1222) 326 at 395.

proved by [Chief Edith Mike Ejezie]” which showed “clearly ... that these results ranging from EC8A (II), EC8E (II) as tendered by the Respondents were obviously fabricated.”¹⁶

1.07 One way in which officials falsify elections is by manufacturing results long after voting has ended. This occurs in units in which results have not yet been announced and no result forms are completed or signed by party agents. Thus, in Katsina State, also in the north-west, an Election Petition Tribunal found that although voting took place, “result (*sic*) in Form EC8A (I) [was] not collated and declared”, yet a result was filed from the Polling Unit.¹⁷ In another case, the Tribunal found that “the results of the election was (*sic*) declared before the completion of collation in Awka South”.¹⁸

1.08 In other cases, supposedly neutral election officials were criminally partisan. For example, in Kaduna State, north-west Nigeria, the Election Petition Tribunal in 2008 registered its “dislike of the law on the practice of allowing party members of any one party to function as INEC Supervisor or Returning officer in the conduct of election[s].”¹⁹ Police officers also routinely commit electoral crimes. In one case, the election Petition Tribunal lamented:

The evidence on record as per exhibit E showed that a policeman, ASP Christopher Oloyede signed an election result sheet as party agent on behalf of the PDP. This is an illegality and violation of electoral rules both by INEC and the police. ASP Oloyede behaved disgracefully and abused his position. Neither INEC nor the police could defend the illegality that ought to have been sanctioned.²⁰

In the 2007 Governorship election in Edo State, south-south zone, the Tribunal found that “the evidence of the witness is that Police Officers were in fact doing the shooting, the thumb-printing or the ballot-stuffing”.²¹

¹⁶ *Chief Edith Mike Ejezie v. Chief Ralph Okeke & 5 Ors.*, Petition No: EPT/EPT/AN/NAE/HR/13/2007, (unreported) at 40.

¹⁷ *Dauda Ibrahim Karfi & PDP v. Haliru Lawal Malumfashi & 227 Ors.*, Petition No. HA/EPT/KTS/23/07, (unreported) at 28.

¹⁸ *Chief Godson C. Ezenagu v. Mr. Emmanuel Uche Eze, INEC & 72 Ors.*, Petition No. EPT/AN/NAE/HR/23/2007 (unreported) at 44-45.

¹⁹ *Engr. Suleman A. Lere & Anor. v. Hon. Saudatu Sani & 81 Ors.*, Petition No. EPT/KD/NA/002/007, (unreported) at 33.

²⁰ *Atikase Orito v. Kunle Odidi & 6 Ors.*, (2010) NWLR (Pt. 1245) 108 at p. 125.

²¹ *Comrade Adams Aliyu Oshiomhole & Action Congress v. INEC & Ors.*, EDGV/EPT/107, (unreported) at 28-29.

1.09 INEC officials have equally and routinely committed electoral crimes. In Edo State, one Felix Osaigbovo who was “INEC presiding officer for Unit 1 Ward 9” in the 2007 elections signed the result sheets “as [a] PDP agent...”²² In Adamawa State, north-east Nigeria, a Tribunal bemoaned the cumulative results of INEC’s failures as follows:

In more serious and accountable political climes, INEC should have evinced some remorse for the whole problem it has caused and the public money it wasted to organize an election it made inchoate even before it started. Its grandstanding is rather unfortunate. As a result of its ineptitude or mischief, a serious disruption will be caused to the governance of Adamawa State.²³

1.10 Violence, including the intimidation of voters, snatching and stuffing of ballot boxes is another mainstay of recent Nigerian elections. In one case arising from the contest over the 2007 Osun Central Senatorial seat in the south-west, the Election Petition Tribunal said:

The evidence of violence, voter intimidation, hijacking, illicit thumb printing, ballot box stuffing is overwhelming and beyond reasonable doubt, conjecture or proposition or presumption ... we are further persuaded that the names mentioned by the Petitioner’s Witnesses as being the ringleaders of these electoral crimes and members of the 2nd Respondents have not been cleared.²⁴

1.11 In the 2007 Governorship election in Edo State, the Tribunal found there had been “hijacking of electoral materials especially result sheets and intimidation of voters.”²⁵ In Kogi State, north-central Nigeria, a Tribunal found that:

²² *Mr. Sunday Eghe- Osazemwind & Anor. v. Levis Osaretin Aigbogun & 4 Ors.*, Petition No: EDSA/EPT/13/07 (unreported) at 31-32.

²³ *Action Congress & 2 Ors. v. INEC & 5 Ors.*, Petition No. AD/GOV/EPT/1/07 (unreported) at 62.

²⁴ *Olusola Adeyeye v. Simeon Oduoye & Ors.*, Petition No. NA/ EPT/OS/12/07 (unreported).

²⁵ *Comrade Adams Aliyu Oshiomhole & Action Congress v. INEC & Ors.*, Petition no. EDGV/EPT/107 (unreported) at 103.

Petitioners have proved beyond reasonable doubt that the 1st Respondent, Hon. Clarence Olafemi, leading his agents and thugs did commit acts of corrupt practices and non-compliance with the Electoral Act by disrupting the conduct of election, harassing and intimidating eligible voters who were sent away from polling units without voting.²⁶

1.12 Cases of forged credentials and eligibility documents were also established. In one case from Nassarawa State, also in north-central Nigeria, the Tribunal confessed it was “satisfied that [Umar Sani Ebini and another] have succeeded in proving the allegation of forgery and/or presenting a forged certificate to INEC against [Patrick Ashagu Ebinny] beyond reasonable doubt.”²⁷ In Ibeju-Lekki in Lagos State, south-west Nigeria, Tunde Isiaq, a 2007 candidate for the House of Representatives, also presented forged credentials.²⁸ In yet another case from Nassarawa State, the Tribunal found that Yakubu Mohammed Kwarra, a candidate in State legislative elections, had presented forged documents with respect to both his age and educational qualifications,²⁹ and noted that apart from being a crime:

[A] candidate who seeks to contest an election is saying loud and clear to the electorate that he or she is worthy of the trust which they repose on him or her. The electorate are trusting ... that the candidate is a person of integrity, honest and whose behaviour at all times is above board. To present a forged certificate to INEC betrays that trust and indeed a candidate guilty of such cannot be ... trusted. He has lied to the very people he seeks to lead.³⁰

1.13 In each of these cases, and many more, the Tribunals, without exception, failed to direct, suggest or order action to ensure accountability for the crimes they identified were committed. By doing so, the Nigerian judiciary has created the impression that there is one law for poor people and another for the big men and women who put themselves forward for elections. As a

²⁶ *(Alara) Aberoran & Anor. v. Hon. Clarence Olafemi & 17 Ors.*, Petition No. NALGH/KG/15/2007 (Unreported) at 40.

²⁷ *Umar Sani Ebini & Anor v. Patrick Ashagu Ebinny & 93 Ors.*, Petition Nos., EPT/NS/007/07 and EPT/NS/011/07 (Unreported) at 32 *et seq.*

²⁸ *Okonlawon Soniyi v. Tunde Isaq*, Petition No., EPT/LAS/NA/10/2007, (unreported).

²⁹ *Lagi Innocent v. Yakubu Mohammed Kwarra*, Petition No. EPT/NS/002/2007, (unreported).

³⁰ *Ibid.*

result, the courts not only facilitate the violation of citizens' rights to effective participation in their government, they also aid the culture of impunity that has become the hallmark of elections in Nigeria.

1.14 Thus, of about 870,000 persons apprehended for offences connected with the 2011 voter registration and general elections, only about 200 persons, or about 0.02 per cent, were successfully prosecuted. Current INEC Chairman, Attahiru Jega, attributes this abysmal number of prosecutions to lack of funds and personnel.³¹

1.15 This Initial Report provides evidence from official judicial records of electoral impunity in Nigeria. It explains electoral impunity as a series of steps or omissions that facilitate the unrestrained

The Nigerian judiciary has created the impression that there is one law for poor people and another for the big men and women who put themselves forward for elections. As a result, the courts not only facilitate the violation of citizens' rights to effective participation in their government, they also aid the culture of impunity that has become the hallmark of elections in Nigeria.

stealing of the peoples' sovereign will without any fear of punishment. Understood this way, there is a clear and overriding policy rationale why electoral impunity needs to be addressed as a threat to Nigeria and its fledgling democracy: those who steal the will of the people without consequence destroy mechanisms of administrative, legal and political accountability. They can only govern in violation of the right of the people to determine who governs them.

1.16 Indeed, legitimacy questions have trailed most political office holders in Nigeria since Independence, partly because judges and lawyers, rather than by the people to whom popular sovereignty belongs, have traditionally settled claims to political power. This has become somewhat of a tradition of the Presidential system of government in Nigeria, leading to what has been described as "Democracy by Court Order".³² Quite often, following the announcement of controversial returns, electoral umpires and the candidate(s) declared as winners ask those dissatisfied with the results to "go to court", with clear knowledge that the courts are unlikely to offer any remedies.

³¹ "Why INEC Can't Prosecute Electoral Offenders – Jega", *Premium Times*, 28 Nov. 2012, available at <http://premiumtimesng.com/politics/109020-why-inec-cant-prosecute-electoral-offenders-jega.html>.

³² *Ibid.*

1.17 Thus, arising from the 2007 general elections alone, there were 1,299 election petitions challenging official results out of a total of 1, 496 elective offices in respect of which INEC organizes elections, yielding an astounding 86.5%.³³ From the 2011 elections, there were an additional 769 petitions, which despite the decrease still netted a majority (51.4%) of electoral posts challenged.³⁴ One explanation is that the sharp drop in the quantity of petitions from 2007 to 2011 reflects an improvement in the quality and acceptability of 2011 elections. Another possibility, however, is a deepening distrust by aggrieved candidates of the judicial system as well as the growing phenomenon of election litigation fatigue. From these numbers, it is clear that, for any court system, Nigeria suffers from an astronomical and unsustainable burden of electoral dispute resolution and of transferring to judges, decisions that belong to the people.

1.18 Often, these petitions have been fought to the level of the Supreme Court, at huge cost in time, public money, and the credibility of the judiciary. The jurisprudence on claims to both political office and electoral legitimacy in Nigeria is as vast and as old as independent Nigeria.³⁵ Even during the years of military rule, the soldiers found judicial affirmation of their legitimacy invaluable,³⁶ even when after having procured such legitimacy, they then turned around to use decrees to preclude the courts from supervising their actions. This system of procuring the appearance of electoral legitimacy through the judiciary has corrupted both elections and the legal process. It has also undermined the right to effective participation in government and the capability of courts to guarantee fair trial.

1.19 By 2007, the courts had evolved a jurisprudence that clearly condoned and even permitted electoral criminality. Section 146(1) of the Electoral Act, 2006, validates only elections that are “conducted substantially in accordance with the principles of this Act” or

³³ These comprise the following offices: President; 36 Governors; 109 Senate seats; 360 members of the House of Representatives; and 990 members of the House of Assembly for the 36 States.

³⁴ The Registry of the Court of Appeal provided these Statistics. *See also*, Femi Falana, “Election Petitions: Tools for Timely Dispensation of Justice”, delivered at the National Stakeholders Forum on electoral Reform, 28-29 Jan. 2014.

³⁵ Some notable cases in this regard include *Sorunke v. Odebunmi*, (1960) N.S.C.C. [Vol. 1] 116; *Akinfosile v. Ijose*, (1960) N.S.C.C. [Vol.1] 129; *Awolowo v. Shagari*, (1979) N.S.C.C. [Vol.12] 87; *Unongo v. Aku*, (1983) N.S.C.C. [Vol. 14] 563; *Nwobodo v. Onoh*, (1984) N.S.C.C. [Vol.15] 1; *Ojukwu v. Onwudiwe*, (1984) N.S.C.C. [Vol.15] 172; *AD v. PSIEC*, (2004)10 N.W.L.R. (Pt. 880) 19 C.A.; *Uba v. Ukachukwu*, (2004) 10 N.W.L.R. (Pt. 881) 224 C.A.; *PDP v. Haruna*, (2004) 16 N.W.L.R. (Pt.900) 455 C.A.; *Abana v. Obi*, (2004) 10 N.W.L.R. (Pt. 881) 14; *Buhari v. Obasanjo*, (2005) 13 N.W.L.R. (Pt. 941) 1 S.C.; *Yusuf v. Obasanjo*, (2005) 18 N.W.L.R. (Pt. 956) 96 C.A.; *Ngige v. Obi*, (2006) 14 N.W.L.R. (Pt. 999) 1. C.A.

³⁶ *Ojukwu v. Lagos State*, (1986) 1 N.W.L.R. (Pt. 18) 621.

where “non-compliance did not affect substantially the result of the elections.” In 2008, the Nigerian Supreme Court claimed that the word “principles” in this provision was “vague, nebulous and large” as well as confusing,³⁷ and declined to affirm any principles governing the conduct of elections. Straying well beyond the scope of any laws, the Court established an impossible standard of proof for election-related malfeasance by adding that a petitioner in an election petition had to prove “not only substantial non-compliance but also the figures, i.e. votes that the compliance (*sic*) attracted or omitted.”³⁸ Unsurprisingly, courts below appear to have read the Supreme Court as sanctioning impunity for electoral crimes and associated violations of the right to participation. In one case from Ebonyi State, for instance, a Court found what it described as “grave” evidence of “irregularities, hijack and illegal thumb printing of electoral materials”, but concluded that it could do nothing about this.³⁹ Thus, the Supreme Court has been accused of playing “a discreditable part” in sustaining electoral impunity in Nigeria.⁴⁰

1.20 This Report is initiated by virtue of the statutory powers conferred on the National Human Rights Commission (NHRC) by Section 5 of the National Human Rights Commission (Amendment) Act 2011. Section 5 confers on the Commission the power, *inter alia*, to deal with all human rights matters guaranteed by the Constitution of the Federal Republic of Nigeria, the United Nations (UN) Charter, the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), African Charter on Human and Peoples’ Rights (ACHPR), and other international human rights instruments to which Nigeria is a party. The Section also mandates the Commission to “undertake studies on all matters pertaining to human rights ... where it considers it appropriate to do so in the formulation of appropriate policies on the guarantee of human rights”. Section 6(1)(a) and (g) empowers the Commission to “conduct its investigations and inquiries in such manner as it considers appropriate”, and “do such other things as are incidental, necessary, conducive or expedient for the performance of its functions under this Act”.

³⁷ *Muhammadu Buhari v. Independent National Electoral Commission & 4 Ors.*, (2008) 12 S.C. (Pt. 1) 1 at 78.

³⁸ *Ibid.* at 88.

³⁹ *Hon. Elem Nwigboji Francis v. Innocent Ugo Chima & 5 Ors.*, Petition No. EPT/EBS/HA/AB/14/2007 (unreported).

⁴⁰ Ben Nwabueze, *How President Obasanjo Subverted Nigeria’s Federal System* (2007) xxx.

1.21 The Report has been prepared by a seven-person, expert Technical Working Group (TWG) constituted by the NHRC and chaired by Professor Nsongurua Johnson Udombana. In preparing this report, the TWG took possession of 1,160 certified judgments from the Registry of the Court of Appeal covering the 2007 and 2011 elections. From an initial review of these cases, the TWG identified 200 cases disclosing various violations of the right to participation in government. Out of these, the TWG identified at least 84 cases containing specific indictments against named persons or institutional actors. For the purposes of this project, an “indictment” is any statement by a court acknowledging wrongdoing that is legally actionable by prosecution, administrative action or any other lawful process of accountability or sanction. These include:

- 10 criminal indictments;
- 43 indictments of mixed criminal and administrative nature;
- 24 administrative indictments;
- Four indictments of a mixed administrative/judicial kind;
- Two possible cases of professional mis-conduct against lawyers involved in election petitions; and
- At least one case of possible judicial mis-conduct.

1.22 From these 84 cases, several persons were indicted. Indictments were also repeatedly addressed to both INEC and the Nigeria Police Force. Far from being exhaustive, these violations merely illustrate wider patterns of election-related criminality and associated impunity that are much more pervasive.

1.23 Elections and electoral practices lie at the heart of representative democracy. Therefore, the success or failure of elections is central to the success or failure of democracies.⁴¹ The credibility of governmental institutions hinges on accountability that is founded on the entitlement of citizens to freely choose their government or change it. This freedom requires the rule of law, including an effective administration of justice. For this reason, the conduct and organisation of elections is regulated everywhere by laws. Where these laws are not observed, the returns from elections become illegitimate and unlawful. In other words, any exercise of political power other than through the free choice of the electorate in a free and fair election is illegitimate. In 1983, the Nigerian Supreme Court maintained:

⁴¹ See Uwais Committee Report, *op cit.*, at 248.

The essence of democratic elections is that they be free and fair and that in that atmosphere of freedom, fairness and impartiality, citizens will exercise their freedom of choice of who their representatives shall be by casting their votes in favour of those candidates who, in their deliberate judgment, they consider possesses the qualities which mark them out as preferable candidates to those others who are contesting with them. The voters must be allowed to freely go to the polling booths and cast their votes unmolested. Free and fair election cannot, therefore, tolerate thuggery or violence of any kind; corrupt practice, personation, threats, undue influence, intimidation, disorderly conduct, and any acts which may have the effects of impeding the free exercise by the voter of his franchise.

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1.24 The legislative election petition tribunal in Kano State took the same view in the 2007 pointing out that

[T]he cornerstone of any democratic process, which is also a pre-condition of our Constitution and laws including the Electoral Act 2006, is the right in every voter to a secured atmosphere in which he can freely cast his lot for who governs him, or represents him in governance. Once the exercise of that free will is denied in circumstances that cast a doubt on the actual choice of the electorate, then the exercise cannot rightly pass for a democratic process. Electoral violence is therefore not a worthy legacy for any democratic culture.⁴³

Those who breach the laws of the land for the purpose of producing fraudulent electoral outcomes commit crimes against the people. They ought to be punished; if they are allowed to go free, then impunity results.

⁴² *Ojukwu v. Onwudiwe*, 3 EPR 850 at 892.

⁴³ *Alhaji Sule Lawan Shuwaki & Anor. v. Abdullahi Illiyasu & Ors.*, EPT/KNS/HA/08/07 (unreported) at 14.

1.2. SUMMARY OF FINDINGS

1.2.01 The evidence from the material so far examined for this report clearly supports the conclusion that the judiciary in Nigeria is unwilling and unable to ensure accountability for electoral crimes. It is also open to the conclusion that the judiciary supports, tolerates or is indifferent to the crimes committed by candidates, parties, and their agents in unlawful pursuit of power and its perquisites.

1.2.02 The terms of reference for this Report do not extend to speculating as to the reasons for this habit. However, this situation has also fostered a real perception that the judiciary can be bought or sold, not just in election petitions, but in all cases. If the judiciary cannot be trusted to resolve disputes fairly and justly, the people may find comfort in violence and vigilante methods.. Based on the evidence so far reviewed, it is clear that:

1. Huge gaps remain in the Constitution, the Electoral Act, and other laws governing elections in Nigeria. Different stakeholders – INEC, political parties, politicians, and other individuals – exploit these gaps to violate the right to participate in government, the right to public service, and the right to fair trial.⁴⁴
2. Many of the tribunal decisions have been based on technicalities while ignoring issues of substantive justice; as such, the judiciary has been used routinely to validate clearly unlawful election outcomes, in many cases clearly accompanied or facilitated by crimes.
3. Many of the cases reviewed also disclose improper exercise of judicial discretion by election tribunals and courts as well as insufficient evaluation of evidence and some suggest possibilities of judicial misconduct that require investigation. Such acts implicate on the right to fair trial and institutional credibility of the judiciary.⁴⁵
4. In cases where petitioners fail to prove allegations of criminality beyond reasonable doubt, courts/tribunals simply dismiss the petitions and ignore the compelling evidence that crimes were committed quite apart from questions of proof.

⁴⁴ See, e.g., *A.N.P.P v. Returning Officer, Abia State*, (2007) 11 N.W.L.R. (Pt. 1045) 431 at 435 (“There is no doubt that the time limit imposed by law for bringing such election related suits can impose a grave injustice on a person where the results are not declared before the expiry of the time limit. Such was the case in this matter. The solution to such mischief lies in reforming the Law”).

⁴⁵ See, e.g., *Hon. Gozie Agbakoba v. INEC & 2 Ors.*, (2008) 18 N.W.L.R. (Pt. 1119) 489 (reversing decisions of the trial court decision and the Court of Appeal for failing to properly evaluate the affidavit evidence of the Plaintiff/Appellant that her name was unlawfully substituted for the election into the Onitsha North and South Federal Constituency of Anambra State).

5. Counsel for respondents, in clear collusion with INEC officials, also sometimes use unethical methods to delay cases and defeat the cause of justice without consequences.⁴⁶

6. In all cases where the tribunals/courts found infractions of the (criminal) law, they fail to exercise their inherent powers to recommend prosecutions by the appropriate authorities.

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⁴⁶ See, e.g., *Charles Udogwu Onyekweli v. INEC* (2008) 14 N.W.L.R. (Pt. 1107) 317 (“The attitude of INEC and its counsel in the instant application is most obnoxious and leaves a very sour and bad taste in the mouth. INEC behaved most disgracefully and without any regard to its enabling laws, general legality, decency or morality in the entire circumstance of this application, and indeed the petition and the appeal itself).

1.3. INITIAL RECOMMENDATIONS

“We realize however, that however well-thought-out the recommendations, they will achieve no purpose *unless there is the will to enforce them.*”⁴⁷

1.3.01 The evidence in this report indicates that Nigeria’s electoral system is crippled by a multiagency penchant for criminal conduct that has remained historically un-checked. The task of consolidating electoral democracy in Nigeria requires that urgent attention be paid to the elimination of electoral impunity through ensuring accountability for electoral crimes. The cases reviewed for this report disclose that in nearly all cases, election tribunals were unwilling or habitually neglected to order prosecution of electoral crimes. The Working Group hopes that by publishing this Report and involving Nigerian citizens and institutions at all levels in examining the evidence from judicial records, it can make a contribution to mobilizing official sanctions against those so identified and incrementally sanitise elections in Nigeria.

1.3.02 No number of recommendations, however, can replace the need for political will on the part of all concerned branches and agencies of the Nigerian State, as well as the INEC, political leaders, political parties and civic organisations. Based upon our findings, the Working Group makes the following initial recommendations. The final report will contain more detailed recommendations following the planned public hearing and interviews with relevant stakeholders.

1.3.03 To the Presidency of the Federation

- Publicly denounce the lack of prosecutions of electoral crimes despite the recommendation of three previous presidential committees on elections to do so.
- Invite all political and public office holders to support concerted action for addressing electoral impunity and returning credibility to the electoral process in Nigeria.
- Direct the Attorney-General of the Federation to prioritise the investigation and prosecution of election-related crimes as a matter of urgency and publish a credible plan for realising this directive.

⁴⁷ Babalakin Commission Report, *op. cit.* para 1.16 (emphasis added).

1.3.04 To the Independent National Electoral Commission

- Establish a project team on election-related crimes and electoral impunity in collaboration with the Attorney-General of the Federation, security agencies and other partners.
- Publish the names of all INEC officials who have been the subject of administrative procedures related to electoral malpractice since 1999.
- Establish a publicly accessible database and register with the names of all persons arrested, indicted or reported for election-related malfeasance across the country.
- Establish and administer, as a matter of urgency, a policy of zero-tolerance for electoral impunity, and exclude from participation in electoral administration all persons arrested for, indicted, or credibly suspected of involvement in election-related malfeasance.
- Compile, issue and publish annually, a report containing all credible allegations of election-related malfeasance, with the names of all persons arrested, indicted or reported and the nature of infractions and transmit this to the appropriate institutions for further action.
- Establish more rigorous protocols for verification and collation of election returns before declaring results.
- Work closely with relevant educational and regulatory agencies such as universities, the West African Examinations Council (WAEC), and the National Examinations Council (NECO) to ascertain the genuineness of claims of educational attainment made or submitted by candidates for office.
- Increase diligence in vetting and training of *ad-hoc* staff who are often subject to the manipulation of political parties.
- As recommended by the Uwais Panel,⁴⁸ monitor *ad-hoc* staff to minimize corruption and collusion with political stakeholders and other partisan actors in the electoral process.
- Through better planning, due diligence, and more effective collaboration with the Armed Services, address perennial and avoidable lapses in electoral logistics that deny citizens their right to effective participation.
- Enhance operational, internal and management co-ordination between INEC offices and staff around the country through better use of information and communications technologies (ICTs).
- Address a clear pattern of abuse of power and discretion by subordinate INEC officials through the establishment of clear protocols on the scope and limits of discretion exercised by INEC officials.⁴⁹

⁴⁸ Uwais Committee Report, *op. cit.* para. 5.5.6.2.9.

⁴⁹ *See, e.g., Hon. Peter Azi & Anor. v. Yakubu Choji & 4 Ors.*, Petition No: PL/LHEPT/10/2007. It was established that, after the election, Hon. Peter Azi scored the highest votes, though his name was crossed out of the list of nominated candidates. Testifying as PW1, Yagba Kundu, a staff of INEC in Plateau State, said that, upon discovering that “the list of candidates for the election had no ANPP candidate”, he wrote a letter to the Resident Electoral Commissioner for directives as to the proper course to take,

- Undertake an internal review of the recommendations of all previous Presidential Panels and Committees connected with elections in Nigeria, including, in particular, the recommendations embodied in the Babalakin, Lemu and Uwais Reports, and publish its own plans for how to bring its administrative processes in line with their recommendations.

1.3.05 To the National Assembly

- As suggested by the Uwais Committee,⁵⁰ amend Section 174 (c) of the 1999 Constitution so that the constitutional power of *nolle prosequi* vested in attorneys-general does not apply to electoral offences.
- Amend the relevant sections of the Electoral Act to render anyone convicted of corrupt practices or other crimes related ineligible to elections for office.
- As suggested by the Uwais Committee, further amend §§ 132(2) and 178(2) of the 1999 Constitution to ensure that there is sufficient time for disposal of election-related disputes before the date on which the winners are to assume office.
- Repeal § 143 of the Electoral Act of 2010 which allows a person whose election return is contested to stay in office during the pendency of the contest, giving them access to State resources which may be used to conduct the dispute, and creating inequality of arms between the parties.
- As suggested by the Lemu Federal Government Investigation Panel and Uwais Committee, pass legislation to establish an Electoral Crimes Commission to ensure speedy resolution of allegations of misconduct prior to, during, and after elections.

1.3.06 To The Inspector General of Police (IGP)

- Take appropriate measures to curb electoral violence by continuing to train police on security measures for election personnel and the Nigerian public before, during, and after elections.
- Include in the annual reports of the NPF, information on complaints against Police Officers involved in election security duties.
- Ensure effective training on as well as dissemination and implementation of the Police Service Commission's Guidelines for Police Officers on election duties.

but the REC was not around to receive the letter. Consequently "he went ahead to declare the PDP candidate as the winner", a decision that the Tribunal nullified.

⁵⁰ Uwais Committee Report, *op. cit.* para. 4.2.27.

- Make public at the end of each election (cycle) the names and identities of Police personnel alleged to have committed electoral crimes and the disciplinary measures taken against them, if any.
- Establish and ensure adequate training and resourcing of an electoral crimes squad.

1.3.07 To the Police Service Commission

- Take effective action to ensure dissemination, monitoring and implementation of the PSC Guidelines for Police Officers on election duties;
- Ensure that all complaints of malfeasance or crimes by Police Officers on election duty are promptly investigated and, if proved, punished administratively, in addition to criminally.
- Regularly publish information on actions taken against Police Officers shown to have been involved in election-related crimes or misconduct.

1.3.08 To Other Security Agencies

- Increase vigilance in collecting information on political thugs used to intimidate voters and/or election personnel so that such actions can be prevented on election day.
- Ensure effective collaboration with the Nigerian Police Force on election security matters.

1.3.09 To the Attorney-General of the Federation and the Conference of Attorneys-General

- Establish within the Federal Ministry of Justice and in all State Ministries of Justice, a unit responsible for the prosecution of electoral crimes.
- Begin immediate investigation into the cases set forth in this report.
- Grant to the INEC, a fiat to undertake independent prosecution of election-related crimes as may be necessary.

1.3.10 To the National Human Rights Commission

- Forward the list of persons and organisations indicted in this Report to the offices of the Federal and State Attorneys-General and INEC for further action.
- Establish a unit or team focused on investigating and reporting complaints of electoral impunity.

- Define a clear strategic direction focus for its work in relation to elections in Nigeria towards upholding the right to participation in government. Rather than act as an all-purpose election observer, the Commission should direct its attention to monitoring and ensuring accountability for election-related crimes and other mis-conduct in that violate the right to effective participation in government.
- Collaborate with state and non-state actors to organize public awareness and media campaigns on the negative impact of electoral impunity on democracy.
- Collaborate with NJI to organize public sensitization and skills training for the Bench on the need to recognize their constitutional functions with respect to decisions of court of superior, dual, and subordinate jurisdiction, and on the need for their prompt enforcement in line with the rule of law.

1.3.11 To the Nigerian Political Parties

- Enlist the leadership of each party to publicly repudiate the “by any means necessary” approach to gaining political office.
- Create a self-policing inter-party body with a code of conduct and corresponding sanctions for abuses of the electoral process such as the improper substitution of candidates after primaries, use of political thugs, and ballot-stuffing by political parties or their agents.
- Dutifully vet prospective candidates to ensure that they meet the qualifications of the office they seek.
- Adopt and require all political party leaders, candidates and agents in elections to subscribe to a voluntary code of conduct in respect of elections and establish effective mechanisms for monitoring such code of conduct.

1.3.12 To the Chief Justice of the Federation and the National Judicial Council (NJC)

- Require all State Chief Judges to designate and skill up judicial resources for the prompt trial of electoral crimes.
- Ensure effective training and monitoring of judges and lawyers on the different burdens of proof on petitioners when alleging criminal (beyond a reasonable doubt) and non-criminal (on the balance of probabilities) violations of the Electoral Act
- Ensure prompt and effective disciplinary action against judges involved in perverting justice in election disputes,
- Prepare and publish annually a report detailing the investigations and any action taken against judges against whom allegations of perverting justice in election-related disputes have been made.
- Effectively sanction abuse of judicial power by election tribunals and other courts.

1.3.13 To the President of the Court of Appeal

- Issue a Practice Direction for election petition tribunals detailing their functions in cases where there is a finding of an election-related crime.
- Issue a Practice Direction requiring election-petition tribunals or other judges who find evidence of electoral crimes to direct prosecutorial action.⁵¹

1.3.14 To the Legal Practitioners Disciplinary Committee (LPDC) and the Nigerian Bar Association (NBA)

- Effectively disseminate and train lawyers on the Rules of Professional Conduct in the Legal Profession, such as improper interference with or other forms of perversion of the administration of justice connected with election petition tribunals.
- Work closely with the National Judicial Council and the President of the Court of Appeal to ensure effective monitoring of the conduct of lawyers and the conduct of election petition tribunals and to ensure prompt and adequate professional sanctions for lawyers who have contravened the Rules of Professional Conduct in election-related proceedings.

1.3.15 To the Nigerian Civil Society

- Vigilantly monitor election cases for examples of criminal activity and forward such information to the attention of attorneys-general in the Federation for further investigation.
- Work with official institutions, including INEC, the security agencies, and the NHRC to undertake public awareness campaigns for the Nigerian citizens on the existence of electoral crimes so that they can demand local accountability.
- Work together with political parties, faith groups, the media and civic associations in a broad and far-reaching coalition for zero-tolerance of electoral crimes and against impunity from official institutions.

⁵¹ See FCRN, § 248 (providing: "Subject to the provisions of any Act of the National Assembly, the President of the Court of Appeal may make rules for regulating the practice and procedure of the Court of Appeal"). Order 19 Rule 7 of the Court of Appeal Rules also provides: "The President may at any time, by notice declare a practice of the court as a practice direction, and whenever the declaration was made, such declaration shall be regarded as part of these rules".

1.3.16 To The Nigerian People

- Organize to publicly denounce examples of electoral violence and impunity in local communities.
- Use social media and pictures to document any examples of electoral irregularities in voting wards.
- Hold elected officials publicly accountable for obvious corrupt acts to steal or manipulate the people's mandate.
- Report violations of rights to the National Human Rights Commission, INEC, and the Nigerian Police as necessary.

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II. CONTEXT, PURPOSE, AND METHODOLOGY

2.1. INTRODUCTION

“Indeed, it can be claimed with a large measure of truth, that rigging of elections has become part of our political culture.”⁵²

2.1.01 Post-colonial Nigeria has a long history of resolving electoral contests in court rather than at the ballot box. This has become somewhat of a tradition, leading to what has been described as “Democracy by Court Order”.⁵³ Out of a total of 1,496 possible elected positions in the Federation,⁵⁴ in the 2007 general elections alone, over 1,200 election petitions were filed challenging official results.⁵⁵ By January 2008, six governors, a dozen senators and “scores of local government officials” were unseated by judicial decree.⁵⁶ For any court system, these statistics are astronomical.

2.1.02 Election petitions are filed in response to irregularities in the electoral process and violations of electoral law. These petitions provide the only meaningful recourse for resolution of contested returns. However, the law only allows candidates, political parties, and the INEC to take part in the election petition process. Ironically, the people, whose will elections are designed to uphold, play no part in the petition process. Additionally, the process thus does not afford remedies for violations of the right to democratic participation. Moreover, once the election petition process starts, the

Over the years, the electoral process in Nigeria has been overtaken by impunity that has replaced governance with illegitimacy. This impunity is Nigeria’s biggest national security challenge. It is the root cause of the political instability, militancy, insecurity and insurgency that plague Nigeria.

⁵² Babalakin Commission Report, *op. cit.* para 10.10.

⁵³ Nigeria: “Democracy by Court Order”, *Economist*, 24 Jan 2008, available at www.economist.com/node/10567560.

⁵⁴ The 1999 Federal Constitution of Nigeria provides for: 1 President, § 132; 36 Governors, § 176(1); 109 national Senators, § 48; 360 national House Representatives, § 49; and 990 state House Assembly members, § 91.

⁵⁵ See, Femi Falana, “Election Petitions: Tools for Timely Dispensation of Justice”, delivered at the National Stakeholders Forum on electoral Reform, 28-29 Jan. 2014.

⁵⁶ Nigeria: “Democracy by Court Order”, *Economist*, 24 Jan 2008, available at www.economist.com/node/10567560.

more important business of ensuring accountability for the violations that engender election petitions is forgotten.

2.1.03 Over the years, the electoral process in Nigeria has been overtaken by a collective indifference. It exists at all levels and creates a pervasive climate of electoral impunity. In its 1986 report, the Justice Babalakin Commission of Inquiry into the then Federal Electoral

Over the years, the electoral process in Nigeria has been overtaken by impunity that has replaced governance with illegitimacy. This impunity is Nigeria's biggest national security challenge. It is the root cause of the political instability, militancy, insecurity and insurgency that plague Nigeria.

Commission (FEDECO), pointed out that “since 1952 when direct elections were first held in Nigeria, accusation of wrongdoing designed to alter the results of elections have accompanied every election in the country.”⁵⁷ This impunity is Nigeria's biggest national security challenge. It is the root cause of corruption and of several forms of violence, including militancy, insecurity, insurgency and electoral violence in the country. Electoral impunity deprives the people of their right to freely choose their leaders and determine how they should be governed. A denial of this fundamental right allows illegitimate power to thrive, undermines the rule of law, corrupts the public good and rewards perverse interests. This report demonstrates that an electoral regime that undermines the rule of law in this way also

threatens the foundations and objectives of an open society and the common good.

2.1.04 This crisis of confidence arising from deepening perceptions of compromised electoral and judicial administration and governance in Nigeria has a long history. This Part provides the context for, and highlights the objectives of, this Report, among other issues.

2.2.The Context

⁵⁷ Babalakin Commission Report, *op. cit.* para. 8:03.

2.2.01 To set the context for this Report, a brief historical detour is necessary.

2.2.02 *Judicial Commission of Inquiry Into the Affairs of the Federal Electoral Commission - The Babalakin Report (1986)*

2.2.03 The Babalakin Commission Report marked an important first step towards curbing electoral impunity. The report was the first of its kind commissioned by government to investigate elections and electoral impunity in Nigeria.⁵⁸ In October 1983, President Alhaji Shehu Shagari was sworn in for a second term as the President of Nigeria despite general elections marred by widespread allegations of electoral fraud and abuse.⁵⁹ In the wake of those allegations, Muhammadu Buhari, a Major-General in the Nigerian Army, who led the overthrow of the administration of President Shagari on 31 December 1983, declared:

*The last general election was anything but free and fair. The shameless rigging and the widespread perversion of the electoral process could not, in all honesty, have been said to have produced a Government of the people by the people ... The only political parties that could complain of election rigging are those parties that lack resources to rig. There is complete evidence that rigging and thuggery were relative to the resources available to the parties.*⁶⁰

2.2.04 In response, General Buhari set up the Judicial Commission of Inquiry chaired by Justice Bolarinwa Babalakin, then a judge of the High Court of Oyo State. The Commission was tasked with: determining the failures of the now defunct Federal Electoral Commission (FEDECO); identifying abuses of the electoral body in the electoral processes between 1979 and 1983;

⁵⁸ *Ibid.* para 1.11 “In the past, accusation and counter-accusations having been made about rigging, nothing further was done about it by those who took over the reins of Government, civilian or military. This is the first time that any Government has set up a Commission of Inquiry into any of our elections with a mandate to determine how things went wrong.”

⁵⁹ *Ibid.* para. 10.18 (With reference to election petitions that followed the 1983 general elections, the Commission reported: “As the verdicts began to be pronounced, the general public often expressed shock and dismay. Some commentators in the nation’s newspapers took the view that the verdicts in a number of instances constituted a rape of democracy perpetrated through the law courts. Allegations of corruption in high places were freely made”.

⁶⁰ *Ibid.*, para. 1.01 (emphasis added).

accounting for public funds appropriated and spent by FEDECO; and ascertaining the persons responsible for each of these shortcomings.⁶¹ The Commission was also mandated to “identify the role of judges and determine in what ways, if any, the improper application of the rule of law adversely affected the electoral processes.”⁶²

2.2.05 The Commission submitted its report in November 1986, about three months after the overthrow of the

It is instructive that our terms of reference do not require us to establish whether or not there were electoral malpractices in 1983. Rather, our terms of reference require us to “determine the causes of failures, abuse, and shortcomings which characterized the electoral processes in 1983: *the fact of electoral malpractices is thus regarded as given. The evidence justifies this stance.* This is what we mean by saying that election rigging has in fact become part of our political culture.” – Babalakin Commission Report paragraph 10.10 (emphasis added).

Buhari regime by General Ibrahim Babangida’s own military operation. With reference to election petitions that followed the 1983 general elections, the

Commission reported:

The fact that the Presidential election itself, together with as many as 7 gubernatorial elections were subject to election petitions heightened ... anxiety As the verdicts began to be pronounced, the general public often expressed shock and dismay. Some commentators in the nation’s newspapers took the view that the verdicts in a number of instances constituted a rape of democracy perpetrated through the law courts. Allegations of corruption in high places were freely made.⁶³

⁶¹ *Ibid*, para. 1.06(a)-(m).

⁶² *Ibid*, para. 1.06(e).

⁶³ *Ibid*. 10.01.

Findings on Electoral Impunity

2.2.06 According to their findings, the 1983 elections were characterized by large numbers of: fictitious names on voter lists in Rivers, Cross River, Oyo, and Lagos states;⁶⁴ illegally separated voters lists in Imo and Oyo states;⁶⁵ illegal printing of voters cards in Oyo;⁶⁶ registration of unqualified persons in Borno;⁶⁷ illegal possession of ballot boxes in Oyo, Plateau, Niger, and Borno; stuffing of ballot boxes in Anambra, Imo, Plateau, and Borno;⁶⁸ falsification of election results in Borno, Anambra, Ondo, and Oyo;⁶⁹ thumb-printing of ballot papers in Borno, Oyo, Niger, Plateau;⁷⁰ voting of under-age children in Borno, Niger, and other states;⁷¹ the deliberate refusal to supply election materials in Borno, Kano, Anambra, and Oyo;⁷² announcing results where no elections were held Borno, Rivers, and Plateau;⁷³ box-switching and inflation of figures in Oyo;⁷⁴ changes in electoral officials in Ondo;⁷⁵ unauthorised announcements of results in Anambra and Oyo;⁷⁶ and the harassment of candidates, agents and voters in Rivers, Imo, Borno, Anambra, Oyo, and Ondo.⁷⁷ No zone of Nigeria was left unscathed by findings of the report and as evidenced by the cases reviewed for this report, most of these patterns continue in Nigerian elections today.

“The most celebrated case of inflation of voters register was that of Oranmiyan North I Constituency. It was reported that the 1979 voters register for the area contained 48,216 names. In 1983 the figures jumped to 214,500!... Two factors were said to be responsible: a) Mr. Stephen Ajibade, FEDECO Administrative Secretary ... b) the area was a NPN stronghold”. – Babalakin Report paragraph 9.02(i).

⁶⁴ *Ibid*, para. 9.02(i).

⁶⁵ *Ibid*, para. 9.02(ii).

⁶⁶ *Ibid*, para. 9.03.

⁶⁷ *Ibid*, para. 9.04.

⁶⁸ *Ibid*, para. 9.06.

⁶⁹ *Ibid*, para. 9.07 (“The falsification of election results was alleged to be the bedroom of electoral malpractice in 1983”).

⁷⁰ *Ibid*, para. 9.08.

⁷¹ *Ibid*, para. 9.09.

⁷² *Ibid*, para. 9.11.

⁷³ *Ibid*, para. 9.12.

⁷⁴ *Ibid*, para. 9.16.

⁷⁵ *Ibid*, para. 9.15.

⁷⁶ *Ibid*, para. 9.13.

⁷⁷ *Ibid*, para. 9.14.

2.2.07 The Babalakin Commission also found the cost of the 1983 elections (350 million Naira) was excessive and the value of materials and services provided to the people was poor.⁷⁸ The Commission indicted FEDECO for its poor management of funds, poor record-keeping, poor training of electoral staff and rampant corruption.

Findings on Legal Impunity

2.2.08 In terms of legal process, the Commission frowned at the lackadaisical enactment of the Electoral Law of 1983, which came into force one day before the Presidential elections. Also, because the Chief Judge of each state (each of whom was politically appointed) was authorized to hand-pick panels of judges for the state's election petitions, the appearance of corruption and favouritism for particular parties minimized the legitimacy of their ad-hoc courts.⁷⁹ "This meant that even before verdicts were delivered, there was already fear of deliberate miscarriage of justice, exploiting the technicalities of the law".⁸⁰

2.2.09 The Commission also denounced the "indiscriminate abuse of *nolle prosequi*", which was a discretionary tool used by attorneys-general to dismiss cases of people accused of committing election-related offences. The Commission declared that, "by the abuse of the *nolle prosequi* and pardons, these States encouraged lawlessness both in 1979 and 1983 election periods".⁸¹ It also "strongly recommended that criminal cases connected with the registration of voters and election offences should be given priority of attention by both the police and the office of the Director of Public Prosecutions (DPP)".⁸² Not doing so encourages a sense of impunity for violations of electoral laws.

⁷⁸ *Ibid.* para. 1.13 "The elections of 1983 cost just under 350 million. At the end of it all, there was no general satisfaction that that huge sum had been well spent. Besides, the Governments which were elected into office were booted out by the military. In other words, it can be argued that the nation wasted 350 million Naira on elections in 1983".

⁷⁹ *Ibid.* para. 10.03.

⁸⁰ *Ibid.*

⁸¹ *Ibid.* para. 10:18; see also 8.39(iii) "In 18 states including Abuja, where figures are available, a total of 2,135 offences were recorded, out of which 805 offences charged to court. Of the 805 offences charged to court, 399 of them (50%) were convicted."; "[A]fter the Military take over, instructions went out to all the State Police Commands to drop all the remaining cases involving electoral offences.. That was the explanation offered in all the States for the rather large number of cases awaiting trial or under investigation".

⁸² *Ibid.*

2.2.10 *The Electoral Reform Committee – The Uwais Report (2008)*

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. – Uwais Report para. 2.1(a)

2.2.11 After the 2007 general elections, President Umaru Yar'Adua constituted a 22-member Electoral Reform Committee to examine the entire electoral process with a view to ensuring that the quality and standard of general elections are raised. Justice Muhammadu Lawal Uwais, a former Chief Justice of Nigeria, headed the Committee. Dr. Attahiru Jega, current Chairman of INEC, but then a university administrator, was one of the members of that Committee. The Committee submitted its Report with over fifty-pages of recommendations in 2008.

2.2.12 The Uwais Committee Report found that "impunity ... has marred Nigeria's electoral process to date".⁸³ It recommended serious sanctions and punishment for electoral malfeasance in the form of amendments to the 2006 Electoral Act and the 1999 Federal Constitution. According to the Report:

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, including those of a criminal nature. This would reduce the impunity which has marred Nigeria's electoral process to date, and which threatens to undermine citizens' confidence in the country's political institutions.⁸⁴

2.2.13 The Uwais Committee Report also recommended Section 174(c) of the 1999 Constitution be amended so

[T]he lack of independence of Electoral Commissions at both the Federal and State levels is a key deficiency of our electoral process. – Uwais Report paragraph 3.

⁸³ *Ibid.* para. 2.6.1

⁸⁴ *Ibid.* para. 2.6.1.

that the power of federal and state Attorneys-General to kill cases and investigations does not apply to electoral offences.⁸⁵ The Report similarly recommended an amendment of the Electoral Act 2006 to establish an Electoral Offences Commission to perform the following functions:

- i. Enforcement and administration of the provisions of the Electoral Act;
- ii. Investigation of all electoral frauds and related offences;
- iii. Coordination, enforcement and prosecution of all electoral offences;
- iv. Enforcement of the provisions of the Electoral Act, the constitution of registered political parties and any other Acts or enactments;
- v. Adoption of measures to identify, trace and prosecute political thuggery, electoral fraud, political terrorism and other electoral offences;
- vi. Adoption of measures to prevent and eradicate the commission of electoral malpractices;
- vii. Adoption of measures, which include but are not limited to coordination, prevention and regulatory actions;
- viii. Introduction and maintenance of investigative and control techniques towards the prevention of electoral malpractices and fraudulent election;
- ix. Facilitation of exchange of scientific and technical information with other democracies on the conduct of joint operations and training geared towards the eradication of electoral malpractices and fraudulent election;
- x. Examination and investigation of all reported cases of electoral offences with the view to identifying electoral officers and staff of the electoral commission, individuals, corporate bodies or groups involved in the commission of electoral offences; and
- xi. Collaboration with election observers within and outside Nigeria.⁸⁶

2.2.14 Still in an effort to curb electoral impunity, the Uwais Report further suggested thus: “The penalty for anyone convicted of certain offences relating to a voter’s card as set out in Section 24 of the Electoral Act 2006 should be extended to include legal disability to participate in elections conducted under the Act for a period of ten years”.⁸⁷ In fact, it advocated that “All offences relating to registration of voters by a candidate should, upon conviction, in addition to

⁸⁵ See *ibid.* para. 2.10.11.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.* para. 2.11.4.

other penalties in the Act, carry a period of ten years disqualification from contesting any election”⁸⁸.

2.2.15 The Investigation Panel on 2011 Election Violence – The Lemu Report (2012)

2.2.16 The 2011 general election took place between April 9 and 19, 2011 and was blighted by serious pre-and post-election violence. After the Presidential election on 16 April 2011, widespread violence erupted in many states of northern Nigerian with about 1,000 people murdered. In response, the Federal Government created yet another fact-finding inquiry to determine the cause of the violence and assess the state of elections in Nigeria. Dr. Sheikh Ahmed Lemu headed the Panel. Among the issues addressed in the Panel’s Report were:

2.2.17 Rigging of elections

The Report highlighted manipulations of elections in favour of candidates, allegations that government officials openly influenced voters and rigged elections directly, financial mobilization and purchase of voters cards, allegations of people being prevented from exercising their voting rights and underage voting as some of the challenges that led to the 2011 election violence.

2.2.18 Denial of a level playing field for campaign purposes

There were also issues of access to the financial resources and reports of some State Governors – in Nassarawa & Niger States, among others – who were accused of restricting campaign space of opposition parties within the states during the presidential election campaign. Political parties and candidates were also intimidated.⁸⁹

2.2.19 Administrative Lapses by INEC

⁸⁸ *Ibid.* para. 2.11.12.

⁸⁹ *Ibid.* para 2.10, 2.11.

INEC's lack of preparedness in some major aspects of the election process – such as update and display of voters' registers – denied many citizens the right to participate in government. The Lemu Report noted that the postponement of the National Assembly Elections by INEC, lack of adequate pre-election sensitization, delays in commencement of voting and a lack of adequate election materials contributed to the 2011 post-presidential election violence.⁹⁰

2.2.20 Self-help Approach to Political Grievances

“As a result of loss of confidence in justice administration, there is a great deal of reluctance or refusal by some politicians to follow due process through the law courts in seeking redress to election grievances. Losers in elections among such politicians are more intent to embrace or resort to self-help and vengeful tactics in settling their grievances. This was one of the primary causes of post-election violence in the April 2011 Presidential Elections as well as other previous elections”.⁹¹

2.2.21 Non-implementation of Previous Panel Reports

“Failure of Government to implement the recommendations of previous panels/committees/commissions over the years ... has gradually promoted and encouraged the culture of impunity and consequent distrust of government leaving the impression of the existence of sacred cows in the society as well as absence of the requisite political will on the part of successive governments”.⁹²

2.2.22 *Entrenched Impunity: INEC and Security Agencies*

2.2.23 Little has changed in the period of nearly three decades covered by these three prior investigations. Despite the comprehensive findings of the Babalakin, Uwais, and Lemu Commission, no prosecutions followed any of these reports and few persons have been tried or convicted of crimes associated with the perversion of electoral processes in Nigeria. As this

⁹⁰ *Ibid.* Exec Summ.

⁹¹ *Ibid.* para. 2.7.

⁹² *Ibid.* para. 2.42.

Report shows, courts have indicted numerous individuals and institutions from INEC to political parties, security agencies and candidates for engaging in electoral fraud, violating electoral laws and fair trial norms in relation to pre- or post-election petitions. The INEC and its predecessors have been severally indicted for election results declared in manifest violation of the electoral laws and, in some cases for colluding with some political parties to disobey court orders by, for example, substituting candidates notwithstanding binding court judgements to the contrary.⁹³ In one of the petitions following the 2007 elections, the Nasarawa State National Assembly/Governorship and Legislative Election Tribunal castigated Professor Maurice Iwu's INEC in these unusually harsh words: "Let us quickly state here unreservedly that the names of the institution called INEC would go down in the annals of history as a body fraught with reckless negligence and complacency in the carrying out of its duties, and this is inimical to a healthy democratic set up".⁹⁴

2.2.24 In a case concerning the Ukwuani constituency of Delta State House of Assembly, the Court of Appeal described INEC as "lawless", declaring:⁹⁵

By pronouncing [Charles Udogwu Onyekweli] the rightful candidate of the PDP for the election of 29/4/07, and in view of the fact that the 1st Respondent INEC participated fully in the suit at the Federal High Court, being aware that the judgment in respect of the matter being challenged by the appellant was fixed for 30/4/07 INEC had no business conducting the election on the 29/4/07 if INEC was truly independent. It was therefore the lawlessness exhibited by INEC by conducting the election in the first leg, and going further to issue the 2nd respondent with a certificate of return despite the judgment of the 30/4/07 that further compounded and confounded the already messy and confused situation.⁹⁶

⁹³ *Dr. Alphonsus Ojo v. INEC & Ors.* (2008)13 N.W.L.R. (Pt. 1105) 577, C.A.

⁹⁴ *Lagi Innocent & Anor. v. Yakubu Abdulhamid Kwarra & 43 Ors.*, Petition No. EPT/NS/002/2007, p. 40 (unreported).

⁹⁵ *See Charles Udogwu Onyekweli v. INEC* (2008) 14 N.W.L.R. (Pt. 1107) 317.

⁹⁶ *Ibid.*

2.2.25 Security agencies have also been indicted such as in cases where security agents disrupted elections by carting away voting materials to police stations and other places so ballot papers could be stuffed. In other scenarios, election results were invalidated and persons were indicted for rigging. In *Olusola Adeyeye v. Simeon Oduoye & Ors.*, in the Osun State Central Senatorial District, the Election Tribunal said:

The evidence of violence, voter intimidation, hijacking, illicit thumb printing, ballot box stuffing is overwhelming and beyond reasonable doubt, conjecture or proposition or presumption ... we are further persuaded that the names mentioned by the petitioner's witnesses as being the ringleaders of these electoral crimes and members of the 2nd respondents have not been cleared.⁹⁷

2.2.26 In all of these cases, little or nothing has been done to hold the perpetrators accountable for their actions after courts have identified them of criminal wrongdoing. Successive attorneys-general at the federal and state levels have similarly failed to take the action required by their office. "It has been suggested", according to the Uwais Committee Report, "that the reason why

"The reason why electoral offences go unpunished in Nigeria is as a result of the failure of the respective Attorneys-General to prosecute offenders especially if those involved are members of the ruling party or were acting in the interest of the ruling party". - Uwais Committee Report para. 4.2.26

electoral offences go unpunished in Nigeria is as a result of the failure of the respective Attorneys-General to prosecute offenders especially if those involved are members of the ruling party or were acting in the interest of the ruling party".⁹⁸ The courts and election tribunals continue to deliver technical electoral jurisprudence, indifferent

to the demands of substantial justice and their obligation to effectively protect the right to participation in government as a fundamental entitlement of citizenship.

⁹⁷ *Olusola Adeyeye v. Simeon Oduoye & Ors.*, Petition No. NA/ EPT/OS/12/07 (unreported).

⁹⁸ Uwais Committee Report, *op. cit.*, para. 4.2.26.

2.2.27 As of yet, none of the evidence identified through the election petition system has been reviewed because the tribunals have failed to direct appropriate authorities, including INEC, to initiate or undertake criminal prosecutions or administrative procedures as the case may be, despite the fact that both section 157 of the Electoral Act and the inherent powers of courts and tribunals give them the powers to do so.⁹⁹ The Nasarawa State National Assembly/Governorship and House of Assembly Election Tribunal explained the responsibilities of the courts in this regard in a 2007 election petition as follows:

Agreed that an election petition is a genre of civil rather than criminal action, albeit *sui generis*, wherever or whenever crime is alleged therein the courts are not to take a casual look at it. Elections affect not just the main contestants but also the lives of the electorate and indeed the entire society or community concerned. Validity or otherwise of an election result goes beyond the personal interest of a contestant. While he may personally decide to resign from office after election, those who 'elected' him into office who are the true owners of the mandate are bound to be affected one way or the other not only by his resignation but also by the decision of the court or Tribunal on the validity or otherwise of the election. The electoral process is bigger than the individual candidate and so a candidate cannot by his own personal or unilateral decision or action neutralize or render the process or the judicial machinery set up as a vital arm of the democratic process nugatory or foist a fait accompli on the courts or Tribunal in the discharge of their Constitutional duty.

There is indeed a heavy dose of public policy content involved in election petitions and that is also why both the Constitution and the Electoral Act have made elaborate provisions to ensure that those who harbour criminal tendencies are not only excluded, but if discovered, prosecuted for even daring at all to pollute the system and steal the people's mandate. So,

⁹⁹ See, e.g., Electoral Act, § 157, "The Commission shall consider any recommendation made to it by a tribunal with respect to the prosecution by it of any person for an offence disclosed in any election petition".

where a candidate is alleged to have ‘stolen’ the people’s mandate, it is not sufficient for him to simply drop the mandate and scamper off, the law and the Society must still call him to account for his alleged criminality if any. It is like the case of a man who is alleged to have stolen or converted another man’s property and he comes and says, ‘this is your property, take it and let me go my way’, and when he is thereafter arrested for prosecution, he contends that having dropped the stolen or purportedly stolen goods, prosecuting him has become a mere academic exercise. Remorse may be basis for allocutus or plea bargaining, but it has never been legal basis for non-prosecution of a criminal suspect. We of course, do not lose sight of the fact that this is not a criminal case, but it is a civil case with a very high dose of criminal content and we make these analogies only to drive home the point on why this petition is not rendered nugatory or an academic exercise by the mere fact of the 1st Respondent’s resignation per se.¹⁰⁰

2.2.28 It is heartening that, in the above case, the Tribunal actually recommended to INEC “that prompt and appropriate steps be taken to prosecute the 1st Respondent [Patrick Ashagu Ebinny] for the offence of forgery in respect of West African School Certificate 03452 dated June 1991 presented by him to INEC before the said April 14th 2007 elections”.¹⁰¹ There is no evidence that INEC followed through on the Tribunal’s recommendations.

2.2.29 Meanwhile, as these equivocations persist, politicians continue to see election as “a do-or-die-affair”. “Over the years”, noted the Uwais Report, “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”.¹⁰²

¹⁰⁰ *Umar Sani Ebini & Anor. v. Patrick Ashagu Ebinny & Ors.*, Petition Nos. EPT/NS/007/07 & EPT/NS/011/07 at 21-23 (unreported).

¹⁰¹ *Ibid.* at 36.

¹⁰² Uwais Committee Report, *op. cit.* para. 1.2.1.5.

2.3 The Purpose of the Project

2.3.01 This project is designed to address the pattern of electoral impunity outlined above by documenting the instances that have been established through court records. In doing so, this report deploys the powers of the NHRC in calling attention to this impunity as deserving of urgent response in order to secure and sustain the right to participation in Nigeria as the basis for democratic government in Nigeria. The Project will be undertaken in phases. Its first phase, which covers Nigeria's 2007 and 2011 election cycles, aims to:

- a. Sift through judicial records to gather evidence of violations of criminal electoral law as well as constitutionally and internationally guaranteed rights to effective participation and fair trial;
- b. Isolate any individuals or institutions who courts have found named in any way as involved in such conduct;
- c. Make this evidence available publicly;
- d. Demand action on the part of the relevant authorities or, if they fail to act, propose lawful alternatives;
- e. Enhance citizens' ability to hold electoral and judicial institutions accountable for their actions;
- f. Provide information for public advocacy on electoral and judicial accountability in support of the rights to participation and fair trial; and
- g. Contribute to enhancing the credibility of the mechanisms of governance and accountability in Nigeria.

2.3.02 This Project is based on the assumption that truth, public awareness and access to information are essential foundations for accountable government founded on the rule of law, justice, security and development in Nigeria for, as the Court of Appeal has pointed out:

“[p]olitics is not anarchy, it is not disorderliness, it must be punctuated by justice, fairness and orderliness”.¹⁰³

2.4 Scope and Methodology

2.4.01 This Project is undertaken in phases. The first phase, which encompasses this Initial Report (2007 election cases) and a subsequent Final Report (2011 election cases), covers the 2007 and 2011 elections. This document is an initial report on on-going research. It is also designed to launch a public consultation involving the TWG and the NHRC to elicit responses from Nigerians. The outcome of this public consultation together with updates on the cases and other receivables will be reflected in the final report to be released later in 2014.

2.4.02 Following, the phase one, the Project will then work back in time to the 2003 and 1999 elections. In undertaking this exercise, the Project Team (comprised of the Technical Working Group (TWG), their assistants, and Research Assistants from the NHRC and an NNHRI WA consultant) relied on existing decisions from election petition tribunals and appellate courts. In addition to cases reported in the law reports, the TWG, with the support of the NHRC, obtained certified true copies of all the election petitions decided or contested in the tribunals during the affected period from the Registry of the Court of Appeal. The Project Team also sourced secondary data from the reports of panels or commissions of inquiry that have previously examined related issues of electoral impunity or credibility in Nigeria.

2.4.03 From all of the cases compiled and reviewed, the project personnel then undertook the task of cataloguing:

- 1) Violations of electoral, criminal, or international law as domesticated by Nigeria;
- 2) The types of infractions that occurred, further catalogued by zone, state, and type of election;

¹⁰³ *Hon. Emmanuel Bassey Obot v. Elder Bassey Etim & Ors.*, (2008) 12 N.W.L.R. (Pt. 1102) 754, C.A at 782.

- 3) Any persons indicted for violations of law or abuse of judicial process;
- 4) The statements of indictment as provided for by Court at issue; and
- 5) Whether it can be determined that any further action was taken following the indictment.

2.4.04 For the purposes of this project, an “indictment” is any statement by a court acknowledging wrongdoing that is legally actionable by prosecution, administrative action or other lawful process of accountability or sanction.

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III. THE NORMATIVE BASES FOR ADDRESSING ELECTORAL IMPUNITY IN NIGERIA

“So, where a candidate is alleged to have ‘stolen’ the people’s mandate, it is not sufficient for him to simply drop the mandate and scamper off, the law and the Society must still call him to account for his alleged criminality if any.”¹⁰⁴

3.01 Electoral impunity is worse than grand larceny. It involves the theft of the will of the people. The law, which has ample means to redress and punish theft of mere property, must find mechanisms to deter, punish and prevent theft of on this much larger scale where the stakes are the viability of an entire nation. The problem of electoral impunity raises issues involving several aspects of the law. This section focuses on the human rights (including constitutional law) and criminal law perspectives, which are essential to the rest of the issues covered in the Report.

3.1 Constitutional and Human Rights Perspective

3.1.01 By definition, a democracy is legitimate only when it is founded on the will of its citizens freely and effectively exercised through the ballot. Democracy is based on the principle that citizens must be fully involved in choosing who governs them and how. The right to democratic governance has been described as:

[T]he subjective capacity of individuals and peoples to demand of their rulers a political regime based on the rule of law and separation of powers, in which citizens can periodically elect their leaders and representatives in free and fair elections, on the basis of their interaction between a number of political parties, full respect for the exercise of freedoms of expression, the press and association and the effective enjoyment of human rights.¹⁰⁵

¹⁰⁴ *Umar Sani Ebini & Anor. v. Patrick Ashagu Ebiny & Ors.*, Petition Nos. EPT/NS/007/07 & EPT/NS/011/07 (unreported) at 22.

¹⁰⁵ Promotion and Consolidation of Democracy, UN ESCOR, 53d Sess., at 17 para. 81, UN Doc. E/CN.4/Sub.2/2001/32, at 17 (2001).

Thus, the right to participate in government is also inseparable from other rights, such as the rights to freedom from discrimination or to education, access to information, freedom of association, and movement. Only an enlightened and empowered citizenry can make rational and informed choices about the identities and policies of their rulers. This capacity of citizens to freely express and affect electoral choices is recognised as a universal value in international law.¹⁰⁶

3.1.02 Constitutional provisions

3.1.03 The Constitution of the Federal Republic of Nigeria 1999 (as amended) is the supreme legal instrument as it both regulates Nigeria's political arrangements and gives fundamental human rights legal force within the country. Meanwhile, the "right to participation in government" embodies two key ideas. That is the right to vote and the right to be fairly elected to public office. The Constitution explicitly provides for the right to participate in government through voting (for all citizens above the age of 18).¹⁰⁷ However, it fails to make express provision for the right of citizens to public office. This right – to public office in Nigeria – may be construed in two important ways: First, through interpretation of related provisions in the Constitution (such as voting); and second, through the transformation of the African Charter on Human and Peoples' Rights into domestic law.

3.1.04 It is within this framework that rights associated with governance in Nigeria can be founded on Part 1 of the Constitution. Specifically, Chapter 1 of the Constitution begins:

This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria. The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the Government of Nigeria or

¹⁰⁶ See generally Thomas Franck, *Fairness in International Law and Institutions* (1995) (positing the emerging right to democratic governance and a participatory process). With respect to Africa, see generally Nsongurua Udombana, "Articulating the Right to Democratic Governance in Africa" (2003) 24(4) *Mich. J. Int'l L.* 1209.

¹⁰⁷ *Ibid.* Ch. 5 §§ 77(2) (National Assembly), 117(2) (any legislative house), & 132(5) (presidential elections).

any part thereof, except in accordance with the provisions of this Constitution.¹⁰⁸

3.1.05 Chapter 2 of the Constitution makes clear that, “sovereignty belongs to the people of Nigeria from whom government through this Constitution derives all its powers and authority.”¹⁰⁹ Here, the spirit of the law implies the integral role that the Nigerian people play in governing. Chapter IV of the Constitution goes on to list the fundamental rights and freedoms of Nigerian citizens, each of which play a role in assuring equitable access to participation in government. Freedoms of thought, conscience, religion,¹¹⁰ and expression, including the “freedom to hold opinions and receive and impart ideas and information without interference”¹¹¹ are each expressly granted. Without these rights, access to public office could legally and easily be impeded by discriminations based upon religious beliefs or political ideology.

3.1.06 It is in Section 40, that the key freedoms of assembly and association are granted to Nigerians. The Constitution makes clear that these rights have political implications by stating, “in particular, he [the Nigerian citizen] may form or belong to any political party, trade union or other association for the protection of his interests”.¹¹² The implication that every Nigerian citizen has the a right to freely associate for political purposes strongly infers the citizen’s right to participate in government through elections to public office, as parties are the only vehicles for seeking political office under the Constitution. The Constitution further establishes the Independent National Electoral Commission (INEC)¹¹³ as the institution to assist in the realisation of the promise of democracy through the ballot box. Paragraph 15(a) of the Third Schedule to the Constitution vests INEC with powers to “organise, undertake and supervise all elections to the offices of the President and Vice-President, the Governor and Deputy-Governor of a State, and to the membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation”.

¹⁰⁸ CFRN 1999, § 1.

¹⁰⁹ 1999 Federal Constitution, § 1(2) (*emphasis added*).

¹¹⁰ *Ibid.* § 38.

¹¹¹ *Ibid.* § 39.

¹¹² *Ibid.* § 40.

¹¹³ *See ibid.* § 153.

Transformation of the African Charter

3.1.07 The right to participate in government is also captured in Nigerian law, through the transformation of the African Charter on Human and People's Rights into Nigerian domestic law. The African Charter (Ratification and Enforcement Act) expressly grants a right to participate in government in Article 13.¹¹⁴ Section 13 indicates the two specific ways a right to participate in government can be construed: that is through 1) voting and 2) access to public office in free and fair elections.¹¹⁵ The Act also guarantees a right to fair hearing,¹¹⁶ including a duty to "guarantee the independence of the Courts."¹¹⁷ As an international treaty that Nigeria has signed and then further transformed through domestic legislation, the Act has the binding force of law, just as any other federal enactment. Thus, even though the right is not expressly provided for in the Constitution, it is as applicable as any of the other rights enumerated in Chapter IV.

International Instruments

3.1.08 Nigeria is a party to various international human rights instruments. These instruments complement domestic constitutional and legal human rights guarantees. The right to participate in government and to fair trial are also embodied in these international instruments, among them the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), Constitutive Act of the African Union (2000), African Charter on Human and Peoples' Rights, African Charter on Democracy, Elections and Governance, ECOWAS Protocol on Democracy and Good Governance, and the Protocol to the African Charter on the Rights of Women.

Universal Declaration on Human Rights (UDHR)

¹¹⁴ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Art. 13 "1. Every citizen shall have the right to freely participate in the government of his country; either directly or through freely chosen representatives in accordance with the provisions of the law. 2. Every citizen shall have the right of equal access to the public service of his country."

¹¹⁵ *Ibid.*

¹¹⁶ *Ibid.* Art. 7.

¹¹⁷ *Ibid.* Art. 26.

3.1.09 The UDHR affirms that “the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”¹¹⁸ By this provision, sovereignty vests in citizens, and manifests in elections conducted:

- (a) fairly, in a way that does not advantage any candidate or party;
- (ii) in secret, so that voters are free to choose the candidate that best represents them without intimidation; and
- (iii) in a manner that all adult citizens with full mental capacity are granted equal suffrage or the right to cast votes of equal weight.

3.1.10 The UDHR also guarantees the rights to a fair trial for all persons;¹¹⁹ equality before the law;¹²⁰ and to access to effective remedies when rights are violated.¹²¹ These rights provide a strong foundation for the meaningful access to and action by the courts when the right to participation in government is violated.

3.1.11 Article 10 provides the right to a fair trial for all persons throughout the world. It states, “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” Combined with Article 7, which outlaws discriminatory treatment in courts by stating that all persons should be treated equally under the law¹²² and Article 8 which provides the right to an effective legal remedy when any of its rights are violated, the UDHR provides a strong foundation for the Nigerian citizen to gain meaningful access to court when her fundamental rights are violated.

¹¹⁸ UDHR, Art. 21(1)-(3).

¹¹⁹ *Ibid.*, Art. 10 providing: “[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him”.

¹²⁰ *Ibid.*, Art., 7.

¹²¹ *Ibid.*, Art. 8.

¹²² *Ibid.*, Art., 7 stating “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

3.1.12 Though not a treaty signed by countries, most of the UDHR's provisions have crystallised into customary international law, which gives its words legal force in all countries. Most of its provisions have been incorporated into domestic constitutions and bills of rights. Local courts also frequently rely on the UDHR's provisions in interpreting and applying human rights norms.¹²³

International Covenant on Civil and Political Rights (ICCPR)¹²⁴

3.1.13 The Human Rights Committee established to oversee the implementation of the ICCPR has emphasised the duty of the state to ensure that people entitled to vote are able to exercise that right freely. The Committee specifically makes clear that:

The conduct of public affairs, referred to is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws.¹²⁵

Constitutive Act of the African Union (2000)

3.1.14 Several African regional treaties equally uphold these fundamental rights. The Constitutive Act of the African Union 2000 (AU Act), which Nigeria has adopted, commits all members States and governments to “promote democratic principles and institutions, popular participation and good governance”,¹²⁶ and to “promote and protect human and peoples' rights in accordance with the African Charter on Human and Peoples' Rights and other relevant human

¹²³ See, e.g., *Ubani v. Director of State Security Services & Anor.* [1999] 11 N.W.L.R. 129 (where the UDHR was relied upon in favour of the Appellant who sought a declaration and other reliefs against wrongful arrest, search and detention by operatives of the Nigerian State Security Services (SSS)).

¹²⁴ Nigeria ratified the ICCPR in 1991.

¹²⁵ Human Rights Committee, The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25), CCPR/C/21/Rev.1/Add.7, General Comment No. 25, adopted 57th Session, 7 December 1996, paragraph 5.

¹²⁶ Constitutive Act of the African Union, Art. 4(g).

rights instruments.”¹²⁷ The African Commission on Human and Peoples’ Rights, established to implement and ensure compliance with the rights under the Charter, has called on States to take “all measures to prevent, investigate and prosecute human rights violations which occur during the election period, and provide adequate redress to victims”.

African Charter on Democracy, Elections and Governance (*ACDEG, 2010*)

3.1.15 Adopted by the African Union in 2010, Nigeria ratified the African Charter on Democracy, Elections and Governance in 2011. The Charter is the first legally binding legal instrument that comprehensively addresses all elements of democracy in Africa. It seeks to “promote democracy, rule of law, and human rights¹²⁸ by: “establishing and strengthening independent and impartial national electoral bodies,” holding regular, free and fair elections,¹²⁹ creating institutions that support democracy,¹³⁰ ensuring equal protection under the law,¹³¹ developing legislative and policy frameworks that are pro-democracy,¹³² and promoting best practices in the management of elections for purposes of political stability and good governance. The ACDEG expressly obliges African countries “recognize popular participation through universal suffrage as the inalienable right of the people”.¹³³

ECOWAS Protocol on Democracy and Good Governance

3.1.16 In July 1991, Member States of the Economic Community of West African States (ECOWAS), of which Nigeria is the leading member, met in Abuja to adopt the Declaration of Political Principles of the ECOWAS.¹³⁴ One of the Declaration’s objectives is to promote better relations among ECOWAS States “by ensuring a stable and secure political environment, in which our peoples can live in freedom under the law and in true and lasting peace, free from any threat to or attempt against their security, in which we can pursue a speedy and effective

¹²⁷ *Ibid.* Art. 4(h).

¹²⁸ African Charter on Democracy, Elections and Governance (2010), Art.4.

¹²⁹ *Ibid.* Arts.1,2 & 7(1).

¹³⁰ *Ibid.* 15(1).

¹³¹ *Ibid.* Art. 10(3).

¹³² *Ibid.* Art. 11.

¹³³ *Ibid.*, Article 4(2).

¹³⁴ Declaration of Political Principles of the ECOWAS, A/DCL.1/7/91 (1991).

realization of the objectives of ECOWAS”.¹³⁵ The Declaration contains the following principle, among others:

We believe in the liberty of the individual and in his inalienable right to participate by means of free and democratic processes in the framing of the society in which he lives. We will therefore strive to encourage and promote in each of our countries, political pluralism and those representative institutions and guarantees for personal safety and freedom under the law that are our common heritage.¹³⁶

3.1.17 In 2008, ECOWAS Member States, including Nigeria, adopted the Protocol on Democracy and Good Governance. The Protocol affirms that: “Every accession to power must be made through free, fair and transparent elections”.¹³⁷ The ECOWAS Protocol also enshrines the principle of popular participation in decision-making, strict adherence to democratic principles and decentralization of power at all levels of governance and further guarantees the freedom of all registered political parties, to “participate freely and without hindrance or discrimination in any electoral process”.¹³⁸ The freedom of the opposition is similarly guaranteed.

Protocol to the African Charter on the Rights of Women in Africa (2000)

3.1.18 The regional Protocol to the African Charter of the Rights of Women in Africa builds upon the rights to vote, participate in government, hold public office,¹³⁹ and be equally protected by the laws of a nation¹⁴⁰ enumerated in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Protocol goes further to provide “effective

¹³⁵ *Ibid.* pmb1.

¹³⁶ *Ibid.* para. 6.

¹³⁷ ECOWAS Protocol on Democracy and Good Governance 2001/2008, Art. 1.

¹³⁸ *Ibid.*

¹³⁹ Regional Protocol to the African Charter of the Rights of Women in Africa Art. 7.

¹⁴⁰ *Ibid.* Art. 15.

access to judicial and legal services, including legal aid”,¹⁴¹ and that women can “participate without any discrimination in all elections”.¹⁴²

Election Monitoring and the Practice of International Organisations

3.1.19 Foreign and local election observation missions as well as the practice of international organisations further strengthen electoral rights, procedures, and best practices. Election observation has become accepted as part of the tool-kits of verifying the effectiveness of the right to participation. Local election observers and others from accredited international institutions such as the African Union, the Commonwealth, European Union, National Democratic Institute, UNDP, and the Transition Monitoring Group – among others - are a standard requirement in elections in emerging democracies. Election observers serve a critical role in ensuring compliance with the electoral process.

3.1.20 Regarding the practice of international organisations, the Constitutive Act of the African Union provides that “[G]overnments which shall come to power through unconstitutional means shall not be allowed to participate in the activities of the Union”.¹⁴³ Unconstitutional changes in government remove the Nigerian citizens’ rights to choose their government and political leaders. This in turn undermines the constitution, subverts democratic governance, and leads to gross violations of human rights.

3.1.21 By prescribing sanctions for unconstitutional changes of government, the African Union Act clearly affirms that the regularity of elections is a matter that is not primarily within the domestic sphere of any country. It also invites the world within and beyond Africa to show active interest in ensuring that the rules regulating elections are applied fairly, firmly and effectively.

3.2 Criminal Law Perspective

¹⁴¹ *Ibid.* Art. 8.

¹⁴² *Ibid.* Art. 9(1).

¹⁴³ Constitutive Act of the African Union, Article 30. Article 23(5) of the African Charter on Democracy and Good Governance defines ‘unconstitutional change of government’ to include “[a]ny amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government”.

3.2.01 The Electoral Act 2006 is the principal legislation that regulated the conduct of the 2007 elections in Nigeria. It is fashioned to help Nigerians enforce the rights to democratic governance by regulating the conduct of elections at federal, state and local levels. The Act is a significant improvement over previous electoral laws. Among other things, it closes a loophole that allowed parties to change candidates even after polling had ended; reinforces the supremacy of election tribunal judgments over INEC's certification process when election results are contested; seeks to regulate campaign financing; and empowers INEC to appoint its own Secretary.

3.2.02 More significantly, the Act creates electoral offences as a check on impunity. Offences covered under of the Act relate to: registration, nomination, improper use of voters' cards, impersonation and voting of unqualified persons, dereliction of duty, bribery and conspiracy, and breaches of secret voting.¹⁴⁴ Also included are: wrongful voting and false statements, voting by unregistered persons, disorderly conduct at elections, treating, undue influence, and all other offences on Election Day. The Act vests jurisdiction to try these offences "in a Magistrate Court or a High Court of a State in which the offence is committed, or the Federal Capital Territory, Abuja".¹⁴⁵

3.2.03 The Electoral Act 2006 was repealed and replaced by the Electoral Act 2010. However, since most of the cases captured so far in this Report arose from the 2007 general elections, the Electoral Act 2006 is used for the narrative. Besides, there is not much difference between the 2006 and 2010 Acts in terms of electoral offences, though the latter Act has increased the punishments for most of the offences. A summary of the offences bearing directly on the objectives of this Report are provided below. The differences between the 2006 and 2010 Acts and the prescribed punishments are highlighted in the Appendix below.

3.2.04 The first category of offences relates registration and to includes:

¹⁴⁴ Electoral Act 2010, Part VIII.

¹⁴⁵ *Ibid.* § 158.

- Destroying, mutilating, defacing, removing or altering without authorization any notice or document required for registration;
- Knowingly giving false information or making a false statement on any application for registration of name or in reference to keeping a name on the register of voters;
- Deliberately registering in a wrong constituency or registering more than once; knowingly publishing any false statement or report so as to prevent persons who are qualified to register from doing so;
- Knowingly making a false statement in any record, register or document which is required to for registration.¹⁴⁶
- Obstructing a registration or revision officer in his duties;
- Wearing any identification purporting to be the identification of a registration officer without authorization; or
- Forging a registration card; or carrying out registration or revision of voters at a centre not designated by INEC.

3.2.05 There are offences in respect of nomination, such as:

- Forging or willfully defacing or destroying any nomination paper, ballot paper, official mark, or certificate of return;
- Delivering any nomination paper knowing it to be forged to an electoral officer;
- Signing a nomination paper as a candidate in more than one constituency at the same election.
- Giving a ballot paper to any person without authority;
- Willfully placing in any ballot box any unauthorized paper;
- Willfully removing from a polling station any ballot paper;

¹⁴⁶ *Ibid.* § 124.

- Destroying or otherwise interfering with a ballot box, its contents, or ballot paper without authority; or
- Signing a nomination paper consenting to be a candidate at an election knowing that he is ineligible to be a candidate at that election.
- Printing a ballot paper or anything that could be used as such without proper authority;
- Printing a number of ballot papers in excess of INEC authorization;
- Being found in possession of a ballot paper when not in the process of voting; or
- Manufacturing, constructing, importing into Nigeria, or having in possession, or supplying to any election official any ballot box or mechanism where a ballot paper could be secretly placed or stored in, or that could be secretly diverted, misplaced or manipulated during polling.

3.2.06 Some offences relate to improper use of voters' cards, such as:

- Giving one's voters' card to another to use at an election;
- Having in one's possession more than one voter's card without a lawful excuse; or
- Buying, selling, procuring or dealing with a voters' card.

3.2.07 Offences of impersonation and voting by a person not qualified to vote is also covered, such as:

- Application to be included on a list of voters in the name of a living, dead or fictitious person;
- Application to be included in another list knowing s one's name was properly included in a list of voters;

- Application for a ballot paper in the name of some o a living, dead or fictitious person;
- Voting at an election and applying for another ballot paper;
- Voting or attempting to vote at an election knowing that one is not qualified; or
- Inducing or procuring another to vote knowing that such other person is not qualified to vote.

3.2.08 There are offences relating to dereliction of duty by INEC officials, such as any:

- Officer who, without a lawful excuse omits any act or omits to act in breach of his official duty; or
- Polling Officer that fails to report promptly at his polling station on an election day;¹⁴⁷ or
- Person who announces or publishes an election result knowing it to be false or at odds with the signed certificate of return; or
- Returning Officer or Collation Officer who delivers or causes to be delivered to INEC a false certificate of return knowing it to be false; or
- Person who delivers or causes to be delivered to any news media a false Certificate of return knowing it to be false.

3.2.09 Offences of bribery and conspiracy in relation to elections are also covered by the Electoral Act. These include anyone who:

- Directly or indirectly gives, lends offers, promises or endeavours to procure any valuable consideration for any person in order to induce a vote, refrain from voting, at any election; or

¹⁴⁷ It could be implied that late arrival of election materials is covered by this provision, as this is often the result of derelict by INEC officials.

- Attempts through corrupt means to either return the election of a candidate to office or to influence a voter's choice; or
 - Gives any gift, loan, offer, promise, agreement, corruptly procures, or tries to procure, the vote of any voter or the return of a specific person to an elected office; or
 - Advances, pays or causes to be paid any money with the intent of bribery at any election; or
 - Directly, or indirectly, by himself, receives anything of value after any election in exchange for any person voting or refraining from voting; or
 - Induces another to vote or refrain from voting; or
 - Induces a candidate to refrain from canvassing for votes for himself at any such election; or
 - Directly or indirectly himself receives, agrees or contracts for anything of value such as an office, or place of employment, for himself or another in exchange for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election.

3.2.10 The breach of secrecy in voting is also a crime punishable under the Electoral Act. Every person, including electoral officers and candidates, in attendance at a polling station or collation centre is required to maintain the secrecy of voting. No person in attendance at a polling booth is permitted, unless authorized by law, to communicate any information on the register of any voter. Similarly, no person shall interfere with a voter casting his vote, or obtain or attempt to obtain information in a polling station about who a voter is voting for; nor shall they communicate information obtained in a polling station as to the candidate to whom a voter is about to vote or has voted for.

3.2.11 The Act prescribes some punishment for anyone who:

- Votes at an election or induces or procures any person to vote at an election, knowing that he or such person is prohibited from voting; or

- Publishes a statement claiming a candidate has withdrawn knowing this is false or without taking care to ensure it is true; or
- Publishes a false statement without reasonable grounds for belief relating to the personal character or conduct of a candidate that is intended to prejudice the candidate's chance of election or to promote election of another candidate.

3.2.12 Similarly, it is a crime for a person to:

- Vote or attempt to vote in a place where he knows his name is not on the register; or
- Knowingly bring into a polling station during an election a voters card issued to another person; or
- Act or incite others to act in a disorderly manner

3.2.13 The law also punishes treating and undue influence, that is a:

- Person who, by himself or by any other person after the date of an election has been announced, directly or indirectly gives or provides or pays money to or any person for the purpose of corruptly influencing another to vote or refrain from voting at such election, or on account of such person or any other person having voted or refrained from voting at such election; or
- Voter who corruptly accepts any inducement after the date of an election has been announced; or
- Person who directly or indirectly uses or threatens to use force or inflicts or threatens to inflict injury, damage, harm or loss against a person in order to compel that person to vote or refrain from voting, or on account of such person having voted or refrained from voting; or
- Person who, by abduction, duress, or a fraudulent device or contrivance, impedes or prevents the free use of the vote by a voter or thereby compels, induces, or prevails on a voter to give or refrain from giving his vote; or

- Who prevents any political aspirants from free use of the media, designated vehicles, mobilization of political support and campaigns at an election.

3.2.14 The Electoral Act prohibits some conduct on an election day. Thus, on the date of an election, no person is authorised to do any of the following in a polling station or within a distance of 300 metres of a polling station:

- Canvass for or solicit votes
- Persuade any voter not to vote for any particular candidate or generally;
- Shout slogans concerning the election;
- Possess any offensive weapon, wear any dress or have any facial or other decoration which is calculated to intimidate voters;
- Exhibit, wear or tender any notice, symbol, photograph or party card referring to the election;
- Use any vehicle bearing the colour or symbol of a political party;
- Loiter without lawful excuse after voting or after being refused to vote;
- Snatch or destroy any election materials; or
- Blare a siren.¹⁴⁸

3.2.15 Similarly, no one near a polling unit or collation centre can convene, hold or attend any public meeting during polling. Nor can they make official announcements, operate a megaphone, amplifier or public address apparatus, unless appointed under the Act; or carry any badge, poster, banner, flag or symbol relating to a political party or to the election.¹⁴⁹ Any person who snatches or destroys any election materials is liable, on conviction, to 24 months imprisonment.

3.3 Some Concluding Deductions

3.3.01 The conclusions that may be drawn from this segment are:

¹⁴⁸ *Ibid.* § 136(1).

¹⁴⁹ *Ibid.* § 136(2).

- Nigerians have a basic right, secured by law, to participate freely and safely in government, including to choose who leads the country at various levels.
- This right is protected and exercised through the ballot.
- It is a crime under Nigerian law to interfere with voting through intimidation, rigging, treating, forgery of results, violence, etc.
- The punishments for such crimes are clear under law. However, enforcement appears to have been lacking, supporting the assertion by the Babalakin Commission “with a large measure of truth, that rigging of elections has become part of our political culture.”
- Courts and law enforcement agencies have not been diligent in ensuring accountability for these crimes.

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IV. THE CHALLENGE OF ELECTORAL IMPUNITY IN NIGERIA: EVIDENCE FROM DECIDED CASES

“Indeed, it can be claimed with a large measure of truth, that rigging of elections has become part of our political culture.”¹⁵⁰

“Our leaders tend to feel that they can remain in office even when it is clear to them that they have lost favour with the people.”¹⁵¹

4.01 Electoral impunity in Nigeria manifests in two ways: first, in the theft of the mandate of the people to elect their leaders; second, in the inability of the legal process and institutions to ensure effective accountability for such theft.

4.1 Evidence of impunity in the electoral process

4.1.01 Voting is an integral part of the election process that goes beyond the act of casting a ballot paper into a ballot box. It encompasses all the preparation made by INEC, including:

- The registration of voters;
- Delimitation of constituencies, wards and polling units;
- Display of voters register;
- Printing and distribution of ballot papers;
- Management of election-related supplies and logistics;
- Security for participants in the election process;
- Staffing and appointment of electoral officials of all categories;
- Collation, management and announcement of returns; and
- Provision of enabling environment for a peaceful election.¹⁵²

¹⁵⁰ Babalakin Commission Report, *op. cit.* para 10.10.

¹⁵¹ *Ibid.* para 8.03(iii).

¹⁵² See *Chief (Mrs.) Edith Mike Ejezie v. Ralph Okeke & 6 Ors.*, Petition No. EPT/AN/NAE/HR/13/2007 (unreported).

These interrelated tasks determine the credibility of elections and are also the sites of most electoral crimes. Election judgments examined for this Report show precisely how lax election preparations and processes result in electoral crimes and aid the culture impunity.

Cases indicating patterns of violations of the right to participate in government and the right to public service

4.1.02 Nigerian election petition tribunals and courts have repeatedly found that political parties, individuals, and public institutions have habitually violated the rights of citizens to effective participation in government and public service. These same cases clearly illustrate the patterns of criminal activity that are used to violate these rights, such as the:

- 1) Submission of forged documents on behalf of unqualified candidates;
- 2) Diverse forms of electoral violence, including the use of thugs, policemen and soldiers to disrupt elections and facilitate the manufacture of fictional or pre-determined returns;
- 3) Falsification and manipulation of election results
- 4) Mismanagement by INEC of electoral logistics such as ensuring timely delivery and supply of voting materials on election day;
- 5) Casting of multiple votes;
- 6) Substitution/exclusion of candidates; and
- 6) Omission of a party's name and symbol on the ballot paper;

4.1.03 A sample of cases below illustrates each of these patterns and serve as a grand indictment on the modern Nigerian electoral process. The cases come from all six geographical zones and involve each of the major parties running in the 2007 and 2011 elections. A more detailed list of indictments is set out in the Appendix to this Report, which further supports the scope and gravity of the impunity associated with elections in Nigeria.

4.1.2 Corrupt Practices by candidates, Electoral officials, and political parties

4.1.2.01 Many cases reveal corrupt practices during elections, including false declarations of age and/or forged certificates by candidates; use of thugs and security agents to disrupt elections and facilitate rigging; and manipulation of election results. Corrupt practices “denote or can be said to connote or embrace certain perfidious and debauched activities which are clearly felonious in character being redolent in their depravity and want of ethics. They become the hallmark of decayed nature lacking in conscience or principles”.¹⁵³ As identified in Section Three of this report, each of these are crimes punishable by law, and as such should be prosecuted. In the course of preparing this report, we were unable to find any case in which any of these cases had been prosecuted despite various clear cases of breach.

Falsified/forged documents

4.1.2.02 During the 2007 election, Tunde Isiaq, a candidate for Ibeju-Lekki Federal Constituency in the south-west was indicted by the election tribunal because he falsified his school certificate in order to meet the constitutional requirements for office, but he was not prosecuted.¹⁵⁴ In the North Central Zone, Patrick Ashagu Ebinny, who ran for the Nasarawa House of Assembly, was indicted by the National Assembly/Governorship and Legislative Houses Election Petition Tribunal in Lafia for presenting a forged certificate to INEC¹⁵⁵ contrary to section 107(1)(i) of the Constitution. Here also, the Tribunal did not direct authorities to prosecute, although they clearly identified a criminal offense.

4.1.2.03 Again in Nasarawa State, Yakubu Abdulhamid Kwarra was indicted by the same court on similar grounds:¹⁵⁶

There is in our humble view credible and overwhelming evidence that the certificate of graduation in Exhibit ‘PET 1’ date 22nd May 2002 was

¹⁵³ *Yusuf v. Obasanjo*, (2006) All F.W.L.R. (Pt. 294) 387 at 460.

¹⁵⁴ *Okanlonwon Soniyi v. Tunde Isiaq & Ors.*, Suit No. EPT/LAS/NA/10/2007 (unreported).

¹⁵⁵ *Umar Sani Ebini & Anor. v. Patrick Ashagu Ebinny & Ors.*, Petition Nos. EPT/NS/007/07 & EPT/NS/011/07 (unreported).

¹⁵⁶ *Lagi Innocent & Anor. v. Yakubu Abdulhamid Kwarra & 43 Ors.*, Petition No. EPT/NS/002/2007 (unreported).

FORGED ... There is evidence before us that [Kwarra] won the election to the Wamba Constituency for the House of Assembly Yes he may have won by more than a simple majority as required by law, which we find in fact he did, *but he arrived there on the platform of fraud*. This negates the dictate of the law of this land and indeed Public Policy. [Kwarra] lied to the people to win and nothing will stop him from continuing to lie to the people. He deceived the electorate by producing a forged certificate. He deceived them by lying about his actual age, and this [*ab initio*] in our humble but firm view invalidate the said election ... By presenting Exhibit 'PET 1', he betrayed the trust reposed on him by the people who voted him in. He stole the votes, albeit majority votes which he secured by his lies.¹⁵⁷

Kwarra, too, was not prosecuted for his criminal behaviour.

Violence and Intimidation

4.1.2.04 Election tribunals have routinely indicted political parties and politicians for using thugs and security agents to intimidate voters, disrupt the democratic process and facilitate

From the little I know I still maintain that if you ask us to vote today no one should be surprised if the guns boom the following week, month, or year. – *Testimony of Alhaji Bello Babayo Dukku, Babalakin Report, paragraph 6.22*

rigging. Electoral violence clearly violates the criminal law and the Electoral Act, as described in section three of this Report. Even in cases where such acts of violence could not be linked directly with a candidate for the election – meaning that the candidate cannot be held responsible for those acts – any other person found guilty of such acts should face the penalty imposed by law.¹⁵⁸

¹⁵⁷ *Ibid.* (emphasis added).

¹⁵⁸ See *Buhari v. Obasanjo* (2005) 13 N.W.L.R. (Pt. 94) 1 at 19.

4.1.2.05 In 2007, the Election Petition Tribunal deplored for widespread corrupt practices, manipulation of results, thuggery, multiple voting, substantial irregularities and non-compliance with mandatory provisions of the Electoral Act, and other forms of violence leading to the disenfranchisement of many voters after an Osun State Central Senatorial District election, in South-West Nigeria.¹⁵⁹

4.1.2.06 In the North West, election officials were attacked during the April 2007 House of Assembly election in Tudun Wada Constituency, Kano State.¹⁶⁰ Presiding officers, clerks and security personnel in polling stations were beaten and injured. Ballot boxes, ballot papers, result sheets and voters registers were either snatched and destroyed or kept in captivity “by a group of youth carrying dangerous weapons which patrol through the registration areas of the Local Government Area on the eve, during and after the elections”.¹⁶¹ The Kano State Governorship and Legislative Houses Election Petition Tribunal deplored the acts and nullified the election. According to the Tribunal: “The report in Exhibit P is a sad commentary on the electorate of Tudun Wada Constituency and an affront to democratic culture; they may do well to join the queue for democratic process”.¹⁶²

4.1.2.07 In Kogi state, North Central Zone, Hon. Clarence Olafemi was unseated from his state House of Assembly office after the Tribunal nullified the election and stated¹⁶³:

The petitioners have proved beyond reasonable doubt that ... Hon. Clarence Olafemi *leading his agents and thugs did commit acts of corrupt practices* and non-compliance with the Electoral Act by disrupting the conduct of election, harassing and intimidating eligible voters who were sent away from polling units without voting. And, as pointed out ... the disruption affected more [than] 50% of the wards in the entire constituency.¹⁶⁴

¹⁵⁹ *Olusola Adeyeye v. Simeon Oduoye & Ors.*, Petition No. NA/ EPT/OS/12/07 (unreported).

¹⁶⁰ *Alhaji Sule Lawan Shuwaki & Anor. v. Abdullahi Illiyasu & Ors.*, EPT/KNS/HA/08/07 (unreported).

¹⁶¹ *Ibid.* p. 14.

¹⁶² *Ibid.*

¹⁶³ *(Alara) Abereoran & Anor. v. Hon. Claraence Olafemi & 17 Ors.*, Petition No. NAGLH/KG/15/2007 (unreported).

¹⁶⁴ *Ibid.* (emphasis added).

4.1.2.08 Another Kogi state house assembly election was invalidated in 2007.¹⁶⁵ The Court found that the election was not free and fair and that the winner, Mohammed Nwaha Abdulsalam was not validly elected. In nullifying the election, the Tribunal stated:

... it is clear that both sides were involved in the act of thuggery, violence, intimidation of voters and disruption of the election in Kabba Area [Siaka] in his statement categorically stated that the thugs were led by [Respondent Witness] 4 It is our view that they could not have been working for anyone else on the day of the election based on the entire evidence before us ... *the atmosphere and the situation in Kabba Area on the day of the election was such that the people were not allowed to freely exercise their franchise.* ... It is our view that the declaration of the 1st Respondent as the winner of the said election cannot stand in the face of the evidence before us ... The picture painted before us is that voters were scared away from the polling stations, *those already there ran away for their lives.* It is our view that the atmosphere as painted before us is such that makes 90 – 100% turn out of voters as recorded in Asuta, Odo Eket, Oke koko, Odolu, Aiyewa and Ayeteju wards unbelievable.¹⁶⁶

4.1.2.09 In another case, where the Ondo State Governorship/Legislative House Election Tribunal found similar criminal conduct, it said:¹⁶⁷

One has to give it to thugs when it comes to disruption of any organised event like election[s]. It should not be so. *Thugs and policemen and soldiers acting as thugs have no business being at polling units and collation centres used for election.* On the totality of the proven evidence before us, we cannot allow the purported election of [Temitayo Fawehinmi] to stand. If we do in the face of all the serious irregularities

¹⁶⁵ *Sanni Emmanuel Siaka v. Mohammed Nwaha Abdulsalam & 85 Ors.*, Petition No. NAGLH/KG/6/2007 (unreported).

¹⁶⁶ *Ibid.* (emphasis added).

¹⁶⁷ *Dr. Joseph Iranola Akinola v. Temitayo Fawehinmi & Ors.*, Petition No. EPT/OND/NA/15/20007 (unreported).

and corrupt practices, *it would amount to giving a stamp of approval to proven malpractices and raising rigging to great heights. We cannot do such a thing.*¹⁶⁸

As is the pattern, the Tribunals failed in each of these cases to direct the appropriate authorities, including INEC, to prosecute the crimes they identified.

Falsification and manipulation of election results

4.1.2.10 Nigerian law presumes that election results, as declared by INEC, are correct until the contrary is proven. In other words, there is a rebuttable presumption that the result of any election declared by a returning officer is correct and authentic. The burden is on the person who denies the correctness and authenticity of the return to rebut the presumption.¹⁶⁹ Besides the potential injustice that this strict burden portends, some of the cases reviewed have indicted INEC or its agents for declaring election results knowing that those results were manifestly unlawful. Thus, there are cases of corrupt practices involving deliberate falsification and manipulation of election results by INEC and political parties. Such criminal behaviour violates the right to participation.

In a ward in Anambra where only 2089 voters were registered, INEC declared over 7226 votes in favour of the Petitioner alone.

4.1.2.11 A most egregious case was found in the South East zone 2007 general elections.¹⁷⁰ In a ward in Anambra where only 2089 voters were registered, INEC declared over 7226 votes in favour of the Petitioner alone. The Anambra State National Assembly/Governorship Election Petition Tribunal had this to say:

It is this total vote ... that [*Mrs. Edith Ejezie*] by her claims in this case had strenuously contended was amongst the unlawful and unveiled votes and result credited to the candidates ... We find it plausible to hold that

¹⁶⁸ *Ibid* (emphasis added).

¹⁶⁹ See *Omoboriowo v. Aiasin*, (1984) 1 S.C.N.L.R. 108; *Jalingo v. Nyame*, (1992) 3 N.W.L.R. (Pt. 231) 538; *Finebone v. Brown*, (1999) 4 N.W.L.R. (Pt. 600) 613; *Hashidu v. Goie*, (2003) 15 N.W.L.R. (Pt. 843) 361; *Buhari v. Obasanio*, (2005) 13 N.W.L.R. (Pt. 941) 1; and *Buhari v. INEC*, (2008) 12 S.C. (Pt. 1) 1.

¹⁷⁰ *Chief (Mrs.) Edith Ejezie v. Hon Ralph Okeke & Ors.*, Petition No. EPT/AN/NAF/HR/13/2007 (unreported).

these results were not the product of any valid election but were merely allocated to the candidates by the 2nd to 6th Respondents and must be nullified.

4.1.2.12 In Edo, Prince Henry Iseghohi contested the election results for the Edo Central Senatorial District after “armed thugs forcefully collected ballot papers from the INEC *ad-hoc*

“No
the
for

There was stuffing of ballot boxes with illegally thumbprinted ballot papers, hijacking of ballot boxes and electoral materials, intimidation of AC party agents, deployment of guns and thugs, falsification of result figures at the units, wards and Local Government collation centers. The result defiled (*sic*) logic ... The purported Local Government collation was done under Military siege. – *Prince Henry Iseghohi v. INEC*, Petition No. EDSE/EPT/3/07 (unreported).

staff”. The Tribunal declared that collations were done in the 8 units of ward 5 before sending the result to Local Government collation centre at Eguare Primary School Uromi”.¹⁷¹ Furthermore, it found that 11 ward supervisors had “gone underground fear of being killed by PDP invading thugs, policemen, and soldiers.”

4.1.2.13 Another case in Edo State affected Hon. Moses Omo Egharevba of the PDP, who alleged that Mr. Ogbeiwi (Etinosa) Ikponmwosa was unlawfully declared as the winner of the House of Assembly Election for Orhionmwon II Constituency held on 14 April 2007.¹⁷² Mr. Egharevba’s ground for the petition were, among others, that Mr. Ikponmwosa was not qualified to contest the election and that his election was invalid by reason of corrupt practices and non-compliance with the Electoral Act. In granting Mr. Egharevba’s prayer, the Tribunal invalidated “the so-called kangaroo election conducted in Urhonigbe South Ward and the fictitious votes therefrom”, as no election took place there due to intimidation and hijacking of voting materials by agents of Mr. Ikponmwosa. The Tribunal also indicted INEC in the following words:

¹⁷¹ *Prince Henry Iseghohi v. Independent National Electoral Commission*, Petition No. EDSE/EPT/3/07 (unreported).

¹⁷² *See Hon. Moses Omo Egharevba & PDP v. Mr. Ogbeiwi (Etinosa) Ikponmwosa & 6 Ors.*, Petition No. EDSA/EPT/3/07.

For the INEC to admit that there was no election and later make a volte face to say there was election in that ward speaks volumes about what is left of the stunned integrity and reputation of INEC in that electoral process. That U-turn, as it were, smacks of double speak which does not find favour with the law.¹⁷³

4.1.2.14 In one such case in the Ahoada West Constituency Rivers State South South Zone,¹⁷⁴ Joseph Elleh (alleged that INEC declared Hon. Hope Ikiriko as winner of the April 2007 House of Assembly Election for the Ahoada West Constituency of Rivers State in clear violation of the Electoral Act because there was no valid voting/election in the wards and units of the constituency; that Voters' Register was not available in the election; and that there was multiple thumb printing of the ballot papers, among other malpractices. In nullifying the Election, the Tribunal found that "the Electoral Officer [Mrs. Rita Deeyor] wrongly exercised her power under Section 54(4) of the Electoral Act, 2006 to return the 2nd Respondent as the winner of the Election in question".¹⁷⁵ According to the Tribunal:

It is therefore merely stating the obvious fact that there was no voter's register in the conduct of the election in dispute. There could not have therefore been valid accreditation, valid conduct of polls, valid counting of voters, valid collation of results, valid signing of Results forms and valid publication of Results.¹⁷⁶

4.1.2.15 In another case emanating from Kaduna State, Engr. Suleiman Lere (1st Petitioner) of ANPP challenged the return of Hon. Saudatu Sani (1st Respondent) of PDP as the duly elected candidate for the 21 April 2007 Election to the Lere Federal Constituency.¹⁷⁷ His ground, among others, was that the election was invalid by reason of substantial irregularities and malpractice in some of the wards (including inflation of votes) as well as non-compliance with the Electoral Act 2006. The Tribunal found the allegation true, set aside the return of Hon.

¹⁷³ *Ibid.*

¹⁷⁴ *See Barr. Joseph Elleh v. INEC & Anor.*, Petition No. PET/SA/20/2007.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *See Engr. Suleiman A. Lere & Anor v. Hon. Saudatu A. Sani & 81 Ors.*, Petition No. EPT/KD/NA/0003.

Sani by INEC and declared Engr. Lere the duly elected member of the Lere Federal Constituency of Kaduna State. The Tribunal further indicted INEC thus:

We will at this stage express the dislike of the law on the practice of allowing party members of any one party to function as INEC Supervisor or Returning Officer in the conduct of election. This no doubt cannot be seen to ensure neutrality. In *Haruna v. Modibbo (supra)*, the Court held thus: “INEC is supposed to be a neutral body. The body should never place itself in a position where imputation may be made that it supports one party or the other in the election”. Furthermore *from the evidence elicited from RW7 and RW8 under cross-examination it is apparent that the results declared for the aforesaid Kayara and Garu wards were in excess of the voters purportedly accredited in Exhibit L and M series, being Voters Registers for the said wards.*¹⁷⁸

Substitution of Candidates & Unlawful Exclusion from Election

4.1.2.16 Substitution of candidates is a new trend in Nigerian politics. Although the Electoral Act 2006 contains clear provisions on substitution of candidates, these provisions are honoured more often in the breach. The Act obliges every political party to submit to INEC their list of candidates at least 120 days before a general election.¹⁷⁹ If a party wants to change its candidates for an election, it must inform INEC in writing at least 60 days before the election.¹⁸⁰ Meanwhile, INEC must give a statement of the names of candidates nominated at least thirty (30) days before the day of the election.¹⁸¹ While the Act vests the right to sponsor and nominate candidates for election on political parties, it places a duty on INEC to publish the personal details of such candidate within seven (7) days of receipt of his nomination and to publish the full list of all contestants at least thirty (30) days before the date of election. According to one

¹⁷⁸ *Ibid.* (emphasis added).

¹⁷⁹ See Electoral Act, § 32(1). A candidate for an election is nominated in writing by those persons whose names appear on INEC Register of Voters for the affected constituency. See *ibid.* § 33(1).

¹⁸⁰ See *ibid.* S. 34. According to the Supreme Court, error in having sent the name of the wrong candidate to INEC, without more, will not amount to a cogent and verifiable reason, as it is no reason at all; see also *Adeogun & Anor. v. Fasogbon & Ors.* [2011] 8 N.W.L.R. (Pt. 1250) 427 at 460.

¹⁸¹ See Electoral Act, § 35.

Election Tribunal, the Act does not give INEC power to alter the list of candidates after it has been published. In fact, INEC has no power whatsoever to remove the name of any person for whatever reason from the published list.¹⁸²

4.1.2.17 Despite the clear provisions of the law, several cases reviewed for this Report reveal unlawful substitution of nominated candidates after party primaries. Such acts violate the Electoral Act and ought to be punished. A compelling example is that of Governor Rotimi Amaechi in the 2007 elections in the South-South. Amaechi was nominated during the Rivers State PDP primaries for the Governorship Election. However, INEC, without lawful reason, substituted Amaechi with Celestine Omehia, who actually represented PDP in the Governorship Elections. Amaechi brought an action at the Federal High Court but lost there and at the Court of Appeal. Dissatisfied with the results, he further appealed to the Supreme Court where the Supreme Court found that the actions of INEC and PDP ignored Section 34 of the Electoral Act and that Amaechi was the rightful PDP candidate. It indicted INEC and the PDP for colluding to deny Amaechi his right to effective participation in electoral democracy; and reiterated the binding nature of an order of court and its enforcement in Nigeria until it is set aside on appeal.¹⁸³

INEC, acting in collusion with ANPP, excluded Alhaji Saulawa from the election.

4.1.2.18 In the North West, the ANPP inexplicably removed and replaced the name of Alhaji Saulawa with the name of another candidate in the Primary Election to the House of Representatives for the Katsina Central Federal Constituency. Despite a court order rejecting the exclusion, INEC, acting in collusion with ANPP, still excluded Alhaji Saulawa from the election. The Court of Appeal held that the actions of INEC, ANPP and the Election Tribunal denied Saulawa the right to effective participation in electoral democracy.¹⁸⁴

¹⁸² *Hon. Peter Azi & Anor. v. Yakubu Choji & 4 Ors.*, Petition No: PL/LHEPT/10/2007. See also *A.C. v. INEC* (2007) 17 N.W.L.R. (Pt. 1048) 222 at 275, where the Supreme Court exhorted INEC not to act outside the intendment of the Constitution and the Electoral Act.

¹⁸³ *Rt. Hon Rotimi Chibuke Amaechi v. INEC & Ors.* (2008) 6 W.R.N. 1 (SC).

¹⁸⁴ *Alhaji I. M. Saulawa v. Badamasi Kabir and Ors* (2011) 2 N.W.L.R. [Pt. 1232] 417, CA.

Emmanuel Obot, won the PDP's primary election for the House of Representatives in the Uyo Federal Constituency of Akwa Ibom State, and his name was submitted to INEC. Yet, in February 2007, Bassey Etim was inexplicably substituted for Obot as the Party's candidate.¹⁸⁵

4.1.2.19 Obot challenged the substitution in court under Section 34(2) of the Electoral Act 2006 and the Court declared the substitution improper and void. It further declared that he was the lawful candidate for the election. While the case was pending before the Federal High Court, INEC conducted elections on the 28 April 2007 and declared Etim the winner. Obot further challenged the result of the election at the Election Tribunal, but the Tribunal maintained that, not being a candidate in the election of 28 April 2007, he had no standing to file the Petition. On appeal, the Court of Appeal decided that the Tribunal had no business dealing with the issue of the nomination, substitution and candidature as these are pre-election rights falling within the jurisdiction of the courts. It further indicted INEC, the political party and the Tribunal for their respective actions, which denied Obot the right to effective participation in electoral democracy.

4.1.3 Dereliction of Duty by INEC Staff

4.1.3.01 Dereliction, or non-performance, of duty is a criminal violation of the Electoral Act, and thus punishable by law. In both the 2007 and 2011 elections, dereliction of duty by electoral officials was rampant. Re-occurring examples in the election petitions include:

- Missing candidates names and party logos on ballot papers;
- Late arrival of electoral officers and election materials;
- Failure to supply sensitive electoral materials such as results forms;
- Late opening of polls units;
- Wholesale failure to conduct election in particular wards;
- Failure to record the results at polling stations and/or in the form proscribed by law;
- Non-posting of electoral officers to some polling booths.

¹⁸⁵ *Honourable Emmanuel Bassey Obot v. Elder Bassey Etim & Ors.* (2008) 29 W.R.N. 128; (2008) 12 N.W.L.R. (Pt. 1102) 754, C.A.

Omissions on ballot papers

4.1.3.02 When electoral duties are not performed diligently, the effects it has on the right to participation in government and to public service are far-reaching. For example, by law, INEC is required to ensure that every ballot paper used during elections clearly carries the symbols and names of the political parties participating in that election to ease voters participation in election. Yet, in many of the cases reviewed, INEC has been indicted for failing to include candidate parties and logos on ballot papers.

4.1.3.03 In the 2007 election to the Plateau State House of Assembly, Dengi Constituency, INEC failed to print the picture of candidate Ali Bala as well as the logo of his party on the ballot papers.¹⁸⁶ Despite this glaring omission, INEC still went ahead to conduct the election in Bala's constituency, only to return another candidate as the winner. After nullifying the election for unlawful exclusion, the Tribunal held:

The implication of this act of omission is that *not only were the Petitioners denied the right to be voted for, the electorates who had desired to exercise their right to vote for them were thereby disenfranchised*. This cannot be the intendment of the Electoral Act, 2006 nor of the Constitution. It is as if the Petitioners herein and their supporters were denied one of their fundamental rights.¹⁸⁷

4.1.3.04 A similar incidence occurred in the Okene Central Constituency in during the 2007 Kogi State House of Assembly Election. There, INEC and its agents refused to defer the election after it was brought to its notice that Bello Ogirima Abdullahi was validly nominated but that his name and his party's logo were unlawfully excluded from the ballot papers.¹⁸⁸ In nullifying the election, the Election Tribunal remarked:

¹⁸⁶ *Ali Bala & Anor. v. INEC & Ors.*, Petition No: PL/LHEPT/6/07 (unreported).

¹⁸⁷¹⁸⁷ *Ibid.* (emphasis added). See also, *Kargwag Fazing & Anor. v. INEC & 3 Ors.*, Petition No: PL/LHEPT/2/07 (unreported) (Where Fazing's name and party were omitted from the Lantang South Constituency ballot papers, despite being the validly nominated candidate).

¹⁸⁸ See *Bello Ogirima Abdullahi & Anor. Isah Ogirima Amoka & 4 Ors.* Petition No. NAGLH/KG/2/2007 (unreported).

[INEC] admitted paragraph 16 of the petition stated above and added that the election could not be deferred because of the overriding public interest. There is no scintilla of evidence before us on what [INEC] considered as overriding public interest. It is our view that there can be no public interest over and above that recognized by the Constitution and the Electoral Act which is that election must be conducted in substantial compliance with the Electoral Act. Therefore when [INEC] stubbornly went ahead with the election in spite of the omission of [Bello Abdullahi's] name and logo from the ballot papers in contravention of section 45(1) of the Electoral Act ... *they did not take into consideration the consequence of their action and the public interest not to waste time and resources in conducting an election which is not in substantial compliance with the Electoral Act.*¹⁸⁹

4.1.3.05 Again, In the North-Central zone, candidate for Jos North-West Constituency, Peter Azi's name was crossed out on the list of nominated candidates despite the fact that INEC had published his name, party, and party's logo before as one of the contestants for the election.¹⁹⁰ INEC declared another candidate as winner, but the Tribunal nullified the declaration, stating: "Based on the admission of averments as to the candidacy of [Peter Azi] by the 2nd – 5th respondents particularly [INEC], the body statutorily charged with the conduct of the election, they are stopped from asserting that the petitioners were not candidates at the election." INEC's act amounted to denying Peter Azi the right to serve the people who gave him their mandates at the polls; denying the electorates the right to be served by a candidate of their choice; and giving a backhanded victory to a candidate who failed to secure the mandate of the voters.

¹⁸⁹ *Ibid.* (emphasis added).

¹⁹⁰ *Hon. Peter Azi & Anor. v. Yakubu Choji & 4 Ors.*, Petition No: PL/LHEPT/10/2007 (unreported).

Failing to conduct elections

4.1.3.06 In a number of cases, INEC and its officials have been indicted for wholesale failure to conduct election in certain polling wards. At least three such instances were established in Anambra in 2007. First in an Anambra State House of Assembly election in Ogbaru II;¹⁹¹ then in a National Assembly Election for Anambra East/West;¹⁹² and finally in the Ekwusigo Constituency for state assembly elections.¹⁹³ The following facts appeared from the judgment of the Election Tribunal in the last case:

It was alleged that [*Mrs. Ifeyinwa Odife, Electoral Officer, Ekwusigo LGA, Anambra State*] ... left the INEC office before 8:30am and PW6 never saw her throughout the day of election. It cannot be presumed that she distributed materials between 8:am and 8:30 when evidence abound (*sic*) that in the process of trying to distribute materials without result sheets, she was challenged and then left under police escort to bring the said result sheets from Awka and never came back throughout the day. *The only inference to draw from the evidence is that [Odife] abandoned her duty post and did not carry her assignment on 14/4/07....* The allegation of non-supply of forms including form EC8A having been made against the respondents, it was incumbent on her to produce before the tribunal in proof of her affirmative assertion the evidence that they were supplied for distribution to the various polling booths. She withheld this vital piece of evidence and section 149(d) [of the Evidence Act] operates against her and other respondents.¹⁹⁴

4.1.3.07 Given such clear evidence of dereliction of duty resulting in denial of the right to participation in government to Nigerians in the affected constituency, the logical thing for the

¹⁹¹ *Okwesa O. Anthony v. Nwaebile C. Chinwe & Ors.*, Petition No. EPT/AN/SAE/52/2007 (unreported).

¹⁹² *Chief (Mrs.) Edith Mike Ejezie v. Ralph Okeke & 6 Ors.*, Petition No. EPT/AN/NAE/HR/13/2007 (unreported).

¹⁹³ *Christiana Ebelechukwu Udeze & Anor. v. Dismas Obi & 4 Ors.*, Petition No. EPT/AN/SAEE/41/2007 (unreported).

¹⁹⁴ *Ibid.* (emphasis added).

Election Tribunal should have been to direct that Mrs. Ifeyinwa Odife be investigated for possible prosecution to serve as a deterrent to other electoral officers. Her non-prosecution only enlarges the dark cloud of impunity that pervades Nigeria's elections.

4.1.4 Contempt of Courts

4.1.4.01 The 1999 Constitution of provides:

The decisions of the Federal High Court, a High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the Federal High Court, a High Court and those other courts respectively.¹⁹⁵

At times, court cases could arise involving elections before a ballot is even cast. These are called “pre-election disputes,” and include issues such as the unlawful substitution of a candidate (which takes place once the ballot paper is printed, rather than at the ballot box). When these types of cases occur, INEC, the political parties and individuals involved have a duty to abide by the court's orders. Yet, oftentimes this is not the case.

4.1.4.02 In the 2007 general elections, INEC substituted names of candidates and proceeded to conduct elections with the new names despite court orders to the contrary. Such blatant disregard for the law leads to violations of the right to participate in government and public service. Each of the instances of the improper substitution of parties listed above serve as an example of INEC and parties including PDP and ANPP disregarding court orders. In some of the cases already highlighted in this Report, the Court of Appeal has condemned election tribunals, INEC as well as political parties for disobeying subsisting and competent court orders.¹⁹⁶

¹⁹⁵ 1999 Const., § 287(3).

¹⁹⁶ See, e.g., *Alhaji I. M. Saulawa v. Badamasi Kabir and Ors.* (2011) 2 N.W.L.R. [Pt. 1232] 417 (condemning the Election Trial Tribunal, INEC and ANPP for disobeying a subsisting competent court order and an authoritative binding precedent all in favour of the Appellant); and *Hon. Emmanuel Bassey Obot v. Elder Bassey Etim & Ors.*, (2008) 29 W.R.N. 128; (2008) 12 N.W.L.R. (Pt.1102) 754.

4.1.4.03 In one case concerning the Ndokwa/Ukwuani in the Delta State Federal Constituency seat for the National Assembly,¹⁹⁷ INEC disobeyed a court's decision that the Onyekweli was the PDP candidate. In a particularly scathing condemnation of INEC, the Court of Appeal declared:

Let us look at the justice of this case. The appellant was the rightful candidate of the PDP at the election by virtue of the judgment of the Federal High Court, Abuja. The election was won by the PDP and automatically the certificate of return should have been given to the appellant who was deemed to have contested the election. However, [INEC] in spite of a pending petition blatantly refused to obey the rule of law and gave a certificate of return to someone who did not contest the

INEC should not be allowed to get away with this rape, yet, violation of the judicial process. INEC, a supposedly "independent" umpire in a democratic process has shown that in this case it was not independent – *Charles Udogwu*

election. *This was a dastardly and altogether condemnable act on the part of INEC. It was totally unjustifiable. It smacks of total recklessness and disregard of the judicial process. INEC as the respondent in the petition demanding that the certificate of return should have been given to [Onyekweli] turned around in the face of pending litigation to give the certificate to another person. The executive arm of government as represented by INEC should not be allowed to get away with this rape, yet, violation of the judicial process. INEC, a supposedly "independent" umpire in a democratic process has shown that in this case it was not independent. It illegally connived from the word go to deprive a successful litigant of the fruit of his judgment. It refused to declare the results to include the name of both the party and the candidate who won in*

¹⁹⁷ See *Charles Udogwu Onyekweli v. INEC* (2008) 14 N.W.L.R. (Pt. 1107) 317.

accordance with the provisions of s. 70, s. 71, s. 76(1) of the Electoral Act. ... INEC in clear contravention of its enabling statute fraudulently suppressed the name of the candidate who won the election and waited until time to file a petition had lapsed. This is in clear violation of s. 76 (1) of the Electoral Act ... I feel constrained to comment further on INEC's complete disregard of the rule of law in this case. This country is governed by the provisions of the 1999 Constitution which dictates that everything done by the executive should be done according to law within a framework of recognized rules and principles and not according to the whims and caprices of men or the crooked and uncertain cord of discretion.¹⁹⁸

4.2 Evidence of Impunity in the Judicial Process

“Election petitions are by their nature peculiar from any other proceedings ... it is the duty of the court therefore to endeavour to hear them without allowing technicalities to unduly batter their jurisdiction”.¹⁹⁹ – *Supreme Court of Nigeria*

4.2.01 The Nigerian Constitution and other international laws make unabashedly clear that every man is entitled to a fair trial, especially where his fundamental rights are concerned. The protection of human rights depends on the access to competent, independent and impartial courts to administer justice fairly. And similarly, the protection of the people's mandates in elections depends on the ability to effectively challenge electoral corruption and non-compliance in a court of law.

4.2.02 From the cases reviewed, it is evident that the judicial process in election cases is the site of breath taking violations of judicial ethics, suggesting gross corruption of the judicial system with clear adverse implications for the institutional credibility of the judiciary. It is surprising that very few of these cases ever get processed into the mechanisms of judicial discipline supervised by the National Judicial council. The following is a brief sampling of such cases:

¹⁹⁸ *Ibid.* at 365-367, 373 (emphasis added).

¹⁹⁹ Supreme Court, in *Nwobodo v. Onoh* (1984) 1 S.C.N.L.R. 1.

4.2.1 Denial of the opportunity to be heard

4.2.1.01 In Imo State, the Court of Appeal indicted the lower tribunal for dismissing Ejiogu's petition without giving him an opportunity to be heard. According to the Court,

... when the Appellant's petition was called ... it was dismissed by the [lower] tribunal without hearing any of the counsel for the parties present at the time but in particular, [Ejiogu]'s counsel. ... *I would say that there was no hearing at all by the tribunal on that day let alone a fair hearing.* What happened in the tribunal was entirely a one-sided affair akin to military briefing in times of a desperate war. Troops gathered, presence noted, and 'war lost' it was decreed. As demonstrated, after noting appearance of counsel before it, the lower tribunal *suo motu*, without anyone saying anything just decreed that the appellant's petition was dismissed because of the judgment in another petition in which he was not a party or afforded a hearing therein. *There can hardly be any other brazen way to ignore the constitutional right to fair hearing than in the procedure adopted by the lower tribunal.*²⁰⁰

4.2.1.02 In the Bayelsa State House of Assembly for Ekerewor Constituency II, *Angos Dide and others* alleged that the Election Tribunal denied them a fair hearing because they were not allowed to call more witnesses in support of their case. After taking the case, the Court of Appeal reiterated:²⁰¹

The right of fair hearing as enshrined in section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 is the bedrock of our judicial system. It is one of the principles of natural justice that supports the concept of rule of law and it is an indispensable part of adjudication in any civil society. Any proceeding conducted without observing the principle of

²⁰⁰ *Ejiogu v. Irona* (2009) 4 N.W.L.R. (Pt. 1132) 575-576, per Garba JCA. (emphasis added).

²⁰¹ *Angos Dide & Ors v. Ebiotu Seleiletimibi & Ors.* (2008) 15 N.W.L.R. (Pt. 1110) 221, C.A.

natural justice is null and void and liable to be set aside no matter how well conducted. In the instant case, the election tribunal having refused the application for an adjournment immediately closed the appellant's case without calling the appellants to continue their case. The appellant's right to fair hearing was thus breached and therefore the proceedings of the trial tribunal were a nullity.²⁰²

4.2.1.03 In the North West, when INEC colluded with the ANPP to exclude Alhaji Saulawa from the Katsina Central Federal Constituency Election despite a Federal High Court order saying he should be permitted as the ANPP candidate, The Court of Appeal indicted the Election Tribunal for declining to hear the Petitioner. According to Okoro, JCA:²⁰³

[A] court must be fully satisfied that it has no jurisdiction before sending the parties away to try their luck elsewhere. In the instant case, [Alhaji I.M. Saulawa] having obtained judgment in his favour that he is the rightful candidate of the ANPP in the said election, and both INEC and ANPP colluding to disobey the said order, where else was the appellant expected to go? As a lawful candidate at the election, I think it was right and proper to approach the Election Tribunal to ventilate his grievance. This is so because the issue as to who was the candidate of the ANPP at the election had been settled at the Federal High Court being a pre-election matter. The appellant did not ask the lower tribunal to determine who was the candidate of the ANPP at the election. Rather he came under section 145(1)(d) of the Electoral Act, 2006 as a candidate at the election. See *Amaechi v INEC (supra)*. The synopsis of all I have endeavoured to say above is that by virtue of the fact that the judgment of the Federal High Court, Abuja Division in suit No. FHC/ABJ/CS/125/07 had fully and effectively resolved the issue of nomination, sponsorship, substitution and candidacy of the 5th respondent as the appellant herein and the judicial

²⁰² *Ibid.* at 245.

²⁰³ *Alhaji I. M. Saulawa v. Badamasi Kabir and Ors.* (2011) 2 N.W.L.R. [Pt. 1232] p. 417, C.A.

interpretation at the highest level of the new section 34(1) & (2) of the Electoral Act, 2006, it was therefore wrong for the court below to hold that appellant's petition and the judgment of the Federal High Court relied upon by him relate to intra-party dispute and that it had no jurisdiction to entertain same. ... *What baffles me however in this matter is that the lower tribunal in one breadth held that it had no jurisdiction to hear the petition and accordingly struck out the petition and in another breadth went ahead to hear and determine the petition which it has struck out thereby dismissing the petition on the merit.* As I understand rules and procedure, once a matter is struck out, it is no longer before the court until it is re-listed. But in this matter, the petition was struck out and at the same time, the tribunal heard and determined it on the merits. I still do not understand.²⁰⁴

4.2.2 Abuse of judicial process and professional misconduct

4.2.2.01 As officers of the court, judges and lawyers are integral in the effective administration of justice and the legal process. Without cooperation from them, the system necessarily collapses. So, when judges and lawyers help to break the law, impunity necessarily ensues. Thus, appellate courts have indicted judges from lower courts for such malfeasance. For example, The Court of Appeal was exceptionally harsh on the judge of its High Court who disregarded an appellate judgment and instead granted an order without both parties present that illegally terminated the Delta State Governorship Election Tribunal. According to the Court of Appeal, *per* Justice Abba-Aji:²⁰⁵

To disregard the judgment of the Court of Appeal in that wise and grant the prayers of the 2nd respondent *is tantamount to gross insubordination on the part of the trial judge and such conduct is condemnable.* By such act, the trial judge has committed a serious blunder contrary to the ethic of

²⁰⁴ *Ibid.* at 448-449 (emphasis added).

²⁰⁵ *Chief Great Ovedge Ogboru v. President, Court of Appeal & Anor.* (2007) All F.W.L.R. (Pt. 369) 1221 (CA).

his office as a judge of the high court.... It is therefore clear from what I have stated above that the lower court has no option or discretion to exercise with respect to the decision of the Court of Appeal delivered on the 13th July, 2005 sitting as a final court, than to strictly comply with the judgment.²⁰⁶

4.2.2.02 Courts have also impeached lawyers for using creative means to “frustrate the legal process in election matters”,²⁰⁷ which amount to a violation of the right to fair trial. When counsel connived with a political party to disobey a pre-election decision of the Federal High Court, the Court of Appeal made the following observations:

The ingenuity of counsel in trying to manipulate the legal system calls for a corresponding ingenuity and dexterity from the bench. The bar have thrown all sorts of balls at us, we must keep our minds on the goal post, which is the attainment of substantial justice in election petition. If not we would surely disappoint the electorate who voted at ward level, state level and national level on polling day with a view to putting who they feel would best actualize the dream of democracy which is the greatest good of the greatest number.²⁰⁸

4.2.2.03 Or, as Justice Niki Tobi observed when a lawyer tried to get a lower court to overrule its superior,²⁰⁹

How can counsel go to the High Court to seek for a nullification of a decision of the Court of Appeal? What law was counsel relying on or upon? Did he forget the existence of section 240 of the Constitution of the Federal Republic of Nigeria 1999? What is in Section 249 of the Constitution to accommodate the action of [The All Nigerian People’s

²⁰⁶ *Ibid.* at 1273.

²⁰⁷ *Ochor Christopher Ochor v. Alphonsus Ojo & Ors.* (2008) 13 N.W.L.R. (Pt. 1105) 524 at 540, C.A.

²⁰⁸ *See ibid.* per Justice Ogunwumiju.

²⁰⁹ *Dr. Ime Sampson Umanah v. Obong (Arc) Victor Attah & Ors.* (2007) 16 W.R.N. 1 (SC).

Party]? I still have one more question; I do not want to ask it. This is my first experience and I do not think I enjoy it. The learned trial Judge did not enjoy it too, to him, it was a taboo or a sacrilege for his court to be called upon to review the decision of the Court of Appeal. He is correct, very correct indeed. I pray it does not come our way the second time.²¹⁰

4.2.2.04 Again in the Uyo Federal constituency of Akwa Ibom in the South-South, a Court of Appeal strongly condemned a lawyer's antics before an election tribunal:

A lawyer has an onerous duty to uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct, and thus shall not engage in any conduct which is unbecoming of a legal practitioner. In the instant case, rather than deposing to an affidavit, the National Secretary of the ANPP, with the apparent connivance and encouragement of the appellants' counsel, chose to shamefully resort to writing a letter to the Chairman of the Tribunal. ... The scenario evinced through the proceedings at the lower Tribunal is a show of shame; no honourable men should be credited with it. Antics that will lead to delay of justice must be abhorred by officers in the citadel of justice.²¹¹

²¹⁰ *Ibid.* at 26.

²¹¹ *All Nigerian Peoples Party & Ors. v. The Resident Electoral Commissioner, Akwa Ibom State & Ors.* (2008) 8 N.W.L.R. (Pt. 1090) 453 at 526 & 528, C.A.

V. INITIAL RECOMMENDATIONS

“We realize however, that however well-thought-out the recommendations, they will achieve no purpose *unless there is the will to enforce them.*”²¹²

5.01 The evidence in this report indicates that Nigeria’s electoral system is crippled by a multiagency proclivity for criminal conduct that has remained historically un-checked. The task of consolidating electoral democracy in Nigeria requires that urgent attention be paid to the elimination of electoral impunity through ensuring accountability for electoral crimes. The cases so far reviewed for this report disclose that in many cases, election tribunals were unwilling or habitually neglected to order prosecution of electoral crimes. The Working Group hopes that by publishing this Report and involving Nigerian citizens and institutions at all levels in examining the evidence from judicial records, it can make a contribution to mobilizing official sanctions against those so identified and incrementally sanitise elections in Nigeria.

5.02 No number of recommendations, however, can replace the need for political will on the part of all concerned branches and agencies of the Nigerian State, as well as the INEC, political leaders, political parties and civic organisations. Based upon our findings, the Working Group makes the following initial recommendations. The final report will contain more detailed recommendations following the planned public hearing and interviews with relevant stakeholders:

5.03 *To the Presidency of the Federation*

- Publicly denounce the lack of prosecutions of electoral crimes despite the recommendations of three previous presidential commissions on elections and invite all political and public office holders to support concerted action for

²¹² *Babalakin Commission Report, op. cit.* para 1.16 (emphasis added)

addressing electoral impunity and returning credibility to the electoral process in Nigeria.

- Direct the Attorney-General of the Federation to prioritise the investigation and prosecution of election-related crimes as a matter of urgency and publish a credible plan for realising this directive.

5.03 *To the Independent National Electoral Commission*

- Establish, in collaboration with the Attorney-General of the Federation, security agencies and other partners, a project team on election-related crimes and electoral impunity.
- Publish the names of all INEC officials who have been subject of administrative procedures related to electoral malpractice since 1999.
- Establish a publicly accessible database and register with the names of all persons arrested, indicted or reported for election-related malfeasance across the country.
- Establish and administer, as a matter of urgency, a policy of zero-tolerance for electoral impunity, including the exclusion from participation in electoral administration of all persons arrested for, indicted, or credibly suspected of involvement in election-related malfeasance.
- Compile, issue and publish annually, a report containing all credible allegations of election-related malfeasance, with the names of all persons arrested, indicted or reported and the nature of infractions and transmit this to the appropriate institutions for further action.
- Establish more rigorous protocols for verification and collation of election returns before declaring results.
- Work closely with relevant educational and regulatory agencies such as universities, the West African Examinations Council (WAEC), and the National Examinations Council (NECO) to ascertain the genuineness of claims of

educational attainment made or submitted by political aspirants and candidates for office.

- Increase diligence in vetting and training of *ad-hoc* staff who are often subject to the manipulation of political parties.
- As recommended by the Uwais Panel,²¹³ monitor *ad-hoc* staff to minimize corruption and collusion with political stakeholders and other partisan actors in the electoral process.
- Through better planning, due diligence, and more effective collaboration with the Armed Services, address perennial and avoidable lapses in electoral logistics that deny citizens their right to effective participation.
- Enhance operational, internal and management co-ordination between INEC offices and staff around the country through better use of information and communications technologies (ICTs).
- Address a clear pattern of abuse of power and discretion by subordinate INEC officials through the establishment of clear protocols on the scope and limits of discretion exercisable by INEC officials.²¹⁴
- Undertake an internal review of the recommendations of all previous Presidential Panels and Committees connected with elections in Nigeria, including, in particular, the recommendations embodied in the Babalakin, Lemu and Uwais Reports, and publish its own plans for how to bring its administrative processes in line with the recommendations of these various panels.

5.04 To the National Assembly

²¹³ Uwais Committee Report, *op. cit.* para. 5.5.6.2.9.

²¹⁴ See, e.g., *Hon. Peter Azi & Anor. v. Yakubu Choji & 4 Ors.*, Petition No: PL/LHEPT/10/2007. It was established that, after the election, the Petitioner scored the highest votes, though his name was crossed out of the list of nominated candidates. Testifying as PW1, Yagba Kundu, a staff of INEC in Plateau State, said that, upon discovering that “the list of candidates for the election had no ANPP candidate”, he wrote a letter to the Resident Electoral Commissioner for directives as to the proper course to take, but the REC was not around to receive the letter. Consequently “he went ahead to declare the PDP candidate as the winner”, a decision that the Tribunal nullified.

- As suggested by the Uwais Committee,²¹⁵ amend Section 174 (c) of the 1999 Constitution so that the constitutional power of *nolle prosequi* vested in attorneys-general does not apply to electoral offences.
- Amend the relevant sections of the Electoral Act to render anyone convicted of corrupt practices or other crimes related ineligible to elections for office.
- As suggested by the Uwais Committee, further amend §§ 132(2) and 178(2) of the 1999 Constitution to ensure that there is sufficient time for disposal of election-related disputes before the date on which the winners are to assume office.
- Repeal § 143 of the Electoral Act of 2010 which allows a person whose election return is contested to stay in office during the pendency of the contest, giving them access to State resources which may be used to conduct the dispute, and creating inequality of arms between the parties.
- As suggested by the Lemu Investigation Panel and Uwais Committee, pass legislation to establish an Electoral Crimes Commission to ensure speedy resolution of allegations of misconduct prior to, during, and after elections.

5.05 *To The Inspector General of Police (IGP)*

- Take appropriate measures to curb electoral violence by continuing to train police on security measures for election personnel and the Nigerian public before, during, and after elections.
- Include in the annual reports of the NPF, information on complaints against Police Officers involved in election security duties.
- Ensure effective training on as well as dissemination and implementation of the Police Service Commission's Guidelines for Police Officers on election duties.

²¹⁵ *Uwais Committee Report, op. cit.* para. 4.2.27.

- Make public at the end of each election (cycle) the names and identities of Police personnel alleged to have committed electoral crimes and the disciplinary measures taken against them, if any.
- Establish and ensure adequate training and resourcing of an electoral crimes squad.

5.06 To the Police Service Commission

- Take effective action to ensure dissemination, monitoring and implementation of the PSC Guidelines for Police Officers on election duties;
- Ensure that all complaints of malfeasance or crimes by Police Officers on election duty are promptly investigated and, if proved, punished administratively, in addition to criminally.
- Publish regularly information on action taken against Police Officers shown to have been involved in election-related crimes or misconduct.

5.07 To Other Security Agencies

- Increase vigilance in collecting information on political thugs used to intimidate voters and/or election personnel so that such action can be prevented on election day.
- Ensure effective collaboration with the Nigerian Police Force on election security matters.

5.08 To the Attorney-General of the Federation and the Conference of Attorneys-General

- Establish within the Federal Ministry of Justice and in all State Ministries of Justice, a unit responsible for the prosecution of electoral crimes.
- Begin immediate investigation into the cases set forth in this report.

- Grant to the INEC, a fiat to undertake independent prosecution of election-related crimes as may be necessary.

5.09 *To the National Human Rights Commission*

- Forward the list of persons and organisations indicted in this Report to the offices of the Federal and State Attorneys-General and INEC for further action.
- Establish a unit or team focused on investigating and reporting complaints of electoral impunity.
- Collaborate with state and non-state actors to organize public awareness and media campaigns on the negative impact of electoral impunity on democracy.
- Collaborate with NJI to organize public sensitization and skills training for the Bench on the need to recognize their constitutional functions with respect to decisions of court of superior, dual, and subordinate jurisdiction, and on the need for their prompt enforcement in line with the rule of law.

5.10 *To the Nigerian Political Parties*

- Enlist the leadership of each party to publicly repudiate the “by any means necessary” approach to gaining political office.
- Create a self-policing inter-party body with a code of conduct and corresponding sanctions for abuses of the electoral process such as the improper substitution of candidates after primaries, use of political thugs, and ballot-stuffing by political parties or their agents.
- Dutifully vet prospective candidates to ensure that they meet the qualifications of the office they seek.
- Adopt and require all political party leaders, candidates and agents in elections to subscribe to a voluntary code of conduct in respect of elections and establish effective mechanisms for monitoring such code of conduct.

5.11 *To the Chief Justice of the Federation and the National Judicial Council (NJC)*

- Require all State Chief Judges to designate and skill up judicial resources for the prompt trial of electoral crimes.
- Ensure effective training and monitoring of judges and lawyers on the different burdens of proof on petitioners when alleging criminal (beyond a reasonable doubt) and non-criminal (on the balance of probabilities) violations of the Electoral Act
- Ensure prompt and effective disciplinary action against judges involved in perverting justice in election disputes,
- Prepare and publish annually a report detailing the investigations and any action taken against judges against whom allegations of perverting justice in election-related disputes have been made.
- Effectively sanction abuse of judicial power by election tribunals and other courts.

5.12 *To the President of the Court of Appeal*

- Issue a Practice Direction for election petition tribunals detailing their functions in cases where there is a finding of an election-related crime.
- Issue a Practice Direction requiring election-petition tribunals or other judges who find evidence of electoral crimes to direct prosecutorial action.²¹⁶

5.13 *To the Legal Practitioners Disciplinary Committee (LPDC) and the Nigerian Bar Association (NBA)*

²¹⁶ See 1999 Const., § 248 (providing: “Subject to the provisions of any Act of the National Assembly, the President of the Court of Appeal may make rules for regulating the practice and procedure of the Court of Appeal”). Order 19 Rule 7 of the Court of Appeal Rules also provides: “The President may at any time, by notice declare a practice of the court as a practice direction, and whenever the declaration was made, such declaration shall be regarded as part of these rules”.

- Effectively disseminate and train lawyers on the Rules of Professional Conduct in the Legal Profession, such as improper interference with or other forms of perversion of the administration of justice connected with election petition tribunals.
- Work closely with the National Judicial Council and the President of the Court of Appeal to ensure effective monitoring of the conduct of lawyers and the conduct of election petition tribunals and to ensure prompt and adequate professional sanctions for lawyers who have contravened the Rules of Professional Conduct in election-related proceedings.

5.14 *To the Nigerian Civil Society*

- Vigilantly monitor election cases for examples of criminal activity and forward such information to the attention of attorneys-general in the Federation for further investigation.
- Work with official institutions, including INEC, the security agencies, and the NHRC to undertake public awareness campaigns for the Nigerian citizens on the existence of electoral crimes so that they can demand local accountability.
- Work together with political parties, faith groups, the media and civic associations in a broad and far-reaching coalition for zero-tolerance of electoral crimes and against impunity from official institutions.

5.15 *To The Nigerian People*

- Organize to publicly denounce examples of electoral violence and impunity in local communities.
- Use social media and pictures to document any examples of electoral irregularities in voting wards.
- Hold elected officials publicly accountable for obvious corrupt acts to steal or manipulate the people's mandate.

- Report violations of rights to the National Human Rights Commission, INEC, and the Nigerian Police as necessary.

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VI. CONCLUSION

“Free and fair election cannot, therefore, tolerate thuggery or violence of any kind; corrupt practice, personation, threats, undue influence, intimidation, disorderly conduct, and any acts which may have the effects of impeding the free exercise by the voter of his franchise.”²¹⁷

6.01 The purpose of an election is to determine the wishes of the people as to who should govern them in a democratic setting. To achieve this purpose, it is imperative that elections are conducted in accordance with the rule of law. The rule of law demands, in particular, that those charged with the responsibility of conducting elections should not, or should not be allowed to, toy with the political rights of the parties, candidates and, most especially, citizens to whom sovereignty belong. INEC, Nigeria’s electoral umpire, should not be allowed to turn elections into *Animal Farm* where it was said that all animals were equal but some were more equal than others.²¹⁸ Similarly, our politicians must play the game by the rules as envisaged by the Constitution and the electoral laws. Only adherence to the rule of law can guarantee a sustainable democracy, peace, and development.²¹⁹ As Justice Salami, former President of the Court of Appeal puts it,

Election matters are very sensitive as they are of paramount significance to all parties concerned: the electorates in particular, who are directly involved; as well as the generality of the Nigerian Populace. It should not therefore be treated as if it were a matter of private concern and only limited to the inner caucus of political parties. By its very nature, the subject is that which ought to be treated with utmost transparency, openness, honesty, and seriousness.²²⁰

²¹⁷ *Ojukwu v. Onwudiwe*, 3 EPR at p. 850.

²¹⁸ *See Isa Aliyu Ndako v. Usman Jibrin Wowo & 3 Ors.*, Petition No. NAET/002/07 (unreported).

²¹⁹ *See Charles Udogwu Onyekweli v. INEC* (2008) 14 N.W.L.R. (Pt. 1107) 317, citing with approval *Inakoju v. Adeleke* (2007) 4 N.W.L.R. (Pt. 1025) 423.

²²⁰ *Dr. John Olukayode Fayemi & Anor. v. Olusegun Adebayo Oni & 7 Ors.* (2010) 17 N.W.L.R. (Pt. 1222) 326 at 396, *per* Salami, PCA.

6.02 When people feel unable to express their electoral preferences, they find refuge in criminal activities as a platform of protest. The UDHR embodies the same principle, cautioning that “it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law”.²²¹ Further, when elections are rigged with impunity, they throw up office holders that are unaccountable to the people. Persons holding stolen mandates are not under an obligation to provide accountable leadership and are under no pressure to engage in activities that will enhance the peoples’ wellbeing. Their major concern is to satisfy the insatiable greed of their godfathers and patrons and oil the wheels of the rogue system that brought them into power.

6.03 The perceived improvement in the 2011 election cycle over previous elections provided hope that Nigeria was on its way to catching up with the rest of the world in terms of democratic governance and its peoples’ right to participation in governance. Unfortunately, recent happenings in the nation’s electoral system appear to have seriously eroded those modest gains. All bye-elections and state elections conducted across the country after 2011 have been riddled with sundry irregularities: mis-management of election logistics; late arrival of materials; inaccurate voter registers; violence; underage voting and other malpractices have been the hallmarks.²²² It is hoped that INEC, in cooperation with political parties, NHRC, civil society organisations, and other relevant stakeholders will urgently address the deficiencies highlighted in this Report. Only by so doing will free and fair elections be guaranteed to Nigerians in future elections. There can be no respect for the right of citizens to participate effectively in their governance if the process of attaining political office is severely flawed, rigged or habitually criminalized without consequences.

6.04 This Report makes the point that the duty of ensuring credible elections in Nigeria does not rest on the politicians or even the electoral management body or, for that matter, the judiciary, alone; it rests primarily on the citizens (the electorates). They could choose to be beneficiaries of a democratic governance or victims of criminalized elections.

²²¹ UDHR, *op. cit.*, pmb1.

²²² See Editorial: “The Voters’ Register”, *Guardian*, 11 Feb. 2014, 14.

APPENDIX I

INDIVIDUALS, GROUPS AND INSTITUTIONS INDICTED FROM THE REVIEWED CASES

S/N	Person(s)/Institution (s) Indicted	Citation of Case	Constituency/State/Zone where case originated from and where Petition is lodged.	Actual or Perceived Statement of Indictment.
1.	Patrick Ashagu Ebinny (1 st Respondent).	<i>Umar Sani Ebini & Anor.</i> v. <i>Patrick Ashagu Ebinny & 93 Ors.</i> AND <i>ANPP</i> v. <i>Patrick Ashagu Ebinny & 68 Ors.</i> , Consolidated Petition Nos: EPT/NS/007/07 and EPT/NS/011/07	Loko/Udege (Nasarawa West) Constituency, Nasarawa State House of Assembly, North Central Zone. National Assembly/ Governorship and Legislative Houses Election Petition Tribunal, Lafia, North Central Zone.	<i>Page. 32, 33 & 36</i> “We are therefore satisfied that the Petitioners succeeded in proving the allegation of forgery and presenting a forged certificate to INEC against the Respondent beyond reasonable doubt. Exhibit PET confirms that the 1 st Respondent presented the forged certificate to INEC contrary to the provision of S.107 (1)(i) of the 1999 Constitution. consequence is thus that the 1 st Respondent was disqualified to contest the April 14 th 2007 election to Nassarawa State House of Assembly...Consequent upon all the above findings and reasoning therefore this tribunal is satisfied that the Petitioners sufficiently proved the allegation of forgery presentation of a forged certificate against the Respondent... Pursuant to S.157 of the Electoral Act 2006, it is hereby RECOMMENDED to the INEC that prompt and appropriate steps be taken to prosecute the 1 st Respondent for the offence of forgery in respect of West African School Certificate 03452 dated 1991 presented by him to INEC before the said April 14 th , 2007 election.”
2.	Abubakar L. Abdullahi	<i>Hon. Yahaya Saduki & Anor.</i> v. <i>Abubakar L. Abdullahi & Ors.</i> , Petition No: SHA/EPT/NS/11/2007	Suleja Constituency, Niger State House of Assembly Election; North Central Zone. National Assembly/ Governorship and Legislative Houses Election Petition	<i>Page 12</i> “Before we are done however, we seize this opportunity to deprecate in strong terms, the conduct of the 1 st Respondent who in his bid to become a lawmaker in the Niger State House of Assembly turned himself into a law breaker by signing the statutory declaration of his age when he was not the declarant.”

			Tribunal, Minna, North Central Zone.	
3.	Hon. Clarence Olafemi (1 st Respondent) and INEC (3 rd Respondent)	<i>(Alara) Aberoran & Anor</i> v. <i>Hon. Clarence Olafemi & 17 Ors.</i> , Petition No: NALGH/KG/15/2007	Mopamuro Constituency; Kogi State House of Assembly, North Central Zone. National Assembly/Governorship and Legislative Houses Election Petition Tribunal, Lokoja, North Central Zone.	<i>Page 40</i> “The Petitioners have proved beyond reasonable doubt that the 1 st Respondent Hon. Clarence Olafemi led his agents and thugs did commit acts of corrupt practices and non-compliance with the Electoral Act by disrupting the conduct of election, harassing and intimidating eligible voters who were sent away from polling units without voting”
4.	INEC Returning Officer Isuikwuato/Umunneochi Federal Constituency.	<i>Uche Maduako</i> v. <i>Nkiru Onyejiocha & 5 Ors.</i> Petition No: ABS/NAHR/EPT/30/07	National Assembly/Governorship and Legislative Houses Election Petition Tribunal sitting at Umuahia, Abia State; South East Zone. National Assembly/Governorship and Legislative Houses Election Petition Tribunal, Umuahia, Abia State, South East Zone.	<i>Pages 20, 21</i> “[T]here is no evidence before this Tribunal that the alleged malpractices which the Returning Officer relied upon to cancel the election were done without knowledge or consent of the Petitioner... We refer to the proceedings of this Tribunal of 23 rd October, 2007. [W]e are satisfied that there is no basis for the cancellation of the election in Isuikwuato L.G.A.”
5.	INEC	<i>Chief (Mrs) Edith Mike Ejezie</i> v. <i>Hon Ralph Chukwujekwu Okeke & 4 Ors.</i> Petition No: EPT/EPT/AN/NAE/HR/13/2007	Federal House of Representatives for Anambra East/West Constituency, Anambra State, South East Zone. National Assembly Election Tribunal/Governorship and Legislative Houses Election Tribunal, Awka, South East Zone.	<i>Pages 40-41</i> “[T]he generating of results for an election that did not hold as proved by the Petitioner clearly shows that these results ranging from EC8A (II), EC8E (II) and EC8F (II) tendered by the Respondents were obviously fabricated. That is brought into existence from a nonexistent election on 21/4/07 in the Anambra West L.G.A. Government.
6.	INEC, Anambra State Office (Second Respondent)	<i>Chief Godson C. Ezenagu</i> v. <i>Mr. Emmanuel Uche Eze</i> <i>INEC & 72 Ors.</i>	Awka North and South Federal Constituency, Anambra State, South East Zone.	<i>Page 44-45</i> “[E]xhibits RR327 and R330 were signed and dated 21 st April 2007 but curiously enough exhibit RF327 was signed and dated 22 nd April, 2007.... It follows that the results of the election was declared before the completion of collation in Awka South local government area.”

		Petition No: EPT/AN/NAE/HR/23/2007)	Governorship/ Legislative House Election Petition Tribunal, Awka, South East Zone.	evidenced by exhibit RR328. This is hi irregular... These pieces of documents were tender evidence by the 1 st Respondent who must be prep to swim with it in the boat of victory or sink with the boat of defeat..."
7.	INEC	<i>Barrister Celestine Ejezie & Anor</i> v. <i>Chief Simeon Ohajianya & Ors.</i> Petition No. EPT/AN/SAE/47/2007)	Anambra State House of Assembly for Ihiala I Constituency, South East Zone. National Assembly Election /Governorship Legislative Houses Election Tribunal, Awka, Anambra State, South East Zone.	<i>Pages 66-67</i> "Is the 3 rd Respondent [INEC] and its agents expected to be independent umpires in this "business arena? Let us all hope a day will not come when I will be regarded as a political party. We do not t that was the intendment of its creation. ... We bel that the reason why the Electoral officer held back form EC25 is because if he had produced it, provisions of S.149(d) Evidence Act would op against interest of the 3 rd to 14 th Respond Moreover, we are not aware of any law that cor such power on him except to state he had an ult motive It is our view that the entries in the var wards of the forms were made by very few person there are similar writing on the groups of forms in ward and they do not reflect that they were filled in normal course of election."
8.	INEC Anambra State Office,	<i>Chief Edith Mike Ejezie</i> v. <i>Hon. Ralph Okeke & Chuwkwujekwu Okeke & Ors.</i> Petition No: EPT/AN/NAE/HR/13/2007.	Anambra East/West Federal Constituency Anambra State, South East Zone. National Assembly/Governorship and Legislative Houses Election Petition Tribunal Anambra State, South East Zone.	<i>Page 40-41</i> "Having stated as above, we hold that from the pr evidence and admitted evidence before us in w there was no election materials supplied within scheduled time to all or any of the wards and po units in Anambra West Local Government Area 21/4/07 in the questioned election, we find that generating of results for an election that did not ho proved by the Petitioner clearly shows that t results ranging from EC8A (II), EC8E (II) as tend by the Respondents were obviously fabricated. Th brought into existence from a none existent election on 21/4/07 in the Anambra West L Government"
9.	i). INEC Delta State Office ii). PDP	<i>Charles Udogwu Onyekweli</i> v. <i>INEC.</i> (2008)14 NWLR(Pt. 1107)317 at 367, CA	Ndokwa/Ukwuani Federal Constituency in the House of Representatives, Delta State, South South Zone. Delta State Governorship and Legislative Houses Election Tribunal	<i>Per Ogunwumiju, J.C.A, page 367, par. D, E and F</i> "The Party is not a faceless entity. The party must l a flag bearer. INEC in clear contravention of its enabling statute fraudulently suppressed the name o the candidate who won the election and waited unti time to file a petition had lapsed. This is in clear violation of S. 76(1) of the Electoral Act. Even tho the party sought to be joined was not joined ab initi the petition, her non-joinder did not render the petit incompetent since she was not a statutory or necess party at the time the petition was filed. In my view, petition as couched praying that INEC issue the certificate of return to the Petitioner could survive against only the Respondent. The third issue is

				resolved in favour of the Appellant.”
10.	Felix Osaigbovo (INEC Presiding Officer; INEC.	<i>Mr. Sunday Eghe- Osazemwind & Anor.</i> v. <i>Levis Osaretin Aigbogun & 4 Ors</i> Petition No: EDSA/EPT/13/07	Ovia North East I Constituency, Edo State, South South Zone. National Assembly, Governorship and State House of Assembly Election Petition Tribunal, Edo Benin City, Edo State, South South Zone.	<i>Page 31-32</i> “[I]t was a malpractice which amounted to compliance with the Electoral Act, 2006 for Osaigbovo to act as INEC presiding officer for Ward 9 and still sign Exhibits 3, 4, 22A and 22 PDP agent... “We have seen that the asto mentioned by RW 18 was made in the Voters Regi after the voters Register were photocopied. They not there when the names were ticked. RW 18 gave evidence that a voter could vote with the num where his face do not match the photograph. Also where a voter’s face match the photograph he c also vote even when the numbers do not tally. That bit convoluted. We have seen the voters registers we have no doubt that the persons who are ticked m than once are the same person... M]ultiple accredita will inexorably lead to multiple voting which wi turn vitiate the results in the units where occurred....On issue of ballots which are not sign the back, ...[B]allot papers which are not stamped signed at the back by the Presiding officer are inval
11.	INEC Plateau State Office Jos.	<i>Hon. Peter Azi & Anor.</i> v. <i>Yakubu Choji & 4 Ors.</i> Petition No: PL/LHEPT/10/2007	Jos North – West Constituency of Plateau State House of Assembly. North Central Zone. Election Petition Tribunal, Jos, North Central Zone.	P. 24: “We are in total agreement with the submission learned counsel for the Petitioners on the strength the decision of the Supreme Court in A.C. v I (Supra) that after 15/3/2007 the 2 nd Respondent ha power to alter the list by deleting the names of Petitioners as reflected in Exhibit ‘P19’; that 15/3/2007 all the names of candidates in Exh ‘P18’ and ‘P19’ remain valid as subsisting lis candidates. Therefore the purported alteration, blotting the names of the Petitioners on Exhibit ‘ is null, void and of no effect whatsoever.”
12.	INEC Collation Officers in charge of Lafia and Obi Local Governments	<i>Umar Musa Yahuza & Anor.</i> v. <i>Mohammed A. Almakura & Ors.,</i> Petition No: EPT/NS/022/07	Lafia/Obi Federal Constituency Nasarawa State, North Central Zone. National Assembly/ Governorship and Legislative Houses Election Petition Tribunal, Lafia, North Central Zone.	<i>Pages 23 – 24</i> “We have herein before found as established case over voting in three (3) polling units of Obi Ward, (2) polling units of Adudu ward, four (4) polling u of Dedere ward and one (1) polling unit in G Ausa 11 ward. This is not in compliance with provisions of Section 54(2) of the Electoral Act 2 We have also found established rather an un malpractice by Collation Officers at the ward w votes scored by the Petitioners at polling stations v not reflected in the summary of results at v level(Form EC 8C) thereby depriving the Petitione their lawful votes. The cases of Agbeede Prin School and Atabula Polling Units are apt in respect. Worse still is the situation that manifeste Shabu/Kwandere ward where the lawful votes of Petitioners were recorded in favour of the 1 st and

				Respondents thereby giving the latter an unfair undue advantage. This is a classical case of electoral rascality on the part of electoral officials. All the irregularities and malpractices indeed amount to non-compliance with the Electoral Act 2006.”
13.	Yakubu Abdulhamid Kwarra, INEC	<i>Lagi Innocent & Anor</i> v. <i>Yakubu Abdulhamid Kwarra & 43 Ors.</i> Petition No: EPT/NS/002/2007	Wamba Constituency; Nasarawa State House Assembly; National Assembly/ Governorship and Legislative Houses Election Petition Tribunal, Lafia, North Central Zone.	<p><i>Pages 15, 16, 18, 19, 22 & 40</i></p> <p>“From the year 1999 to the year 2006 when the Respondent, Yakubu Abdulhamid Kwarra, presented his credentials to INEC is eight years. One would expect that if the certificate obtained in 1999 belongs to the 1st Respondent, he would have retrieved the same from the University of Jos for the purpose of presenting same to INEC, but he did not. The necessary conclusion is that that certificate of 1999 does not even belong to him. He presented a forged one in 2002 to INEC instead...Where then did that certificate of 2002 presented to INEC and which is in Exhibit PET. 1, come from? The 1st Respondent had a duty to explain, but he just did not.</p> <p>....</p> <p>We note, upon perusal of Exhibit PET 1 that the purported degree certificate of 22nd May, 2002 bears the stamp of the Registrar of the University of Jos, but there is the stamp of the Registrar, University of Jos, Nigeria on Exhibit ‘PET 10’. Therefore the necessary implication and unequivocal conclusion is that the certificate dated 22nd May, 2002 evidently did not emanate from the University of Jos...There is in our humble view credible and overwhelming evidence that the certificate of graduation in Exhibit PET 1 dated 22nd May, 2002 was forged. The document speaks for itself, in view of the cogent and compelling evidence by the 1st Petitioner...Therefore, a Court of Law or the Tribunal for that matter cannot close its eyes to the infringement of the Constitution...Indeed we hold that the documents of the 1st Respondent regarding his educational and educational qualifications in exhibit PET 1 are evidently documents which ex facie and in substance are constitutionally illegal and statutorily void...It stands to reason – Because a candidate who seeks to contest an election is saying loud and clear to the electorate that he or she is worthy of the trust which they repose on him or her. The electorate are trusted ... that the candidate is a person of integrity, honest and whose behavior at all times is above board. To present a forged certificate to INEC betrays that trust and indeed a candidate guilty of such cannot be a man to be trusted. He has lied to the very people he seeks to lead.</p> <p>....</p> <p>It is not the law that the decision of INEC a</p>

				<p>qualification of a candidate to contest an election is conclusive and cannot be questioned. Where a decision smack (sic) of reckless negligence in not being able to or failing to verify and/or identify the documents presented to them by candidates who sought to contest election, such decision can be questioned. INEC, in our view helped to perpetrate this evil. The part played by INEC in this matter regarding the acceptance of the documents in Exhibit PET 1 coupled with its lack-luster attitude, coupled with the fact that it was not sure whether it verified the 1st Respondent's particulars or not leaves much to be desired of an institution which is a sine-qua non in a democratic setup. It's reckless negligence and constitutes a gross betrayal of trust reposed on it (sic) by the electorate in the elections of April, 2007 ... There is evidence before us that the 1st Respondent won the election to Wamba Constituency for the House of Assembly conducted on the 14th day of April, 2007 on the platform of the PDP. Yes, he may have won by more than a simple majority as required by law, which we find in fact he did but he arrived here on the platform of fraud. This negates the dictate of the law of the land and public policy. The 1st Respondent lied to the people to win and nothing will stop him from continuing to lie to the people. He deceived the electorate by producing a forged certificate. He deceived them by lying about his actual age, and <i>ab initio</i> in our humble but firm view invalidates the election... Let us quickly state here that the name of this institution called INEC would go down in history as a body fraught with reckless negligence and complacency in the carrying out of its duties, and is inimical to a healthy democratic set up."</p>
14.	Alhaji Abdulkadir A.Zaranda (1 st Respondent); INEC Bauchi (3 rd Respondent)	Alhaji Isa Babayo Tilde v. Alhaji Abdulkadir A.Zaranda and 4 Ors. Petition No: NAGLH/EPT/BA/2/07	Toro/ Jama'a House of Assembly Constituency of Bauchi State, North East Zone. National Assembly Election /Governorship Legislative Houses Election Tribunal, Bauchi, North East Zone.	Pages 34-35 "The breach of Section 34 of the Act here had the effect of letting in an ineligible person, the 1st Respondent, who did not, based on the credible evidence before, go through the crucible and gamut of nomination and screening by the INEC for the election under Sections 32 and 33 of the Electoral Act, which are conditions precedent for eligibility of a candidate for election. Sections 32 and 33 of the said Act are couched in compulsory terms with stiff penalties in the event of infringement, and a person such as the 1st Respondent, who was shown to have leap-frogged them and taken undue advantage of the situation cannot be allowed to benefit from his own wrong or breach of mandatory statutory provisions. To allow him reap such a benefit would be an assault on the democratic process envisaged by Sections 32, 33

				<p>and 34 of the Electoral Act. We are therefore of the considered opinion that the breach of Section 34 of Electoral Act here was fundamental and had substantial adverse effect on the electoral process by circumventing Sections 32 and 33 of the same Act, marred the outcome of the election by the voters casting majority of their votes for an ineligible candidate, the 1st Respondent; consequently, we agree with Mr. Nanle for the Petitioner nullifying the election following the case of Chukwuv. Icheonwo (supra) cited in his written address read together with Section 147 (1) of the Electoral Act, 2006; moreso the accepted evidence before us did not disclose that the infraction of Section 34 of the Electoral Act, 2006 that brought the 1st Respondent into the election competition illegally and thus made him an ineligible contestant was a notorious fact known to the electors in the Toro/Jama'a Constituency or that the electors were aware of the inherent legal disqualification or defect that disentitled the 1st Respondent to contest the election, but none-the-less to went (sic) on to cast majority of lawful votes for him...we accordingly enter judgment for the Petitioner nullifying the election that brought about this litigation, and hereby order the 3rd Respondent qua INEC to conduct a fresh or by-election for the House of Assembly seat for Toro/Jama'a Constituency of Bauchi State at the earliest opportunity.</p>
15.	Hon. Aminu Sule Garo of ANPP (The 1 st Respondent)	<p><i>Senator Bello Hayatu Gwarzo & Anor.</i> v. <i>Hon. Aminu Sule Garo & 2 Ors.</i> Petition No. EPT/KNS/SEN/32/07</p>	<p>North Senatorial District of Kano State, Kano State, North West Zone. National Assembly Election Petition Tribunal, Kano, North West Zone..</p>	<p><i>Pages 116-117</i> “The facts that the grading ascribed to 1st Respondent Exhibit P.4 had been shown not to be from cumulative marks while at the College is also confirmation that Exhibit P.4 is a forged document. The above all important variation in the certificate issued to the 1st Respondent by RW1 nine (9) years after he allegedly completed his course of study at Government Technical College, Kano in 1993 and those issued to PW2 and RW4 in 1983 (the year of completion of their course of study) leaves us in no doubt that Exhibit P.4/P.28 is a forged certificate and we so hold...The 1st Respondent did not present Exhibit P.4 or P.28 to [INEC]. No! His denial is that Exhibit P.4/P.28 he presented to the Respondent is not a forged document. We also hold without any hesitation that it was the 1st Respondent that presented Exhibit P.4/P.28 (a forged certificate) to [INEC]. The two elements to be proved in order to establish that the 1st Respondent presented a forged certificate to [INEC] has (sic) therefore been proved beyond reasonable doubt and we so hold. We therefore hold that by virtue of the provision of S.66(1)(i) of</p>

				1999 Constitution, the 1 st Respondent was not qualified to have contested election to the Senate for the North Senatorial District of Kano State had presented a forged school leaving certificate (Ex P.4/P.28) to [INEC].
16.	2 nd -4 th Respondents: The Returning Officer, Bichi Federal Constituency, the Kano State Electoral Commission, and INEC Commissioner	<i>Rtd. Captain Ahmed Haladu Bichi and PDP v. Alh. Ibrahim Muazzam The Returning Officer, Bichi Federal Constituency The Electoral Commission for Kano State INEC</i> Petition No: EPT/KNS/HR/29/07	Bichi Federal Constituency, Kano State, North West Zone. National Assembly Election Petition Tribunal, Kano, North West Zone.	<i>Pages 18-21</i> “The 2 nd -4 th Respondents cannot give Exhibits A, A16 to the Petitioners in due process of the law, then turn around to make a return in the election based on totally new results. To say otherwise is to tamper and endorse abracadabra, for which the Respondents inherently stand accused in this petition, as part of the electoral process. The evidence of the P.W.I that the Respondents protested the shortfalls in the scores recorded for the Petitioner at the earliest opportunity when the results were still being collated into the relevant forms has not been discredited in any way. That evidence in our view raises the high probability that the 2 nd -4 th Respondents indeed availed the Petitioners of their own scores in the election from the respective polling units before the collation of the results. From the foregoing, therefore, we are satisfied on the balance of probabilities that the Petitioners were issued with the results that they have tendered before us from the respective polling units of Danzabuwa ward that the results reflect the actual scores of the respective parties in the election. We are also satisfied beyond reasonable doubts on the reason of the abundant pieces of circumstantial evidence in this trial (notably, the fact that the Petitioners have Exhibits A, A1-A16 and B in due process of the law, the credible evidence of the Petitioner that he raised the issue regarding the shortage in the recording of the votes of the Petitioners at the earliest opportunity, which evidence has not been discredited and failure of the Respondents to call the respective Presiding officers to deny giving Exhibits A, A1-A16 to the Petitioners) that in collating the results into the relevant Forms EC8B(II) (Exhibits L,N and NN) and EC8C(II) (Exhibit L1), the electoral body, through the instrumentality of its officers, fell into grave error in regard to some of the lawful scores of the Petitioners. Having reached these conclusions, and having accepted that Exhibits A, A1-A16 represent authentic results of the election from the respective polling units of Danzabuwa ward, Exhibits M, M1-M16 and MM, MM1-MM16, and all the other exhibits that have their roots in them, cannot be any credible documents to prove the results of the election as they are in our view, each of dubious and doubtful origin. . . . The simple task here therefore is to correct any anomalies, if at all, in the return made in the election by working

				<p>with what the authentic scores of the respective parties were from the units of Danbazuwa ward and then add the respective scores to the uncontested scores they each received from the other wards of the constituency to decide on the winner of the election... We are satisfied that it is not a matter of mere coincidence that these figures substantially agree with the entries in Exhibit B, which by the evidence of PW1, came into the possession of the Petitioner through the due process of section 75 of the Electoral Act, 2011. This gives the 1st Petitioner a clear lead on the vote and he, rather than the 1st Respondent, ought to have been declared and returned as the winner of the election.. We accordingly, hereby enter our judgment in favour of the Petitioners and against the Respondents..”</p>
17.	INEC State Office Katsina	<p><i>Dauda Ibrahim Karfi & PDP</i> v. <i>Halliru Lawal Malumfashi & 227 Ors.</i> Petition No: HA/EPT/KTS/23/07</p>	<p>Katsina State House of Assembly Election to the Malumfashi Constituency, North West Zone.</p> <p>National Assembly Election/Governorship Legislative Houses Election Petition Tribunal, Katsina, North West Zone.</p>	<p>Page 28- 29</p> <p>“In this case elections were held in polling stations and the result (sic) in Form EC8A (I) not collated and declared, thus rendering the election inconclusive. It is therefore our view that the alleged non-compliance was pronounced. Our view in this matter is further strengthened by the fact that the election was said to have been peacefully conducted and there was no violence during the period. And yet no reason was given by INEC for their failure to collate the result. As to the last remaining 4 wards, Karfi, Gara Dansaka, Makaurachi and Yaba wards, there is no doubt the election did not hold in those wards. Both the Petitioners and the 1st Respondent are in accord on this. It is our view, that irrespective of who or what caused the non-holding of the election that day INEC ought to have ordered a by-election in those wards. We therefore find that there was substantial non-compliance on the part of INEC for failing to conduct an election in those wards. We have gone through the issues of non-compliance placed before us and after a careful consideration we are of the view that the declaration of result from only 4 out of 12 wards in the Constituency, and the non-conduct of election in 8 out of the 12 wards amount to substantial non-compliance. The substantial non-compliance is more pronounced when one considers the fact that even in the four wards where the election was held and the result declared, election did not hold in 57 out of 108 polling stations of those wards where election was said to have held and result collated and declared. Taking the whole Constituency as a whole, election did not hold in 154 polling units out of 211 polling units in the Constituency. Taking further, evidence shows that there are altogether 86,909 registered voters in the Constituency and in Exhibit P3 i.e. Form EC8E(I) only 16,608 registered voters</p>

				voters participated in the election. We therefore believe, that there was substantial non compliance with the conduct of the election.
18.	Rtd. Maj. Gen Abubakar Tanko Ayuba 1 st Respondent; PDP.	<i>Alhaji Muhammed Bello Usman v. Major General Tanko Ayuba (Rtd) PDP INEC Returning Officer Kebbi South Senatorial District Resident Electoral Commission, Kebbi State</i> Petition No. KB/EPT/SEN/1/07 (Consolidated)	Kebbi South Senatorial District Election, Kebbi State, North West Zone. National Assembly Election/Governorship Legislative Houses Election Petition Tribunal, Birnin-Kebbi, Kebbi State, North West Zone.	<i>Pages 45, 47, 48, 55, 63</i> “The 1 st Respondent may be a member of PDP, even then once the PDP did not as we have already held sponsor him to contest the election, he is not qualified to contest election...The Electoral Act envisaged a situation where a candidate sponsored by a political party could die just as General Musa Bamba did before the Election and after the time stipulated for changing/substituting candidates. It adequately made provisions to take care of such situation. The candidate could be substituted under Section 34(3) of the Electoral Act (supra) or 3 rd Respondent could postulate the election under Section 37 of the same Act. Did the 2 nd or 3 rd Respondent utilize these provisions? No evidence of the nature is tendered before us. ... We therefore discountenance the submission of Lead Counsel for the Respondents that the 1 st Respondent was qualified to stand election and consider all cases propelled on that argument as irrelevant. What is worse, (sic) the National Chairman of PDP, Kebbi State by a letter dated 19/2/07, Exhibit 1, denied the existence of any substitution of the former candidate of PDP with 1 st Respondent. The cumulative effect of the transgression of the Electoral Act according to the Petitioners render the candidature of the 1 st Respondent particularly that he was declared nominated void. ... Major General Tanko Ayuba (1 st) was not qualified to contest the Election held at Kebbi South Senatorial District on 21 st April 2007 for the seat of Senate. The votes for him were therefore invalid. Accordingly, we declare null and void the return as the Senator representing Kebbi South Senatorial District of Kebbi State. “
19.	Electoral Officer and Returning Officer INEC to Malumfashi State Constituency of Katsina State.	<i>Dauda Ibrahim Karfi & PDP v. Halliru Lawal Malufashi & 227 Ors.</i> Petition No: HA/EPT/KTS/23/2007	Malumfashi State Constituency of Katsina State House of Assembly North West Zone. National Assembly Election /Governorship Legislative Houses Election Tribunal, Katsina, North West Zone	<i>Pages 28 – 29</i> “[I]t cannot be said that an election was conclusively concluded until the result from the polling stations were collated and declared. In this case elections were held in polling stations but result in Form EC8A (I) were not collated and declared thus rendering the election inconclusive. It cannot therefore be said that election was indeed held. It is therefore our view, that the alleged non-compliance was proved. And we so hold. Our view on this is further strengthened by the fact that the election was said to have been peacefully conducted, and there was no violence during the period. And yet no reason was given by INEC for its failure to collate the result. As to the last remaini

				<p>wards Karfi, Gara Dansaka, Makaurachi and Y wards, it is not in doubt the election did not hold those wards...[r]espective of who or what caused non-holding of the election that day INEC ought have ordered a by-election in those wards. We therefore find that there was non-compliance on part of INEC for failing to conduct an election in t wards. We have gone through all the issues of compliance placed before us and after a ca consideration we are of the considered view that declaration of result of election from only 4 out of 12 wards in the Constituency, and the non conduct election in 8 out of 12 wards amount to substantial non-compliance. The substantial non-compliance more pronounced when one considers the fact even in the four wards where election was held result declared, election did not hold in 57 out of polling stations of the 4 wards where election was to have held and result collated and declared. Take the whole Constituency as a whole, election did hold in 154 polling units out of 211 polling units in Constituency. Taking it further, evidence shows there are altogether 6,909 registered voters in Constituency and from Exhibit P3 i.e. Form EC8 only 16,608 registered voters participated in election. We therefore believe that there substantial non-compliance in the conduct of election. The 1st Respondent was declared winner margin of 9,574 votes. About 86, 909 registered voters did not take part in the election. While there is guarantee that all the registered voters would have turned out to vote but disenfranchising even half that number mentioned, it cannot be said that electorate had spoken. It is important that that people be allowed to choose their mandated representative and this was not done in this election</p>
20.	INEC of Katsina State	<p><i>ANPP & Ibrahim Mamman Dan Musa v. Sule Mu'a zu, PDP, INEC and 100 Ors.</i> Petition No: HA/EPT/KTS/47/2007</p>	<p>Dan Musa State Assembly Constituency for Katsina State, North West Zone.</p> <p>National Assembly Election /Governorship Legislative Houses Election Tribunal, Katsina, North West Zone.</p>	<p>Pages 30, 50, 51, 57, 60, 61, “... and that the figures for unused and spoilt ballot papers is (sic) a correction and not a cancellation as Officer who entered the figure therein did not know how to write in words. ...We are therefore at a loss to why INEC having made copies of Form EC8 available to the Petitioners and certified same authentic only to turn round and make some alterations to the original documents in their possession, since original figures in the original documents (Exhibits 1-12 to PII I –XIV) before the said alterations do not tally with the figures as contained in the certified true copies given to the Petitioners by INEC. The Petitioners having tendered their own copies, from the source INEC, who had earlier certified same, hence</p>

				<p>question has arisen for INEC to answer, as the scenario looks a bit suspicious. Though RW 18 (Officer) would like this Tribunal to regard alterations as mere corrections at the instance of Ad hoc staff but this Tribunal is rather of the view, INEC should not shield away (sic) from responsibilities as the said Ad-hoc staff are not before us but INEC. ...But the question is why were Form EC8 BR for the various Wards as enumerated above signed only by the PDP? The onus is therefore on INEC to show why only the PDP signed the Form EC8 BR. Even those who signed are questionable as already noted, as the onus has now shifted on INEC to establish why the other party did not sign. Some of the Respondents' witnesses claimed that agents of other political parties had signed Form EC 8BR separately. But since they were not signed, INEC has discharged the particular burden placed on it. In fact, there is nothing in the entire evidence of INEC to point to any refusal on the part of the other parties minus the PDP to sign the said documents...It is observed, that Form EC8A I relating to Statement of Result of Polling Stations particularly in the columns relating to i) number of Voters on the register; ii) number of Ballot Papers issued to the Polling Station; iii) number of unused Ballot Papers; iv) number of spoiled Ballot Papers; v) number of rejected Ballot Papers; vi) number of Total valid Votes (Sum of valid Votes for all parties); and vii) total number of used Ballot Papers sum of (#4+#5+#6) That the columns opposite each of the above have in some polling stations not been completed at all. And where completed, they have been improperly filled and replete with mistakes."</p>	
21.	INEC State	Katsina	<p><i>Abubakar Lawal Kaita & Anor.</i> v. <i>Alhaji Kabir Ahmed Kofa and 316 Ors.</i> Petition No: NA/HR/EPT/KTS/42/2007</p>	<p>Kankia/Kusaday/ingwa Federal Constituency, Katsina State; North West Zone. National Assembly Election /Governorship Legislative Houses Election Tribunal, Katsina, North West Zone.</p>	<p>Pages 37-38, 40-41 "The correct position from the Exhibits before the Tribunal is as follows- In Ingawa 40 Polling Station had no form of ticking what so ever yet votes were returned thereat...In Kusada Local Government Area 32 Polling Stations had not their Register of Voters marked with either single or double ticking. In Kankia Local Government Area the number of Polling Stations without any form of ticking is 17. From the above would be seen, that in 89 Polling Stations in Ingawa, Kusada and Kankia Local Government Areas, Voters Register did not show any sign of accreditation and votes were recorded in...It is settled, that where the total number of votes cast exceed the total number of accredited voters registered in a particular polling station such situation amounts to electoral malpractice. This is the ratio in <i>T. v. Lawan (1992) 3 NWLR (Pt 231) 569</i>...On the whole, we ask the final question which is whether</p>

				non-compliance did not and could not have had any impact whatsoever on the election in which case I must be congratulated for a job well done. The question must be answered in the negative this is so in view of our earlier finding that unaccredited voters formed a significant portion of the voters used in declaring the result of the election which votes we cannot determine. Consequently, the proper order to make in this circumstance is to annul the election and order for a fresh election.”
22.	INEC Katsina State	<i>Abubakar Damale Kaita, Action Congress v. Alhaji Badamasi Kabir, PDP & 283 Ors. Petition No: NA/HR/EPT/KTS/43/2007</i>	Katsina Central Federal Constituency Katsina State, North West Zone. National Assembly Election /Governorship Legislative Houses Election Tribunal, Katsina, North West Zone.	<i>Pages 42-44</i> “The Tribunal has taken a careful scrutiny at the Voters Register Exhibits P1(a) –(v) to P11 (a)-(g) in view of the Statement of Results from Polling stations Exhibits PT2 (a) – (x) to P22 a-Z7 Summary of Results from Polling Stations Exhibits P23 (a) – (b) summary of Results from Registration Areas and found that non-accreditation or proper accreditation has affected at least not less than 70 Polling Units in the entire eleven Registration Areas complained about by heavy unaccredited votes in some areas while some with heavy votes enjoy no single accreditation at all...We ...know that 71 out of 252 Polling Units were affected...[T]his malpractice cut across at least a third of the Constituency should not be treated lightly.”
23.	INEC Kaduna State	<i>Engr. Suleman A. Lere & Anor. v. Hon. Saudatu A. Sani & 81 Ors. Petition No: EPT/KD/NA/003</i>	Lere Federal Constituency of Kaduna State, North West Zone. National Assembly Election /Governorship Legislative Houses Election Tribunal, Kaduna, North West Zone.	<i>Pages 31, 33, 34</i> “As we examined the evidence of both parties in respect of these two wards we found that the Petitioners witnesses are credible and forthright. In cross examination said although he is an agent for Goron Dutse he wants justice for all irrespective of whose ox is gored. In this same case other PDP and AC agents as well as INEC officials testified that there was in fact no election. I wonder then that the Petitioners in paragraph 1 of their petition said they will rely on God fearing INEC officials The evidence of the Respondents’ witnesses on the other hand fell short of credibility and substantial compliance with the Electoral Act 2008. We will at this stage express the dislike of the law for the practice of allowing party members of any party to function as INEC Supervisor or Returning officer in the conduct of election. This no doubt can be seen to ensure neutrality. In other words the Petitioner has proved the falsity of Exhibits 01 and as required.”
24.	INEC of Katsina State (3 rd Respondent)	<i>Garba Datti Muhammed & Anor v. Hon. Mohammed Sule & Ors.</i>	Sabon Gari Federal Constituency of Kaduna State, North West Zone.	<i>Pages 18-19, 25, 26 & 31</i> “In this Petition, the Petitioners have shown through the named witnesses that there was no election in the polling units concerned in issue 1. They have provided credible evidence to warrant our finding. Some po

		Petition No: EPT/KD/NA/002	National Assembly Election /Governorship Legislative Houses Election Tribunal, Kaduna, North West Zone.	agents who were at the polling units to cover the and vote, and the ward officers said these po agents explained to them why they could not b results for the 9 polling units in question. T witnesses are the grassroots and eye witnesses evidence of the Respondents' witness on the o hand is hearsay because they were not at the po units to know whether elections were held.
25.	INEC of Kaduna State	<i>Dr. Shehu Usman Adamu & Anor.</i> v. <i>Hon. Sani Mohammed Illiyasu & Ors.</i> Petition No: EPT/KD/HA/006	House of Assembly Maigana Constituency of Kaduna State, North West Zone. National Assembly Election /Governorship Legislative Houses Election Tribunal, Kaduna, North West Zone.	<i>Pages 12-13, 19</i> "Having scrutinized and compared the two sets results before us, our observation is that the sc recorded in the two sets of forms are different. In original forms produced by INEC i.e. (Exhibits A C1 D1 F1 the scores were altered in favour of th Respondent while some of the scores of the Petitioner were reduced. But the names of presiding officers, names of polling units and code numbers remain unchanged. The circumsta warranting the glaring alterations in the originals Exhibits A1 B1 C1 D1 F1 were left unexplained by Respondents. This adds weight to and gives cred to the evidence of the Petitioners witnesses Exhibits A1 B1 C1 F1 were falsified. On our par have great doubt in our mind regarding genuineness of these exhibits. We therefore do attach any weight to them. On the other hand, accept and rely on exhibits A B C D F as the autho results. ... No witness was called by the Responc to show that elections were conducted. In other w the Respondents adduced no evidence to contradic testimonies of P.W. 5,6,9,10 and 11. Instead dumped on us the forms purportedly containing re from the polling units in respect of which aforementioned Petitioners witnesses had said tha elections took place i.e. Exhibits K, K2, K3 and There is no explanation before the tribunal on these results came about in the face of the evidenc the above mentioned witnesses of the Petitioners there could not have been results where elections not take place. Their evidence remains unshaken. tribunal finds as a fact that there was no electio Unguwar lalli Code 009 of Gimba Ward, Ung Dallatu, Code 004(B) of Maigana Ward. Consequ Exhibits K, JK2, K3 andK4 which are the copie Forms EC8 A(I) for the aforementioned po stations, containing the purported results of elect are rejected by us in toto."
26.	INEC	<i>Frank Onyindibe</i> v. <i>Cyprian Ughamadu</i>	Awka South II Constituency in the Anambra State	<i>Page 25</i> "The Respondents failed to show evidence distribution of result sheets to the polling units but

		& Ors. PETITION NO: EPT/AN/SAE/65/20 07	House of Assembly South East Zone. National Assembly Election/Governorship Legislative Houses Election Tribunal, Awka, Anambra State, South East Zone.	because the authenticity and correctness of the result sheets tendered by the Respondents have been impugned. The presumption placed on them by law has been rebutted since their presumed authenticity has been debunked.”
27.	INEC	<i>Brig. Gen. J.O.J. Okoloagu (Rtd.)</i> v. <i>Chief Ayogu Eze & Ors.</i> Petition No. NAGL/EPT/EN/NA (/31/2007)	Enugu North Senatorial District, Enugu State, South East Zone. National Assembly/Governorship and Legislative Houses Election Tribunal, Enugu, South East Zone.	<i>Pages 43-46</i> “[E]lection materials for Ukehe ward II in Igbo-L.G.A. did not arrive until 3.00pm and when they arrived the results were removed and handed over to the 118 th Respondent... There was no election in Ogbu Aba Village in Udemu L.G.A....There was no election in Aku Ward 4 , Igbo-Etiti L.G.A. Election materials for Uzo-Uwani L.G.A. arrived its headquarters about 4.45 pm. We have no other choice than to conclude that the Petitioner has proved that INEC recruited at least 2 members or agents of the PDP as presiding officers to conduct the election. ... [I]t is crystal clear that there is no specific denial of the Petitioner’s denial and specific allegation of allocation of votes to particular candidates which did not field candidates at the election under dispute...”
28.	INEC	<i>Okwesa O. Anthony</i> v. <i>Nwaebile C.Chinwe & 4 Ors.</i> Petition No: EPT/AN/SAE/52/20 07	Ogbaru II Constituency of the Anambra State House of Assembly, South East Zone. National Assembly/Governorship and Legislative Houses Election Tribunal, Anambra State, South East Zone.	<i>Pages 43-44</i> “[T]he Independent National Electoral Commission (INEC) failed to supply sensitive electoral materials such as result forms, late supply of non sensitive materials and the late opening of polls and when voting took place, failure to record the results at polling stations and in the Statutory Form EC8A. The combination of the above in the opinion of the Tribunal constitutes non compliances with the Electoral Act and the relevant provisions in the Election Manual Guidelines made pursuant to the Act. They are substantial non compliances that have affected the election of 14/4/2007 in respect of Ogbaru II Constituency...Exhibits R-R 122 the results declared are irregular, not genuine, invalid and not authentic...”
29.	INEC, Roseline O. Odu – (Collation Officer) 3 rd Respondent.	<i>Hon. Uche Maduako</i> v. <i>Nkeiru Onyejiocha</i> <i>INEC & Ors.</i> Petition No: ABS/SHA/EPT/30/0 7	Isiukwuato/Umunne ochi Federal Constituency, Abia State, South East Zone. National Assembly/Governorship and Legislative	<i>Pages 26-27</i> “[W]e have painstakingly examined the documents tendered in the form of exhibits before this Tribunal and discovered that some of the serial numbers on the Forms EC8As are out of sequence with the other serial numbers even admittedly from the same source, the Respondent, this presupposes manipulation of results... The exhibits AA series of the Petitioner with serial number is 002908, the same as exhibit MM series...”

			Houses Election Tribunal.,	the 1 st Respondent. The scores for the PDP is 887 PPA 8. The name of the Collation Officer is Rose O. Odu.”
30.	INEC (4 th Respondent)	<i>Emmanuel Emeruwa v. Prince Nwogu Okoro & 11 Ors.</i> Petition No: ABS/SHA/EPT/28/07	Abia State House of Assembly, Abia South Constituency, South East Zone. National Assembly\Governorship and Legislative Houses Election, Umuahia, Abia State, South East Zone.	<i>Page 11 and 12</i> “We have considered the documentary evidence of Petitioners in exhibit A series and consider it as late votes cast at the election which the 4 th Respondent not justified in cancelling. ... We hereby set aside declaration and return of the 1 st Respondent Prince Nwogu Okoro as the winner of the election and declare the petitioner Emmanuel Emeruwa as the duly elected member of Abia State House of Assembly for the South State Constituency”.
31.	INEC	<i>Deacon Iyke Nwoke v. Chief Mrs Grace Nkm Uche & 13 Ors.</i> Petition No: ABS/SHA/EPT/25/07	Umuahia Central House of Assembly Constituency. Abia State, South East Zone. National Assembly\Governorship and Legislative Houses Election Tribunal sitting at Umuahia, Abia State; South East Zone. Court of Appeal, Port Harcourt Division, South East Zone.	<i>Pages 20-21 of the Judgment</i> “[We] find the relocation of collation centre a substantial non-compliance which has substantially affected the result of the questioned election.”
32.	INEC	<i>Prince Arua Arunsi v. Kalu Igu Uduma INEC & 130 Ors.</i> Petition No: ABS/NAHR/EPT/33/07	Arochukwu/Ohafia Federal Constituency, Abia State, South East Zone. Governorship and State House of Assembly Election Tribunal sitting at Umuahia, Abia State, South East Zone	<i>Page 35</i> “The exhibits are concocted and tell lies on their face. On this score alone the 1 st Respondent return cannot stand. ... RW4 admitted under cross examination the variation in the ward results and that at the Local Government can only occur if there is falsification which admission is fatal to the Respondent’s case. exhibits tendered by the 1 st Respondent in respect of Ohafia Local Government regarding the scores of the 1 st Respondent at the Constituency, Local Government and declaration of results are irreconcilable contradictory and one which 1 st Respondent reliance cannot be explained... The Respondents from the 1 st Respondent are not deductible from all the materials before the tribunal knowing the return of the 1 st Respondent as in exhibit AQ could not be justified, created these

				documents which have done nothing but to expose the falsity of the Respondents' case. The argument relating to presumption in favour of the results is baseless."
33.	INEC. Barrister Chijioke Madumere	<i>Chief Chidi Fred Nwosu & Anor.</i> v. <i>Barrister Chijioke Madumere & 145 Ors.</i> Petition No. ABS/SHA/EPT/05/07	Abia State House of Assembly for Umuahia South Constituency. South East Zone. National Assembly\Governorship and Legislative Houses Election Tribunal sitting at Umuahia, Abia State, South East Zone.	<i>Pages 37-38</i> "Sacred facts are obvious and undisputable and do not tell lies. The Respondent's set of results tell lies on their faces from our findings based on our examination of the two versions of results tendered by the parties.... [W]e find that it is part of Petitioner's case that the Respondents used multiple serial numbers which are out of sequence to achieve votes manipulation in favour of 1 st Respondent. Petitioner gave notice to produce same for that purpose. The Respondent generally denied the averment in Petitioner's plea and did not directly or specifically deny this specific allegation in their paragraph 14 of their reply. Regrettably learned counsel for the 2 nd Respondents in his 21 page final address kept silent over this issue....Serialization of numbers for electoral results at all levels are designed by the Electoral Commission 2006 to check the manipulation of the Electoral process by the parties. ...The stand of this Tribunal is to invalidate or nullify or strike down any result of the parties afflicted with this malady where there is credible evidence of vote manipulation, re-writing, swapping or the like which affected or altered actual authentic, and valid votes of the parties in question...The inevitable conclusion is that where there were no vote manipulations in Petitioner's results, there were vote manipulations in Respondents version of 28 unit results in question."
34.	PDP (2 nd Respondent), INEC officials.	<i>Abba Odin N & All Nigeria Peoples Party</i> v. <i>Samuel Onu Aja-Onu, & 97 Ors.</i> Suit No: EPT/EBS/HA/16/2007	House of Assembly Election into Ohaozara West Constituency of Ebonyi State, South East Zone. Governorship and Legislative Houses Election Tribunal, Abakiliki, Ebonyi State, South East Zone.	<i>Page 9</i> "Counsel to the 1 st Respondent argued in his address that this Tribunal should not visit the acts of the electoral malpractices carried out by the member of the 2 nd Respondent and by officers of the Respondent on the 1 st Respondent as it was not shown that the first Respondent authorized the acts. In respect to Counsel this is very unrealistic in the circumstances of this case. ... He cannot claim the benefits of these actions and reject the burden of the same; that is unconscionable."
35.	State Constituency, Ebonyi State (3 rd Respondent); INEC, Ebonyi	<i>Ude- Amanta Anoke Michael</i> v. <i>Sylvester Nwenu Nwite Returning Officer,</i>	Onicha West Constituency, Ebonyi State House of Assembly; South East Zone.	<i>Pages 15-16</i> "The Third Respondent which was supposed to be an independent and unbiased umpire degenerated into choosing a candidate for the PDP other than the one sponsored by the party. .. The 3 rd Respondent abdicated its function and went into choosing

	Office Resondent); Returning Officer, Onicha West (2 nd Respondent); (4 th)	<i>Onicha West State Constituency, Ebonyi State INEC Resident Electoral Commissioner & Ors., Suit No: EPT/EBS/HA/4/2007</i>	National Assembly, Governorship/Legislative Houses Election Petition Tribunal, Abakalili, Ebonyi Stat, South East Zone.	candidate of its choice for the PDP; a power it did not possess under the Law. The 3 rd Respondent has no power to exclude a person a person validly nominated by his party as the candidate for an election. The 2 nd and 4 th Respondents failed to lead evidence to justify the exclusion of the Petitioner from the election”.
36.	Pastor Awoke Vincent O (1 st Respondent)	<i>Hon. Ogazi Linus Ogbonnaya & Action Congress v. Pastor Awoke Vincent O. & 6 Ors. Suit No: EPT/EBS/HA/AB/1/07</i>	House of Assembly Election for Ohaukwu North State Constituency, Ebonyi State, South East Zone. National Assembly, Governorship/Legislative Houses Election Petition Tribunal, Ebonyi State, South East Zone.	<i>Pages 13, 15</i> “The evidence of DWI (1 st Respondent) is hard for me to believe I hereby treat it, as I cannot say Pastor Awoke lied (he being a clergy man) but say he is untrue... Having held that the 1 st Respondent did not resign his employment with the Ebonyi State University, Abakiliki, it definitely means that he was not qualified to contest the April 14 th 2007 election and that his returned as the person elected cannot stand for the avoidance of doubt I hereby nullify his return as the winner of the said election.”
37.	Chairman Ohazara West Development Area (14 th Respondent), Nigerian Police Force & INEC	<i>Chukwu Ori v. Samuel Onuaja-Onu & 24 Ors. Suit No. EPT/EBS/HA/AB/15/07</i>	Ohazara West Constituency, Ebonyi House of Assembly; South East Zone. National Assembly, Governorship/Legislative Houses Election Petition Tribunal, Abakalili, Ebonyi State	<i>Pages 6- 7</i> “The reason given for the arrest of the Petitioner on Election Day is very lame and untenable, the arrest of the Petitioner who was contestant in the election on the Election Day is a crude and primitive way of rigging election by the Respondent (sic) was an exhibition of stone age behavior where might is right. The 14 th Respondent who is Chairman of Ohazara West Development Area misused and abused his power by the illegal arrest of the Petitioner so as to give the 1 st Respondent undue advantage over the Petitioner during the election. [T]he 14 th Respondent took advantage of the poorly educated Nigeria Peoples for carrying out the illegal arrest, such as an election where one of the contestant was arrested during the election cannot be said to be free and fair...It is disappointing that INEC can schedule or postpone an election to be held on Sunday when most of the voters are worshipping their God in various churches...The act of conducting an election on Sunday in a predominantly Christian Community is a disenfranchise majority of the voters, this cannot be said to be free and fair election”.
38.	INEC Ebonyi State Office.	<i>Engineer Okpani U Uche & All Nigeria Peoples</i>	Afikpo North East Constituency of Ebonyi State, South	<i>Page10</i> “The spread of the corrupt electoral malpractice throughout the Constituency and a run through

		<i>Party (ANPP)</i> v. <i>Bernard Ndubuisi Isu & 148 Ors.</i> Suit No: EPT/EBS/HA/11/20 07	East Zone. Governorship and Legislative Houses Election Petition Tribunal, Abakalili, Ebonyi Stat, South East Zone.	number of votes accredited to the 1 st Respondent the several tainted results sheets and a comparison their total figure with a number of the total votes accredited to the 1 st Respondent in the election contained on Exhibit 108 show that the compliance with the electoral Act, 2006 by the Respondent was very substantial. The declaration the 1 st Respondent as the winner of the election can thus stand and will be nullified.”
39.	Mrs. Ifeyinwa Odife (Electoral Officer, Ekwusigo Local Government Area, Anambra State)	<i>Christiana Ebelechukwu Udeze & Anor.</i> v. <i>Dismas B.A. Obi (aka Afam Obi) & Ors.</i> Petition No: EPT/AN/SAE/41/20 07	Ekwusigo Constituency, Anambra State House of Assembly; South East Zone. National Assembly and Governorship Election Tribunal, Anambra State, South East Zone.	<i>Page 26</i> “[I]t should be noted that the 4 th Respondent was party to the petition. Several allegations were made against her. She attached her statement on oath to the petition. She never did give evidence. It was alleged that she left the INEC office before 8:30 am and I never saw her throughout the day of election. It can be presumed that she distributed materials between 8:00 am and 8:30 when evidence are bound that in process of trying to distribute materials without results sheets, she was challenged and then left under police escort to bring the said result sheet from Awka never came back through the day. The only inference to draw from the evidence is that 4 th Respondent (Mrs. Ifeyinwa Odife) abandoned her duty post and did not carry her assignment of 14/4/07.”
40.	Obi Oputa (RWI); Akaetekwe Ogochukwu Chizoba, Electoral Officer Ogabru (2 nd Respondent)	<i>Engr. S.O. Kaine & Anor.</i> v. <i>Chinwe C. Nwabiele & Ors.</i> Petition No: EPT/AN/SAE/63/20 07	Ogbaru II Constituency; Anambra State House of Assembly; South East Zone. National Assembly and Governorship Election Tribunal, Anambra State, South East Zone.	<i>Pages 53-54</i> “The voters register and the results sheets were made available for the said election. [T]his takes under section 64(1)-(4) of the Electoral Act. ... It is patently clear that the Electoral Commission failed to comply with the above provision by reason of the facts that the result sheet was provided at the units, no vote was recorded at the unit, no vote was recorded at the units by presiding officers. Since no form was provided, no result generated at these units, there was no form to be signed and stamped by the Presiding Officer, no result was announced by the presiding officers at the polling station. ... These are major infractions of the Electoral Act and INEC Manual by the 2 nd -5 th Respondents.
41.	INEC Anambra State Office,	<i>Hon. Ben Chuks & Anor.</i> v. <i>PDP Candidate & Ors.</i> Petition No. EPT/AN/NAE/HR/1 9/2007	Nnewi South, Nnewi North and Ekwusigo Federal Constituency, Anambra State; South East Zone. National Assembly Election /Governorship Legislative Houses Election Tribunal, Awka, South East	<i>Page 69</i> “The effect of all these alterations and manipulations therefore is to render the documents themselves worthless unreliable and of no probative value whatsoever. It reveals also that whereas 5 th Respondents haven’t conceded that no election place on 21/4/2007, because of its postponement on 22/4/2007 the same Respondents have now gone ahead to produce documentary evidence tending to show that the elections have taken place on both dates namely 21 st April and 22 nd April 2007. The Tribunal can choose which of them to believe and which

			Zone.	disbelieve. Consequently they are both rejected.”
42.	INEC, Awka Office (First Respondent), Akutekwu O. Chizoba (Electoral Officer Ogbaru L.G.A. RW1).	<i>Ifeanya Anthony Ikechukwu</i> v. <i>INEC & 4 Ors.</i> Petition No: EPT/AN/SAE/44/2007	House of Assembly Elections for Ogbaru 1 Constituency Anambra State; South East Zone. National Assembly Election /Governorship Legislative Houses Election Tribunal, Awka, Anambra State, South East Zone	Pages 37-38 “The Electoral Officer Rwl ...claimed ignorance even the basic things regarding his job despite working for 15 years with the 1 st Respondent. All the stories told about distributing materials (complete) to supervisory presiding officers and receiving collated results from them are cooked up lies aimed at misleading the Tribunal into believing that an election was conducted in the constituency without any irregularities resulting in the return as aforesaid. We are unimpressed by his testimony considering his position as an umpire in the election with no particular interest to take sides among the candidates.”
43.	Mr. Friday Fred Omoigberai (1 st Respondent), INEC State Office Edo State; PDP	<i>Joseph Foly Ogedengbe, Esq</i> v. <i>Mr. Friday Fred Omoigberai & 9 Ors.</i> Petition No: EDS/EPT/1/07	Owan East Constituency in the Edo State House of Assembly. South South Zone. Governorship and Legislative House of Assembly Election Tribunal, Benin-City, Edo State, South South Zone.	Page 44, 51, 52, 58-59, 61 “[T]he 1 st Respondent, Mr. Friday Fred Omoigberai who was tried on 9 th September, 1997 by the Metropolitan Revenue Court of Edo State and sentenced to 2 months imprisonment with hard labour in default of paying assessed tax of ₦17,000.00 is the same and one person as Hon. Fred Omoigberai who contested election in the Edo State House of Assembly in Owan Constituency on April 14 th , 2007.,We have at all times compared the accreditation in the Registers tendered against their unit results and discovered, to our consternation, that the number of votes cast exceeded the number of accredited voters in the queue in many units. This is at variance with the provisions of the Electoral Act, 2006...PDP’s lead in that election is ineffectual and barren. This is because the rug has been pulled out from its feet when the Tribunal declared the candidate, the 1 st Respondent, ineligible to vie for election ab initio.”
44.	INEC; Barrister Alex Irotumhe	<i>Johnson Egwakhide Oguma & Action Congress</i> v. <i>Christian U. Iviosimhe, PDP, INEC, Resident Electoral Commissioner INEC Edo State, Electoral Officer Etsako Central</i> PETITION NO.	Etsako Central Constituency, Edo State, South South Zone. National Assembly, Governorship and House of Assembly Election Petition Tribunal, Benin City. Edo State, South South Zone.	Pages 23-25 “INEC had no right whatsoever having cancelled the said election and fixed a date for bye-election to be held a second round and declared the (sic) 1 st Respondent as winner of the same election earlier cancelled...Exhibit 10 tendered by the Respondent as witness is a Police Extract arising from a complaint to the Police of hijack of election materials. If this is proved (sic) of violence then we are at a loss as to what to do with it is. ... [W]e have physically critically examined Exhibits 75-83 (Forms EC8B(I), i.e. 9 wards collated results and found as a fact that they were all signed by one single individual by name Barr. Alex Irotumhe. This is monumental case of not only fraud, but corruption practices and substantial non-compliance with all

		EDSA/EPT/09/07		laws governing ... conducting elections in this country. The same person signed Exhibits 11 and 11A wards 4 & 5 results. This is apart from the fact that election in ward 9 was cancelled on account of violence. Also voters Registers admitted show that they were photocopied before ticking to participate in voting/accreditation. Most others are ticked to participate meaning multiple voting...RW2 under cross-examination by Petitioners' counsel said all the results for his ward 4 were signed in the Colla Centre which is non-compliance."
45.	INEC, Resident Electoral Commissioner, Sen. (Prof) Osunbor, PDP The Nigeria Police.	<i>Comrade Adams Aliyu Oshiomhole & Action Congress (AC) v. INEC & 18 Ors. Petition No: EDGV/EPT/107</i>	Edo State Governorship Election, South South Zone. National Assembly, Governorship and State House of Assembly Election Petition Tribunal, Edo Benin City. South South Zone.	<i>Pages 28, 29 .103 -105</i> "The quandary here is should the proposition include where the evidence of the witness is that Police Officers were in fact doing the shooting, the thumb printing or the ballot-stuffing. See S.4 of the Police Act, 1990. In the first place, the Police Officers are supposed to be at the polling stations armed and alone or escorting anybody. The Nigeria Police Force is a regimented and disciplined force. It is unlikely that armed police officers will be at the polling stations without the consent of superior officer... Petitioners have led oral evidence in 10 Local Government Areas to establish corrupt practices and non-compliance with Electoral Act, 2006. We consider in proof of corrupt practices and non-compliance with the Electoral Act, 2006. "Second, Exhibit 70 revealed a contrast between the total votes for the local government in Exhibit 70 and number of votes actually tendered in Tribunal as counted. None of the figures on Exhibit 70 and Exhibit 105 tallied... the contrast and discrepancies on Exhibit 70 and Exhibit 105 raises serious doubt about the lunar tranquility which the witnesses for the two sets of Respondents and PW47 said pervaded the affected local government areas on Election Day". These documentary evidence invariably corroborated the evidence of Petitioners witnesses on hijacking of electoral materials especially result sheets and intimidation of voters. Sixth, the issue of manipulation of result sheets comes the issue of over-voting which speak for themselves from the Units Result sheets tendered. Seventh, there is a recurrent issue of those mentioned who were employees of INEC or members of 3 rd and 4 th Respondents. There were no serious efforts to identify their names. It needs to be re-emphasized that the named are said to be members of the 4 th Respondent who is the 4 th Respondent who sponsored the 3 rd Respondent. Whatever acts perpetrated by those named in furtherance of election of 3 rd Respondent under the Respondent are acts of 3 rd and 4 th Respondents. It

				beyond the issue of 3 rd Respondent authorizing t acts. The combined effect of all these is that Petitioners have proved the incidence of cor practices and non-compliance with Electoral Act 2 against the two sets of Respondents beyond reason doubts in the local government areas in dispute.”
46.	Hon. Joseph Ekhaton, the INEC Supervisory Polling Officer, Morrison Omogiate (leader , Ovia South West Council), Festus Aimufiua (Registrar college of Agric, Iguraken, Monday Ezomo (PDP Youth Leader), Tessorare (PDP Chieftain , Omiyi Jolly alias Okuta (PDP Member), PDP INEC, Edo State Office.	<i>Engr. Nosakhare Isaac Osahon & Action Congress v. Hon. Ehiogie West-Idahosa & 19 Ors .</i> Petition No EDNA/EPT/6/07 No:	Ovia Federal Constituency Edo State House of Assembly, South South Zone. National Assembly, Governorship and House of Assembly Election Petition Tribunal, Edo Benin City	<i>Pages 44, 47- 48</i> “Whereas several serious allegations were n against INEC officials who allegedly took part in elections malpractices eg. Morrison Omogiate, Fe Aimufiua by PW6, Joseph Ekhar to by PW13 evidence of rebuttal was called by them. And the la settled that where evidence is unchallenged, a cou law seized (sic) of the matter has no option tha accept same as proved. [W]e ...agree that the e results of Ovia South West Local Government Ar plagued by corrupt practices, manipulation and compliance with both the Electoral Act and relevant laws governing conduct of election. Th because we have found as submitted by Petiti counsel several cases of over voting by comparin unit result with Voters registers. We therefore hav option than to cancel the entire result for Ovia S West Local Government Area...Furthermore, and clear “case of irregularity in this Local Govern Area is that from the result of physical countin ballot papers done by PW22, the total number of v recorded is 33,784 while the result declared in Ex 43 showed the total votes cast as 41,376, a clear of over voting”.
47.	INEC, Electoral Officer, Returning officer for Ahoada West Local Government Area	<i>Barr. Joseph Elleh v. INEC & Ikiriko Odhuluma Hope</i> Petition No: EPT/SA/20/2007	Ahoada West Constituency Rivers State South-South Zone. National Assembly, Governorship and State House of Assembly Election Petitions Tribunal, Port Harcourt, Rivers State, South South Zone.	<i>Pages 24 and 26</i> "RQ 1, the Electoral officer who conducted Election in dispute was clear and unequivoca admitting under cross-examination that voters' reg was not among the list of Electoral materials distributed on the Election day. This admittance makes nonsense of the pleadings of the two set Respondents on voters' register which is to the e that same was distributed by the said Electoral of to the Supervising Presiding officers on the Elec day. ...It is therefore merely stating the obvious that there was no voters' register in the conduct o election in dispute. There could not, have there been valid accreditation, valid conduct of polls, v counting of votes, valid collation of results, v signing of Results forms and valid publication Results...It is crystal clear that the number of vot the ward where election was cancelled is almost t the number of votes scored by the 2 nd Respondent was returned as the winner of the election in questi

48.	INEC	<p><i>Hon. Moses Omo Egharevba &PDP</i> v. <i>Mr. Ogbeiwi (Etinosa)</i> <i>Ikponmwosa (AC) & Ors.</i> Petition No: EDSA/EPT/3/07</p>	<p>House of Assembly Orhionwon (II) Constituency, Edo State South South Zone.</p> <p>National Assembly, Governorship and State House of Assembly Election Petitions Tribunal, Benin City, Edo State, South South Zone.</p>	<p>Page 17 “For the INEC to admit there was no election and make a volte face to say there was election in that speaks volumes about what is left of the stu integrity and reputation of INEC in that elec process. That U-turn, as it were, smacks of do speak which does not find favour with the law...”</p>
49.	<p>Tajudeen Araoye Adeyemo, Alhaji Olarinde, Chiefs Hamusat Moshood, Oyelade Tajudeen, Badru Taiwo, Okunola Rufai, Olaniyan Kasali and Olaniyan Muftau. Others are Rasaq Adeyemo, Hon. Ibraheem Dauda, Hon Adeyemo Asimiyu, Hon Rufus Oyegbile, Alhaji Fassai, Fatai Olukotun, Alhaji Wahab Aniyani and Councillor Quadri Jamiyu</p>	<p><i>Olusola Adeyeye</i> v. <i>Simeon Oduoye & 711 Ors.</i> Petition No: NA/ EPT/OS/12/2007.</p>	<p>Osun State Central Senatorial District.</p>	<p>Pages 20, 26 and 27 “This Tribunal has carefully reviewed the evidence the petitioner on this issue to the effect that elections of 21/04/07 in the Osun Central Senat District were marred by substantial elec malpractices. The evidence of violence, v intimidation, hijacking, illicit thumb printing, b box stuffing is overwhelming and beyond reason doubt, conjure or proposition or presumption. In the petitioner’s evidence is far from being wobbly vague. We accept the evidence before the Tribunal although the elections started on a peaceful note in said district they became disrupted by invasion of polling units and booths by armed thugs and hoodl of the 2nd respondents. That in this disruption, ens chaos, mayhem and voter intimidation the hoodl and thugs were emboldened to engage in c malpractices of ballot box snatching, illicit th printing of ballot papers, ballot box snatching etc evidence of PW1-PW36 we find is believable and not in any way impeached in cross examina Indeed that there is nothing in the evidence of R RW2 to contradict the above as all the responc witnesses testified that they arrived at their po units early, cast their votes and within 15-20 min left the booths for their homes. All of which happ well before 12noon. Further that they visited no c units in their respective wards. We are satisfied th occurrence of the incidents of electoral malprac enumerated above has been proved beyond reasonable doubt. “We are further persuaded th names mentioned by the Petitioner’s witness being the ringleaders of these electoral crimes members of the 2nd Respondents (sic) have not cleared. Since the names mentioned are said to known members of the 2nd Respondents,(sic) the shifted to the Respondents to show that they did no</p>

				<p>what the Petitioner said they did and we so hold. We are equally concerned that the second Respondents i.e the Commission never deemed it necessary to call witnesses to explain away the pervasive irregularities. Nor did they rigorously deconstruct the elections and results they conducted with payers' money as constitutionally required. Rather they choose to abandon their pleadings with the attendant consequence that the Commission will be deemed to have accepted the facts adduced by the Petitioner. The burden of proof on the Petitioner in such a circumstance is minimal."</p>
50.	Tunde Isiaq (1 st Respondent)	<p><i>Okanlawon Soniyi v. Tunde Isiaq</i> Petition No: EPT/LAS/NA/10/2007</p>	<p>Ibeju-Lekki Federal Constituency; South West Zone.</p> <p>The National Assembly/Governorship and legislative Houses Election Petition Tribunal, Lagos, South West Zone.</p>	<p>Having found that the 1st Respondent was not qualified to have contested the April 28th (sic) Election into the House of Representative for Ibeju- Lekki Federal Constituency on ground that he presented a false certificate....</p>
51.	Temitayo Fawehinmi (aka Fawehinmi T-1 st Respondent).	<p><i>Dr. Joseph Iranola Akinlaja (aka Akinlaja) v. Temitayo Fawehinmi & Ors.</i> Petition No: EPT/OND/NA/15/2007</p>	<p>Ondo East/Ondo West Federal Constituency of Ondo State; South West Zone.</p> <p>Governorship/Legislative Houses Election Tribunal, Akure-Ondo State, South West Zone</p>	<p>Page 119</p> <p>"We heard so much about thugs, and policemen and soldiers acting in concert with them, in the testimony of the Petitioner's witnesses. One has to give credence to thugs when it comes to disruption of any organized event like election. It should not be so. Thugs and Policemen and Soldiers acting as thugs has (sic) a business being at polling units and collation centres used for elections, on the totality of proven evidence before us we cannot allow the purported election of the first respondent to stand. If we do in the face of all these serious irregularities and corrupt practices, it will amount to giving a stamp of approval to the electoral malpractices and raising rigging to great heights. We cannot do such a thing. In the final result, we hold that the 1st Respondent, Temitayo Fawehinmi was not elected or returned by majority of lawful votes.</p>
52.	Election Petition Tribunal; INEC (3 rd Respondent) The Resident Electoral Commissioner, Ekiti State (4 th Respondent).	<p><i>Dr. John Olukayode Fayemi & Anor. v. Olusegun Adebayo Oni & 7 Ors.</i> (2010) 17 NWLR (Pt. 1222) 326</p>	<p>Ekiti State Governorship Election; South West Zone.</p> <p>Ekiti State National Assembly Governorship and Legislative Houses Election Tribunal;</p>	<p><i>Per Salami, P.C.A, pages 395-396, paras. G-E</i></p> <p>"From the deductive summary of the above, what brought to the imagination was the prevaricating conduct of the fourth Respondent. This was the Resident Electoral Commissioner who protested against the results of the wards of Ido-Osi which she declared as fake. She refused to announce those results as to do so would amount to an affront on her Christian conscience. In consequence, abandoned her duty post,. Some would say intriguingly, and to the consternation of the w</p>

			Court of Appeal, Ilorin	world, she subsequently, emerged. Without offering any explanation whatsoever; she accepted and announced the self-same results which she had earlier impugned as being repulsive to her conscience. The absence of evidence, therefore, explaining the change of heart by the 4 th Respondent in the light of what transpired, in my humble view, leaves very much to be desired of the 3 rd and 4 th Respondents who, by the nature of responsibility reposed in them, held the key of ensuring that a free and fair elections (sic) be conducted for the Nigerian people. The betrayal of confidence will have a devastating and lasting effect. The cumulative outcome is to lend a corroborative credence (sic) to the allegations of non-compliance levied by the Appellants.”
53.	INEC PDP, ASP Christopher Oloyede; ;	<i>Atikase Otito v. Kunle Odidi & 6 Ors.</i> (2011) 7 NWLR (Pt. 1245) 108	Ilaje II Constituency of Ondo State, South West Zone. Governorship/Legislative Houses Elections Petition Tribunal, Ondo State, South West Zone; Court of Appeal.	<i>Per Gumel, J.C.A. p. 125, paras. C-D</i> “The evidence on record as per exhibit E showed that the policeman, ASP Christopher Oloyede signed the election result sheet as party agent on behalf of PDP. This is an illegality and violation of election rules both by INEC and the police. ASP Oloyede behaved disgracefully and abused his position. Neither INEC nor the police could defend the illegality that ought to have been sanctioned.”
54.	Court of Appeal, Prof. Maurice Iwu	<i>Alhaji Atiku Abubakar v. Alh Umaru Yar'Adua</i> (2008) 4 NWLR (Pt. 1078) 465 (SC)	Presidential Election. Supreme Court.	<i>Per Niki Tobi, J.S.C p. 503, para. B - E</i> “Courts of law cannot sacrifice the constitutional principle of fair hearing at the altar of speedy hearing of cases when the content of the speedy hearing is in consonance with fair hearing in the sense of averment by the parties, as in the instant appeal, the right to administer interrogatories. A party who is entitled to administer interrogatories and is denied the right, is denied, the right to fair hearing. Although the law is that speedy hearing is one vital and important aspect of fair hearing, speedy hearing of a case which denies a party access to pre-trial evidence, such as interrogatories, is not fair hearing. In the instant case the Court of Appeal was wrong in rejecting the application to administer interrogatories on the ground that it would impede speedy trial of the case. Accordingly, I am of the firm view that Prof. Iwu should answer the 27 questions”.
55.	INEC	<i>Kingsley Owen Chijioke Oriaku v. INEC &</i>	House of Representatives, AMAC/Bwari Federal	<i>Pages 41 and 47</i> “All the findings in this matter show conclusively that the Petitioner was VALIDLY NOMINATED for the election of 21 st April 2007. It has also been shown

		Anor.Petition No: NAET/001/07	Constituency, Federal Capital Territory, FCT, Abuja. Election Tribunal	established that the name and logo of the Petitioner Party, APGA were not on the Ballot Papers used in the conduct of the April 21 st 2007 House Representatives' election. ...The fact that ballot papers were printed abroad is no license or passport for the invocation of Section 146 of the Electoral Act, 2006 when from the evidence and circumstances of the case, it is clear that the provisions of the law breached, INEC did not comply with fundamental, statutory conditions for a valid elections. There can be no result or votes to be counted in ballot election where such candidates who were cleared to contest the election were denied opportunity of contesting and in a situation where the choice of the electorate is so circumscribed, albeit unlawfully by INEC in this matter. The reasons being peddled in INEC's favor to save the election in dispute from being invalidated by this Tribunal are tenuous and inconsistent with the sense of justice and fair play in the election. INEC was given more than sufficient time to plan, organize and conduct a free and fair and impartial election right from 2006 to April 2007. INEC should not be permitted to benefit from its own wrong. To allow any person or authority to benefit or reap from his/its wrongful or unlawful act will be manifestly unjust, and it will portray the law in this case the Electoral Act, 2006) as an instrument of injustice. See A. P. v. OWODUNNI (1991)8 NW (Part 210) 391 at 421."
56.	INEC Returning Officer, Dengi Constituency, Electoral Officer; INEC Jos Office.	<i>Ali Bala &Anor.</i> v. <i>INEC & 3 Ors.</i> Petition No: PL/LHEPT/6/07	Dengi Constituency; Plateau State House of Assembly; Plateau North Central Zone. Election Petition Tribunal	<i>Pages 24 and 26</i> "Having regard to all the foregoing, we answer the issue for determination in the affirmative accordingly hold that the Petitioners were unlawfully excluded by the 1 st to 3 rd Respondents from contesting the Dengi election on the 14 th day of April, 2007. In the instant case, the ballot papers used for the Dengi election did not have the symbol and name of the Petitioner thereon. The ostensible reason proffered by the 1 st to 3 rd Respondent for the absence of the symbol and name on the ballot papers used for the Dengi election is that the Petitioners submitted their nomination forms after 29 th January, 2007, being the last day for the submission of such forms. In spite of this reason, the evidence before this Tribunal shows that the Petitioners were listed among the candidates to contest the election into the Plateau State House of Assembly on 14/4/2007(though wrongly placed by the 1 st Respondent under Kantana Constituency instead of Dengi Constituency): see Exh. P3. The implication of this act of omission is that not only were the Petitioners denied the right to be voted for by the electorates who had desired to exercise their right

				vote for them were thereby disenfranchised. cannot be the intendment of the Electoral Act, 2006 nor the 1999 Constitution. It is as if the Petitioners herein and their supporters were denied one of their fundamental rights.”
57.	INEC Plateau State Office	<i>Kargwak Fazing & 1 Or Democratic Peoples Party;</i> v. <i>INEC & 3 Ors.</i> Petition No: PL/LHEPT/2/2007	Langtang South Constituency, Plateau State House of Assembly, Plateau State, North Central Zone. Election Petition Tribunal, Jos, North Central Zone.	Pages 20-21: “In the instant case, the ballot papers used for the election into the "Plateau State House of Assembly" in respect of Langtang South constituency did not include the symbol and name of the 2 nd Petitioner thereon. The ostensible reason proffered by the 1 st to 3 rd Respondents for the absence of the said symbol and the name on the ballot papers used for the Langtang South election was that the Petitioners submitted their nomination forms after 29 th 1/2007, being the last date for the submission of such forms. Our earlier findings in this judgment showed that in other constituencies where nomination forms of candidates was received by the 1 st Respondent on the same day as those of the Petitioners herein, as in Langtang North constituency where the symbol of the 2 nd Petitioner was missing on the ballot paper used for the election was rescheduled. In the case of Langtang South constituency, no effort was made to reschedule the election. The implication of this was that not only were the Petitioners denied the right to be voted for by the electorates who had desired to exercise their right to vote for them were thereby disenfranchised. This cannot be the intendment of the Electoral Act nor the Constitution of the Federal Republic of Nigeria, 1999. It is as if the Petitioners herein and their supporters were denied one of their fundamental rights”.
58.	INEC Plateau State Office	<i>Kelvin Tonggrang Dasun & 1 Or.</i> v. <i>INEC & 3 Ors.,</i> Petition No. PL/LHEPT/3/2007	Pankshin North Constituency; Plateau State House of Assembly; North Central Zone. Election Petition Tribunal, Jos	Pages 27 & 30: “In the result, we hold that the 2 nd Petitioner and the candidate, the 1 st Petitioner, were, by the non-inclusion of their names and logo in the ballot papers used for the election into the Plateau State House of Assembly for Pankshin North Constituency on 14 th April 2006, unlawfully excluded from the elections. This finding sustains the first ground of the petition which is based on Section 145(1)(d) of the electoral Act 2006... It is evident to us that one of the consequences of the failure by the 1 st -3 rd Respondent to reflect on the ballot papers the logo and name of the Petitioners is the disenfranchisement (sic) of certain of the electorates including the 1 st Petitioner himself. This cannot be the intendment of the Electoral Act, 2006 or of the Constitution of the Federal Republic of Nigeria, 1999. We have no doubt that the failure of the 1 st Respondent to include the logo and the name of the Petitioners on the ballot papers used for the election of 14/4/2006

				wherein the 4th Respondent was returned as elected in clear violation of the said provision of Section 45(1) of the Electoral Act, 2006. We hold that this violation sustains the second ground of this petition which is founded on Section 145(1)(b) of the Electoral Act, 2006.”
59.	INEC Plateau State Office	<i>Manasseh Maxwell Duwong & Democratic Peoples Party.</i> v. <i>INEC & 4 Ors.</i> Petition No: PL/LHEPT/14/2007	Bokkos Constituency; Plateau State House of Assembly; North Central Zone. Election Petition Tribunal, Jos, North Central Zone.	<i>Pages 17, 19, 20 and 21:</i> “The ballot paper was admitted in evidence as exhibit 1 (1-78) which showed clearly that the name of the 2 nd Petitioner under which platform the 1 st Petitioner nominated to contest the election was not included on the ballot paper to enable the Petitioners’ supporters and other eligible voters vote for them. ... We are satisfied with the submission of learned counsel for the Petitioners that the election of 14 th day of April 2007 conducted by the 1 st to 2 nd and 5 th Respondents was a substantial violation of the provisions of the Electoral Act. By section 45 (1) of the Electoral Act, the Respondent (INEC) has a mandatory duty to include the symbol adopted by the Petitioners (in this case ‘Pineapple’) in the ballot paper used for the election. The 1 st Respondent failed to do this. As a consequence, the Petitioners were unlawfully precluded from contesting the election of 14 th day of April, 2007. It is clearly stated in the petition (see: paragraphs 17 and 19) and the testimonies of the witnesses (PW2 and DW1), contrary to the fundamental principles of the Electoral Act and the Constitution of the Federal Republic of Nigeria 1999, the election that supported the aspiration of the Petitioners, was denied their basic civic right to vote for the candidate of their choice. The Petitioners were also denied their constitutional right to contest the election. ... The conduct of the Respondents in removing or failing to include the name and logo of the Petitioners in the ballot paper being one that had the effect of disenfranchising the electorate apart from denying the Petitioners their right to contest to the office in issue goes to the root of the principles of the Constitution and the Electoral Act. ”Once a party complains of unlawful exclusion from an election, no Respondent can find shelter under the umbrella of substantial compliance. The unlawful exclusion of the Petitioners and the disenfranchisement of the electorate that support them is an unpardonable violation of the Electoral Act that once proved, entitles the Petitioners to judgment nullifying the election. We so hold”.
60.	INEC Plateau	<i>DPP & Anor.</i>	Plateau South Senatorial District;	<i>Page 10:</i> “From the evidence led and our findings, the Petitioners

	State Office	v. <i>Brig. Gen. John Shagaya (Rtd.) & 3 Ors.</i> , Petition No: PL/NAEPT/SN/27/2007	North Central Zone. National Assembly/ Governorship and Legislative Houses Election Petition Tribunal, Jos. North Central Zone.	(sic) were no doubt excluded from the ballot paper in these Local Governments Areas. That was the main reason why election in those Areas ought also to have been postponed so that the Petitioners and their supporters could also enjoy the right of franchise in the election as did the Respondents. Not postponing the election in those Areas in our view was also a violation of Section 27 of the Electoral Act 2006 as discretion conferred for just cause was not exercised, learned counsel for the Petitioners had submitted that piecemeal conduct of election was a violation of Section 48 of the Electoral Act 2006. It was one election that was bedeviled with a common virus of the absence of the logo and name of the Petitioners who were contestants at the election in all the Local Government Areas covering the Plateau South Senatorial District.””
61.	INEC Plateau State Office	<i>DPP & Anor.</i> v. <i>INEC & 3 Ors.</i> , Petition No: PL/LHEPT/4/2007	Rukuba/Irigwe constituency; Plateau State House of Assembly; North Central Zone. National Assembly/ Governorship and Legislative Houses Election Petition Tribunal, Jos, North Central Zone	<i>Page 16</i> “That being the case, we hold that we find no justification for the omission by the 1 st Respondent of the Petitioners’ logo and name from the ballot paper used for the House of Assembly election on 14/4/2007 in respect of Rukuba/Irigwe Constituency of Plateau State.”
62.	INEC Plateau State Office	<i>DPP & Anor.</i> v. <i>INEC & 3 Ors.</i> , Petition No: PL/LHEPT/8/2007	Qua’an Pan South Constituency, Plateau State House of Assembly, North Central Zone. National Assembly/ Governorship and Legislative Houses Election Petition Tribunal, Jos, North Central Zone	<i>Pages 16 – 17</i> “It is our candid view that the conduct of the Respondents in removing or failing to include the name and logo of the Petitioners in the Ballot Paper being one that had the effect of disenfranchising the electorate apart from denying the Petitioners their right to contest for the office in issue, goes to the root of the principles of the Constitution and the Electoral Act. Section 146(1) of the Electoral Act cannot help in the case of the Respondents. It is an incurable Fundamental vice...The unlawful exclusion of the Petitioners and the disenfranchisement of the electorates that support them is an unpardonable violation of the Electoral Act that once proved, entitles the Petitioners to a judgment nullifying the election and we so hold.”
63.	INEC Plateau State Office	<i>DPP & Anor.</i> v. <i>INEC & 3 Ors.</i> , Petition No:	Riyom Constituency, Plateau State House of Assembly, North	<i>Pages 22 – 23</i> “From the above, we find and hold that there is no justification for the omission or exclusion of the Petitioners’ logo and name by the 1 st Respondent

		PL/LEHPT/5/2007	Central Zone. National Assembly/ Governorship and Legislative Houses Election Petition Tribunal, Jos, North Central Zone.	the ballot papers used for the Plateau State House of Assembly Election on 14/4/2007 in respect of Ri Constituency. Accordingly, we hold as proved the fourth require of unlawful exclusion. Having regard to the foreg we therefore answer the first issue in the affirm and accordingly hold that the 1 st – 3 rd Respon unlawfully excluded the Petitioners from contes the election into the Plateau State House of Asser held on 14 th April, 2007 with respect to Ri Constituency of Plateau State.”
64.	INEC Kogi State Office.	<i>African Democratic Congress & Anor.</i> v. <i>INEC & Ors.</i> Petition No: NALGH/KG/4/2007	Lokoja II Constituency, Kogi State House of Assembly, North Central Zone. National Assembly/ Governorship and Legislative Houses Election Petition Tribunal, Lokoja, North Central Zone.	<i>Page 20</i> “The role of INEC the 1 st Respondent is to be umpire in the electoral process. In our view acts of nature where some candidates are not treated equ particularly when it affects the right of a party i election should be avoided. This otherwise in our v will only succeed in feeding the disease that it need cure. When people feel unable to express electoral preference, they find refuge in crim activities as a platform of protest. This serves wake-up call for INEC now that another election the corner. In all, we are of the view and we hold that compliance of the Electoral Act aforesaid by th Respondent which led to the unlawful exclusion o Petitioners in the election of 14 th April 2007 into Lokoja II Constituency of Kogi State House Assembly has substantially affected the said elec and therefore cannot stand.”
65.	INEC, Adamawa State Office	<i>Action Congress & 2 Ors.</i> v. <i>INEC & 5 Ors.,</i> AD/GOV/EPT/1/07	Governorship Election, Adamawa State, North East Zone National Assembly/Governor ship and Legislative Houses Election Petition Tribunal, Yola, Adamawa State	<i>Page 62</i> “A word on INEC before we proceed further in judgment. ... In more serious and accountable poli climes, INEC should have evinced some remorse the whole problem it has caused and the public m it wasted to organize an election it made inchoate before it started. Its grandstanding is ra unfortunate. As a result of its ineptitude or mischi serious disruption will be caused to the governanc Adamawa State. In our view the 2 nd and 3 rd Petiti and the 6 th Respondent who had already been swor as Governor are victims of INEC’s excesses. We that the 1 st Petitioner validly nominated the 2 nd an Petitioners but they were unlawfully excluded by 1 st Respondent from the Governorship election w took place on 14/4/2007 in Adamawa State.”
66.	Kano State Resident Electoral Commissioner	<i>Alhaji Sule Lawan Shuwaki & ANPP</i> v. <i>Abdullahi Illiyasu Electoral Officer,</i>	House of Assembly, Tudun Wada Constituency, Kano State, North West Zone.	<i>Page 13</i> “When therefore the Resident Electoral Commissi for Kano State ordered or directed the DW 8, Electoral Officer in charge of the constituency make a return based on that the Administra

	(3 rd Respondent)	<i>Tudun Wada L.G.A. The Resident Electoral Commissioner of Kano State INEC</i> Petition No: EPT/KNS/HA/08/07	Governorship and Legislative Houses Election Petition Tribunal, Kano., North West Zone.	Secretary of the Commission had seen (sic) if cancel, he was not working on the basis of empirical data showing that there was a valid, free fair election. Consequently, the result subsequently declared was null and void for not being in compliance with the provisions of the Electoral Act 2006. This translates to the conclusion that the election of the Respondent was invalid by reason of substantial non-compliance with the provisions of the Electoral Act 2006 as put forward in the substance of the complaint in this petition. There is no cross-petition before us to challenge the exercise of discretion to cancel the election and so we must accept the cancellation of the election as conclusive on the point.”
67.	INEC, PDP	<i>Charles Chinwendu Odedo v. INEC and Anor.</i> (2008) 17 NWLR (Pt. 1117) 554	Idemili North and South constituency; Anambra State House of Representatives; South East Zone. Supreme Court	<i>Per Niki Tobi, J.S.C., Pg.612, para. E</i> “I have come to the conclusion in this judgment that the substitution was not in compliance with sections 34(1) and (2) of the Electoral Act, 2006. And as a consequence of the non-compliance is a nullification of the purported election of Obinna Chidioka to the House of Representatives. The purported election is hereby nullified based on a primary in which Obinna Chidioka scored only 6 votes is hereby nullified. In his place, the Appellant who scored the highest votes of 39 votes is declared competent to contest the election in the constituency. And I declare the Appellant to contest the election on the platform of the PDP in respect of the Idemili North and South Federal Constituency in Anambra State. “
68.	INEC	<i>Chief Theodore Ahamefule Orji & Anor v. Onyema Ugochukwu & 2 Ors.</i> (2009) 8 NWLR (Pt. 1161) 207 C.A.	Governorship election, Abia State; South East Zone. Governorship/National Assembly Election Tribunal, Abia State; Court of Appeal.	<i>Per Saka Adeyemi Ibiyeye, J.C.A., pages 285, para C-D</i> “I am of the strong view that the import of the all the evidence in this case and the inadvertence on the part of INEC is that the declaration of results was not within the contemplation of paragraph 4 (1)(a), (b) and (c) of the First Schedule to the Electoral Act 2006. The consequence was that there was no declaration of results of the election that took place on 14 th April, 2007. In the circumstances, the declaration of results and in view of the special nature of election matter, the petition and/or petitions as the entire proceedings thereon are a nullity.”
69.	INEC Resident Electoral Commissioner	<i>Chief Martin Agbaso v. INEC</i> (2010) 1 NWLR (Pt. 1174) 1 C.A	Governorship Election held in Imo State, South East Zone. Federal High Court; Court of Appeal	<i>Per Jimi Olukayode Bada, J.C.A. page 3</i> “...While parties are in dispute on the cancellation and re-schedule of election and there is a pending case before the court on the legality of the cancellation, it is not competent or appropriate for the Independent Electoral Commission and the Resident Electoral Commissioner to ignore the case and proceed to reschedule and conduct another election. They ought to have waited for the outcome of the case.”

70.	INEC.	<i>Hon. Ikpechukwu Onuoha PDP</i> v. <i>Charles Chinedum Onuoha & 100 Ors.</i> Petition No: ABS/SHA/EPT/6/07	Abia State House of Assembly. National Assembly\Governorship and Legislative Houses Election Tribunal sitting at Umuahia, Abia State; South East Zone.	<i>Pages 18-20</i> “[N]on-compliance with the provision of the Electoral Act 2006 as highlighted in paragraph 2(a)(b)(c) and in this judgment have been proved on preponderance of evidence. The said issues are non-compliance with section 64(1) of the Electoral Act...we hold that the Form EC8A that was not signed by a Disputes Presiding Officer would be adjudged as being invalid and an act not in accordance with the aforesaid provisions of the Act...[W]e hold that such results as tendered by the Respondent ought to be rejected and same is hereby rejected....”
71.	INEC, Ebonyi State Office.	<i>Barrister Nnachi O. Egwu</i> v. <i>Mr. Ben Ndubuisi Isu PDP</i> INEC <i>The Returning Officer INEC (Afikpo)</i> Suit No.: EPT/EBS/HA/6/2007	Afikpo North East Constituency in Ebonyi State House of Assembly, South East Zone. Governorship and Legislative Houses Election Tribunal, Abakiliki, Ebonyi State, South East Zone	<i>Page 10</i> “This Tribunal has no option, in the circumstances of this case, than to attribute it to the deliberate under supply of electoral materials by the 4 th respondents. The under supply of ballot papers to the polling booths in the Constituency was thus a substantial non-compliance and it has the effect of nullifying the House of Assembly election conducted by the Respondent (INEC) in Afikpo North East Constituency of Ebonyi State.”
72.	INEC (Anambra Office)	<i>Nduka Alor</i> v. <i>Obiora Chukwuka & Ors.</i> Petition No: EPT/AN/SAE/78/2007	Onitsha South II Constituency election into the Anambra House of Assembly, South East Zone. National Assembly/Governorship and Legislative Houses Election Tribunal, Awka, Anambra State, South East Zone.	<i>Page 46</i> “The failure to supply sensitive electoral materials and such a(sic) result forms by the Electoral Commission, the late supply of non sensitive materials and late opening of polls, disruption of voting process by aggrieved electorate, form a catalogue of non compliances which bedeviled the elections process 14/4/2006 which was substantial in nature and afflicted the totality of the elections process into Onitsha South II constituency including the result declared by 2 nd Respondents. In this matter, INEC failed in its onerous responsibility and duty to conduct a free and fair election in Onitsha South II constituency on 14/04/2007. The Commission failed to live up to expectations of the electorate and in the way and manner it conducted the election. In the light of this, the election into Onitsha South II State Constituency on 14/4/2007 which the 1 st Respondent Obiora Chukwuka returned as the winner cannot stand”.
73.	INEC and its officials assigned for the conduct of the gubernatorial	<i>INEC & Ors.</i> v. <i>Comrade Adams Aliyu Oshiomhole &</i>	Edo State Governorship Election, South South Zone.	<i>Per Abdullahi, P. C. A. Pages 626 – 627</i> INEC, as I said earlier has the exclusive power to conduct elections and declare the results; it does not share that power with anyone. It conducts the election

	election in Edo State.	<i>Ors.</i> (2009) 4 NWLR (pt. 1132) 607 C.A.	National Assembly, Governorship and Legislative House Election Petition Tribunal, Benin City, Edo State; South - South Zone.	and its mandate is to see that the elections are free and fair. To that end, INEC is expected to and must be as an impartial umpire. Impartial means not supporting one person or group more than another, neutral, unbiased... INEC and its officials appear to have derailed from their role in this case. Yes they have joined necessary parties and must therefore be joined as Respondent...Ironically, INEC and its officials submitted in their brief that the fact that the tribunal relied on documents only and discarded the testimony of PW47 did not portray it as an impartial arbiter in the circumstances, but that is an unwarranted attack on the tribunal.”
74.	INEC Delta State Office, PDP	<i>Dr. Alphonsus Ojo v. INEC & Ors.</i> (2008)13 NWLR (Pt. 1105) 577, C.A.	Ukwuani constituency of Delta State House of Assembly. South South Zone. Federal High Court; Delta State Governorship and Legislative Houses Election Tribunal; Court of Appeal.	<i>Per Nwosu - Iheme, J. C. A., page 584 para 2</i> “By pronouncing the Appellant the rightful candidate of the PDP for the election of 29/4/07 and in view of the fact that the 1 st Respondent INEC participated in the suit at the Federal High Court, being aware of the judgment in respect of the matter being challenged by the Appellant was fixed for 30/4/07, INEC had no business conducting the election on the 29/4/07. INEC was truly independent. It was therefore the lawlessness exhibited by INEC by conducting the election in the First leg and going further to issue a Certificate of Return to the 2 nd Respondent with a Certificate of Return despite the judgment of the 30/4/07 that further compounded the confusion and confounded the already messy and confused situation. The first relief granted by the said Federal High Court by declaring the Appellant the candidate of PDP for the election into the Delta State House of Assembly for the Ukwuani Constituency, subsumed every other relief before the eye of the law therefore the fact of the 2 nd Respondent participation in the election of the 29/4/07 never took place. It is not only deleted. It was erased from human memory and deemed never to have taken place at all.
75.	PDP, and Senator Hosea Ehinlanwo	<i>Senator Hosea Ehinlanwo v. Chief Olusola Oke; Peoples’ Democratic Party, Independent National Electoral Commission</i> (2008) 16 NWLR (Pt. 1113) 357.	Ondo South Senatorial Election; South West Zone. Supreme Court.	<i>Per Onnoghen, J.S.C. at page 411; paras D</i> “It is however unfortunate that a winner of primaries conducted by the 2 nd Respondent in accordance with its Constitution and guidelines was prevented from being submitted as candidate for election in a democracy while the man who was sponsored became the sponsored candidate. There is nothing that has been done about that having regards to the state of the law on substitution and the facts of this case. This case presents the stark realities of the Nigerian situation, particularly as it relates to the attitude of the political class which sees election into any position as a matter of life and death and consequently ready to do anything possible to attain the ambition. The Appellant in this case, distinguished Senator simply exploited

				<p>State of the relevant law to his advantage irrespective of the fact that he lost the primary election and appeal against same was refused by the People's Democratic Party (PDP). “</p> <p><i>Per Akintan J.S.C. page 416 Paras B-C</i></p> <p>“In the letter by which the request for the substitution was made...no reason was given for making the request. The provisions of the subsection are mandatory and the conditions prescribed are not to be folded...There was a total failure to give cogent reasons in this case. It follows also that there was nothing to verify since no reason was given. The mandatory provisions of the Act were therefore not complied with and as such the attempt to make the change is null and void.</p>	
76.	Ekiti State Election Tribunal; Electoral Officers;	INEC	<p><i>Dr. John Olukayode Fayemi v. Olusegun Oni & INEC & 15 Ors.</i> (2009) 7 NWLR (Pt. 1140) 223</p>	<p>Ekiti State Governorship Election; South West Zone.</p> <p>Ekiti State National Assembly Governorship and Legislative Houses Election Tribunal, Ekiti State, South West Zone;</p> <p>Court of Appeal, Ilorin. North Central Zone.</p>	<p><i>Per M.D Muhammad, J.C.A, pages 284 & 285 paras H, B respectively</i></p> <p>“From the foregoing, the question that yearns for an immediate answer is: if the electoral officers to wit the presiding officers poll clerks and poll assistants and accountable cannot say whether or not the accreditation of voters was carried out and how many voters were accredited to vote in the 14th A Governorship Election in the contested areas would?...Is it not perverse for the tribunal to hold that there had been accreditation, an exercise of knowledge of the number of voters participating in voting, and yet to turn round and hold at the same time that the number of such voters accredited cannot be inferred from the very exercise? I hold it is perverse to so hold. The foregoing finding of the tribunal, is a manifest exercise of approbation and reprobation and a dismal volte face”.</p>
77.	National Assembly Election Petition Tribunal Oshogbo.		<p><i>Yusuf Sulaiman v. Leo Adejare Awoyemi & Ors.</i> (2009) 16 NWLR (Pt. 1168) 513.</p>	<p>Irepodun/Olorunda/Osogbo/Orolu Federal Constituency</p> <p>National Assembly Election petition Tribunal, Oshogbo, Osun State;</p> <p>Court of Appeal.</p>	<p><i>Per Ogunbiyi, J.C.A., pages 550 paras. E- F</i></p> <p>“With the tribunal having issued subpoena duces tecum et ad testificandum on a competent and compellable witness but prevented him from giving evidence, such tribunal cannot be said to have obeyed the hallowed principles of natural justice, equity and good conscience. More intriguing also was the holding and substitution of “notice to produce” for “subpoena duces tecum ad testificandum”. The case of the Appellant rightly submitted by learned counsel, has received fair treatment in the circumstance.”</p>
78.	ANPP (2 nd Appellant) & the Federal High		<p><i>Barrister (Mrs.) Amanda Peters Pam & Anor.</i></p>	<p>AMAC/Bwari Federal House of Representatives</p>	<p><i>Per George Adesola Oguntade, J.S.C., p. 94 para. C-E</i></p> <p>“The 2nd Appellant, (ANPP) in its letter explained</p>

	Court of Abuja	v. <i>Nasiru Mohammed & INEC</i> (2008) 16 NWLR (Pt. 1112) 1 (SC)	Election, FCT. Supreme Court	<p>NAS 4 dated 19/02/07 wherein it purported to substitute the 1st Respondent with the 1st Appellant without any reason whatsoever was given for the substitution. In the letter from the 2nd Appellant to the writer one Senator Sai'du Umar Kumo signed and dated 19/02/07, he wrote: 'I am forwarding herewith details of the proposed approved substitutions in respect of the National Assembly candidates for your necessary approval, please.' Clearly, the 2nd Appellant did not comply with the provisions of Section 34 in substituting the 1st Appellant with the 1st Respondent as a candidate for the National Assembly election on 21/04/08."</p> <p>Per Niki Tobi, p. 94, para. C "I have never come across a more oppressive and hostile litigation than this in my life as a Judge. Here is a case where the trial Judge refused to stand down a matter for ninety minutes. Here is a case where very hostile proceedings (using the expression of Ademola, CJN in <i>Doherty v. Doherty</i> (1968) NMLR 241, in which the facts were violently and notoriously in dispute, were not converted to a writ of summons, all in the name of speedy hearing. Here is a case where a matter fixed for a motion was rushed to judgment in favour of the 1st Respondent the same day, again all in the name of speedy hearing. It is a matter where all known principles of fair hearing were thrown overboard to destroy the case of the Appellants, again in the name of speedy hearing. The ambition and desire of a judge to hear a matter speedily cannot be substituted for the hearing of the case".</p>
79.	Tribunal, INEC, ANPP	<i>Alhaji I. M. Saulawa v. Badamasi Kabir and Ors.</i> (2011)2 NWLR [Pt. 1232] p.417	House of Representatives for the Katsina Central Federal Constituency, Katsina State, North West Zone. Federal High Court; National Assembly Election Petition Tribunal Kaduna; Court of Appeal,	<p><i>Per Okoro, J.C.A., pages 448-449, paras. F-C</i> "Whenever aggrieved parties have decided to bring their matter before a court of law to ventilate the same, such court should not hastily abdicate its function on any flimsy objection to its jurisdiction...What baffles me however in this matter is that the lower tribunal in one breadth held that it had no jurisdiction to hear the petition and accordingly struck out the petition and in another breadth went ahead to hear and determine the petition which it has struck out thereby dismissing the petition on the merit. As I understand rules and proced</p>

			Kaduna, North West Zone.	once a matter is struck out, it is no longer before the court until it is relisted. But in this matter, petition was struck out and at the same time, tribunal heard and determined it on the merits. It still do not understand.”
80.	Governorship Legislative Houses Election Petition Tribunal, Kaduna	<i>Barrister Emmnauel Bako Kantiok; Action Congress (AC) v. Kantiok Irmiya Ishaku; PDP; INEC; The Returning Officer, Zonkawa State Constituency</i> Suit No: CA/K/EPA/SHA/9/07	Zonkwa State Constituency of Kaduna State, North West Zone. Governorship Legislative Houses Election Petition Tribunal, Kaduna; Court of Appeal, Kaduna, North West Zone.	“The trial Tribunal is in grave error when it ruled that there was no counter affidavit and therefore ruled that the preliminary objections were unchallenged and uncontradicted that being so will be taken' as proof of the facts in issue. The learned trial Tribunal totally did not take into consideration the evidence adduced by the Petitioners (now Appellants) before arriving at the conclusion that their petition is incompetent. This is a clear breach of their right to fair hearing contained in Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria...In the instant appeal it is very glaring from the printed record before the court that the trial Tribunal denied the Appellants their right to fair hearing contained in Section 36(1) of the 1999 Constitution of Nigeria, when it ignored and did not consider the Appellants’ written address and its accompanying counter-affidavit which was filed and sued in opposition to the 1 st & 2 nd Respondents’ motion dated 04/06/2007, and proceeded to strike out the Appellants petition on the grounds that the said 1 st & 2 nd Respondents’ motion had no counter and was unchallenged and un-contradicted, accordingly Issue No. 1 was resolved in favour of the Appellants against the Respondents. Issue of fair hearing is fundamental as the want of it vitiates (sic) the entire proceedings and the outcome of the proceedings and proceedings be it judgment or ruling, accordingly the ruling of the Tribunal delivered on 20/06/2007 is nullified for not observing the basic principle of audi alteram partem.” Pages 16-17 of the judgment.
81.	Governorship and Legislative Houses Election Tribunal in Imo State	<i>Ejiogu v. Irona</i> (2009) 4 NWLR (Pt. 1132) 513	Ohaji/Eghema/Oguta/Oru West Federal Constituency; South East Zone. Governorship and Legislative Houses Election Tribunal in	<i>Per Garba, J.C.A. Pages 575-576 Paras C-D</i> “In the present appeal, I have recounted the facts and circumstances leading to and in which the Appellant’s petition was dismissed as shown on the record of appeal more than once. As a reminder and in brief, when the Appellant’s petition was called before the lower tribunal on

			<p>Imo State; Court of Appeal.</p>	<p>September, 2007 for continuation of the hearing session, it was dismissed by the tribunal without hearing any of the counsel for the party present at the time but in particular, Appellants' counsel. Without wastage of verb and any difficulty whatsoever I would say there was no hearing at all by the tribunal on that day let alone a fair hearing. What happened in the tribunal was entirely a one sided affair akin to a military briefing in times of a desperate war. Troops gathered, presence noted, and "war lost" was decreed that the Appellant's petition was dismissed because of the judgment in which he was not a party or afforded a hearing there. There can hardly be any other brazen way to ignore the constitutional right to fair hearing in the procedure adopted by the lower tribunal. Perhaps, I should point out here that tribunal has power to dismiss the Appellant's petition on whatever appropriate reasons is not in doubt. The tribunal should, however, be told or at least reminded that it could not take a decision of such reaching consequence as a dismissal in respect of Appellants' petition and which affects his rights without first giving him an opportunity of hearing on it...Like I mentioned before, there was no hearing at all by the lower tribunal in the proceedings of 6th September, 2007 and so the Appellant was not afforded an opportunity of hearing at the proceedings before his petition was dismissed. This is clearly a breach of the guaranteed right that in the determination of legal rights or obligations in proceedings before a court or tribunal, he should be given a fair hearing. What happened on the 6th of September, 2007 was a complete denial of a fair hearing by the lower tribunal to the Appellant before his petition was dismissed. The tribunal had a constitutional duty and obligation to have invited the Appellant to address it on the effect of the earlier judgment of the tribunal on his petition before dismissing it on the basis of that judgment. The failure, neglect, omission or refusal to do that before proceeding to dismiss the Appellant's petition amounted to denial of fair hearing to the Appellant. There can be no doubt about that at</p>
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82.	National Assembly Election petition Tribunal,	<i>Babajide Omoworare v. Iyiola Omisore & Ors. (2010) 3 NWLR (Pt. 1180) 58.</i>	Osun East Senatorial Election, Osun State, South West Zone. National Assembly Election petition Tribunal, Oshogbo, Osun State, South West Zone; Court of Appeal	<i>Per Ogunbiyi, J.C.A. page 131 paras. F-H</i> “This I say because despite the prevalent finding by the Hon. Tribunal that the nature of malpractices and non-compliance, with the Electoral Act are numerous, it could nevertheless shut its eyes only to decide in favour of all the numerous anomalies. This I hold is very unfortunate. The learned tribunal took care to evaluate the evidence. The findings on the evidence were well within its powers as court of appeal. The evidence which this court is neither seized of nor could question. The tribunal was seriously somersaulted by the decision it took regardless of its findings”.
83.	G.A. Adetola Kazeem, SAN (2 nd & 3 rd Petitioners/Appellants’ Counsel); National Secretary of ANPP.	<i>All Nigerian Peoples Party & Ors. v. The Resident Electoral Commissioner, Akwa Ibom State & Ors. (2008) 8 NWLR (Pt. 1090) 453, C.A.</i>	Nullification of the governorship election in Akwa Ibom State. South Zone. Governorship Election Tribunal; Court of Appeal.	<i>Per Saulawa, J. C. A., pages 516 paras D – F 526 paras. E - G</i> “It’s instructive to note that the absence of the 2 nd and 3 rd Petitioners’ counsel from the tribunal on the said 25/10/07 was most reprehensible, to say the least. Bearing in mind the tribunal’s obligation of giving the Petitioners 48 hours within which to appear at their house in order and make a report thereupon, the failure of the 2 nd and 3 rd Petitioners’ counsel G.A. Adetola Kazeem, SAN ought to have either personally appeared or at least sent any of his junior colleagues to the tribunal on the said 25/10/07. What is more, the fact that both the 2 nd and 3 rd Petitioners had never appeared in the tribunal since the petition was filed, clearly indicated that they have very little if any interest in the final outcome of their petition. Contrariwise, the absence of the Petitioner (Resident Electoral Commissioner, Akwa Ibom state) from all indication had decided the case for reasons best known thereto, to take it’s decision into it’s hand by leaving the 2 nd and 3 rd Petitioners to their fate. Hence, in the light of the above postulations, there are cogent reasons to believe that the lower tribunal had exercised its discretion in dismissing the petition judicially and judiciously.... It is trite that a lawyer has a solemn duty to uphold and observe the rule of law, promote and foster the cause of justice and maintain a high standard of professional conduct and thus shall not engage in any conduct which is unbecoming of a legal practitioner.... In the instant case, rather than deposing to an affidavit

				the National Secretary of the ANPP, with apparent connivance and encouragement of Appellants' counsel, chose to shamefully resort to writing a letter to the Chairman of the tribunal?
84.	Appellant's Counsel, Oholi James SAN	<i>Yusuf v. Suntai</i> (2010) All FWLR (Pt. 502) 1002	Governorship Election of Taraba State, North – East Zone; National Assembly/Governorship and Legislative Houses Election Tribunal Jalingo, Taraba State; Court of Appeal, Jos Division; North Central Zone.	<i>Per Ngwuta, J.C.A, p.1011, para.8</i> “It is the duty of learned counsel to use due language in attacking the judgment of the court or tribunal. In the instant case, there is no evidence that the trial tribunal fished for fault in the case of the Appellant, yet the Appellant accused the tribunal of unfairness and uneven handedness. This is unfair. The trial tribunal members in the perception of the Appellant, have erred in law or fact, but a gratuitous charge of unfairness and uneven handedness as well as fishing for fault in the Appellant's case goes beyond the call of duty of counsel.”

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APPENDIX II

NIGERIA'S ELECTORAL LAWS AS HARMONIZED BY THE NATIONAL ASSEMBLY: COMPARING THE 2006 AND 2010 ELECTORAL ACTS

Provisions	2006 Provisions	2010 Changes	Implication
PART I: LEGAL STATUS AND ESTABLISHMENT OF INDEPENDENT NATIONAL ELECTORAL COMMISSION FUND (INEC) ETC.	<p>Sub sec 1-3</p> <p>Sub-sec 4: Maintenance of separate fund by the Commission</p> <p><input type="checkbox"/><input type="checkbox"/> INEC will establish and maintain a separate fund to defray all expenditure incurred by the Commission except expenditure associated with admin costs, salaries, allowances, and gratuities.</p> <p><input type="checkbox"/><input type="checkbox"/> Payments into this fund shall be made by made the Federal Government and by other assets accruing to the Commission</p>	<p>Sub sec 1-3: no changes</p> <p>Sub-sec 4 – deleted.</p> <p><input type="checkbox"/><input type="checkbox"/> 1&2 establish the “INEC Fund” to which monies will accrue by way of investments, interest, aid, grants, and other assets</p> <p><input type="checkbox"/><input type="checkbox"/> 5 designates how the funds in 1&2 fund will be applied.</p> <p><input type="checkbox"/><input type="checkbox"/> Section 4 regarding the “separate fund” financed by the federal government has been deleted.</p>	<p>The previous left INEC in extending a departure seemingly m an important INEC by co one “INEC I The addi authorized : commission for expense Costs, such That Act r from “all o elimination improve ove</p>
PART II — STAFF OF THE COMMISSION	9	No changes.	
PART III:- NATIONAL REGISTER OF VOTERS AND VOTERS' REGISTRATION	10 – 25	<p>No Changes.</p> <p>Section 10-25 summarized:</p> <p><input type="checkbox"/><input type="checkbox"/> Each person qualified to vote shall be registered on a continual basis by appearing in person at the venue with proof of identification such as a birth certificate, passport or driver's license, or any document that will prove the identity, age and nationality of the applicant.</p> <p><input type="checkbox"/><input type="checkbox"/> INEC shall make available 60 days after each year, the list of names and addresses of each registered voter within that year.</p> <p><input type="checkbox"/><input type="checkbox"/> INEC may appoint any officers it requires to maintain and update the Voter's Register as long as such officer is not a member of any political party.</p> <p><input type="checkbox"/><input type="checkbox"/> A person resident in a constituency other than that in</p>	<p>Preparing a increasingly election since</p> <p>There is a international the registry expensive te the biometri in 2006.</p> <p>Publishing t important p preparations behind sched</p> <p>The resider sensitive is Freedom I <i>Crossroads</i> between sta origin rem</p>

		<p>which he is registered may apply to be transferred to his place of residency.</p> <p><input type="checkbox"/><input type="checkbox"/>Any person or political party upon payment of a fee may obtain a copy of the voter's register.</p> <p><input type="checkbox"/><input type="checkbox"/>A copy of the voter's register shall be displayed for no less than 5 days and no more than 14 days by INEC for public scrutiny.</p>	<p>reflecting u questions.</p> <p>There is a g voter registe longer peri publication arguably cre urgency an contributed t</p>
<p>PART IV:- PROCEDURE AT ELECTION</p>	<p>26-27-no changes 28- Announcement of election results 29- 31 – no change</p> <p>32-changed: Submission of list of candidates and their affidavits by political parties</p> <p>(no later than 120 days before elections) 33 – fine was 50,000 34-42-no change</p> <p>42: Ballot boxes: new sub sec 3&4</p> <p>42-76 – no change</p> <p>77-Access to election documents: new section</p>	<p>28(27 in new) changed: Announcement of election results: there is a slight change in the titles of the officers that will announce the election results: The results of the elections shall be announced by –</p> <ul style="list-style-type: none"> -the Presiding Officer at the Polling Unit; -the Ward Collation Officer at the Ward Collation Center; -the Local Government or Area Council Collation Officer at the Local Government/Area Council Collation Center; -the State Collation Officer at the State Collation Center; <p>The Returning Officer shall announce the results and declare the winner of the election at:</p> <ul style="list-style-type: none"> -the Ward Collation Center in the case of Councillorship election in the FCT; -Area Council Collation Center in the case of Chairmanship and Vice Chairmanship election in the FCT; State Constituency Collation Center in the case of the State House of Assembly election; -Federal Constituency Collation Center in the case of elections to the House of Reps -Senatorial District Collation 	<p>During 1 Washington. President C pledged tha declared at reform is th good on tha to an import at the polls, tallying stag 1998.</p> <p>Requiring p candidates 1 could be an INEC more affidavits. T of the bill, it the primary highly prob Nigerian el (except arg increases t campaigning positive imp civic engage</p> <p>Making available (h should incre small way. I for a future</p>

		<p>Center in the case of election to the Senate; State Collation Center in the case of election of a Governor of State; -National Collation Center in the case of election of the President; The Chief Electoral Commissioner who shall be the Returning Officer at the Presidential election.</p> <p>Change to section 32 (now 31): Submission of list of candidates and their affidavits by political parties (no later than 60 days before) New Language: (4: anyone can apply to the Commission for a copy of any candidate's information for a fee. 7:candidate must give the Commission an identifiable address in the State where he intends to contest the election where he can receive all correspondence)</p> <p>33(now 32): fine is now N100,000.</p> <p>42: Ballot boxes: new sub sec 3&4 (3-A polling agent shall be present at distribution of election materials, voting, counting and result collation, 4- Before voting begins, INEC will provide all election materials at the polling unit).</p> <p>77-Access to election documents: New section: (1-the Resident Electoral Commissioner in an election state will respond to an election petition for documents</p>	<p>ballot problem such as the President A primary can each other t for the court</p> <p>INEC is d grievance p principal fac elections in 2011. Howe punishment sanction wi Legal exped a better alt advance pe incumbent political bias</p>
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		<p>within 7 days after request by a party.</p> <p>2- if he fails, he will be liable on conviction to N2,000,000 max fine and/or 12 month imprisonment).</p>	
PART V:- POLITICAL PARTIES	<p>78-Powers of INEC to register political parties – new section 79-83 – no change</p> <p>84-Merger of political parties: new section.</p> <p>85 – Notice of Convention Congress etc – new section</p> <p>86-no change</p> <p>87 – Nomination of Candidates by Parties –new section</p>	<p>78-Powers of INEC to register political parties – new subsection: 78(7) – INEC can de-register political parties if there is a breach of registration requirements or failure to win a seat in the National or State Assembly election).</p> <p>84-Merger of political parties: new section: (if INEC fails to communicate its decision on a party merger request within 30 days, the merger will be deemed effective).</p> <p>85 – Notice of Convention Congress etc – new section (3-elections of any executive member of a party shall be through a democratic process).</p> <p>87 – Nomination of Candidates by Parties –new section</p> <p>1-parties must hold primaries;</p> <p>2-primaries may be direct or indirect;</p> <p>3- if direct, all aspirants must have equal opportunity to be voted for;</p> <p>4-if indirect;</p> <p>-for a Presidential candidate, a party shall: hold special state</p>	<p>Election to effectively reasonably entry. The a should simi quality of However th rather than s broad power likely to be some point. Discussion 2009 empha ballot access In a domin Nigeria’s th benefit the l merger (Sec inaction co party fragme interests of i</p> <p>Primaries Nigeria. Or since then, t mandate for these provis the most im law.</p> <p>A specific re is thus pote The laconic compared to reflects the f are likely to resemble th regard thoug</p>

	<p>87-91-slight changes in amounts of fines. 92-Election Expenses of political parties: new section. 93-100: no change 101-Prohibition of Broadcasting etc 24 hours before or on polling day: new language.</p>	<p>conventions -a National Convention shall be held to ratify the candidate with the highest votes, who will be declared the winner of the primaries and his name forwarded to INEC as the party candidate. -for the Governorship, Senatorial, Chairmanship and councillorship candidates, a party shall hold special congress, the aspirant with the most votes shall be declared the winner of the primaries, and his name will be forwarded to INEC. 6- Where there is only one aspirant for any of the above posts, the party shall convene a special convention for the aspirant's confirmation, and the name shall be forwarded to INEC 7- if a party adopts the indirect primaries system, they must clearly outline in their constitution, the rules for delegate democratic elections at the convention. 8-There shall be no delegation of votes. 9-if a party fails to comply with these rules, its candidate will not be included in the election. 10- if an aspirant complains that any Act provision has not been complied with, he may apply to the Federal or State High Court for redress. 11- this section does not empower Courts to stop primaries or a general election from holding while a suit is pending. 87-91-slight changes in amounts of fines. No significant changes. 92-Election Expenses of political parties: new section. (3b-party breach of this section shall be followed by a maximum fine of N1,000,000 and if accurate audited return is not</p>	<p>what could important r party conve is also dou media, wou the potenti administrati significant h</p> <p>The fine he for an audit integrity o audited exp (1979 – 198</p> <p>The prohib likely be an it more diffi that could s important fo that they a other inform as announc units are expected.</p>
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		<p>provided within the stipulated period, the court may impose a maximum penalty of N200,000/day for the period after the return was due until it is submitted to INEC.</p> <p>101-Prohibition of Broadcasting etc 24 hours before or on polling day: new language. (A person, print or electronic medium that releases any material to promote/oppose a party/candidate via print or electronic media, 24 hours before or on polling day is guilty of an offence under this Act.)</p>	
PART VI:- PROCEDURE FOR ELECTION TO LOCAL GOVERNMENT	<p>102-112 – no change 113-Dissolution of Area Council: new section</p>	<p>113-Dissolution of Area Council: new section 2 – when determining a three year term, where a re-run election has taken place and the person earlier sworn in wins the re-run election, the time spent in office before the date the election was annulled, shall be taken into account.</p>	<p>The dissolution followed temporary important to by parties in</p> <p>This provis the terms election of challenged. challenges a extend terms</p>
PART VII:- PROCEDURE FOR LOCAL GOVERNMENT COUNCIL ELECTIONS		<p>The 2006 legislation does not account for this section. This entire section was removed or merged.</p>	
PART VIII:- ELECTORAL OFFENCES	<p>117-133-mostly changes to penalty years and amounts. No significant changes in language.</p>	<p>117-133-mostly changes to penalty years and amounts. No significant changes in language except in Section 133(3b) – election tribunals shall open their registries for business 7 days before elections).</p>	
PART IX:- DETERMINATION OF ELECTION PETITIONS ARISING FROM ELECTIONS	<p>134-Time for Presenting Election Petition: new section</p>	<p>134-Time for Presenting Election Petition: new section (2,3,4 - An election tribunal shall deliver its written judgment 180 days from petition filing date, and any appeal shall be heard and disposed of 90 days from the above judgment date. The court</p>	<p>Hundreds challenged i presidential more than a several gube overturned. to fix a rea</p>

	<p>135-139-no change 140 – Nullification of elections by tribunal or court: new section.</p> <p>141-Effect of non-participation in an election – new section.</p> <p>142-145 – no change</p>	<p>may give appeal decisions and reserve the reasons for a later date) 140 – Notification of elections by tribunal or court: new section (2: if a court or tribunal nullifies elections on the grounds that the candidate most voted for was not qualified to contest they shall order a fresh election).</p> <p>141-Effect of non-participation in an election – new section (a tribunal or court cannot declare any person a winner if such a person has not fully participated in all the stages of the said election).</p>	<p>appeal procedu courts. This for petition process in distracts the out duties; swift resolut</p> <p>Section 141 the importan are cases w even thoug through pri spoke to th “godfathers”</p>
PART MISCELLANEOUS	X:- 146-158: no change		
First Schedule	<p>1-5: no change 6 – Contents of Election Petitions: new section</p> <p>7-17 – no change</p> <p>18-Pre-hearing session and scheduling</p>	<p>6 – Contents of Election Petitions: new section (The election petition shall be accompanied by-a list of the witnesses, witness statements, copies/list of all documents to be relied on at the hearing of the petition.</p> <p>18-Pre-hearing session and scheduling: -7 days after petitioner’s reply to respondent, or 7 days after the respondent files a reply, the petitioner shall apply for a prehearing notice, which the court shall issue to both parties. The respondent may also apply for the pre-hearing notice where the petitioner fails to apply for the same or apply for an order to dismiss the petition. If both fail to apply, the court will presume the petition abandoned. If a party fails to attend the</p>	<p>This new se be a reasona produce in plan to use. because the petitions ha observation documents evidence at language sec such mater formalizes th way as accusations; openly testif</p>

	<p>19-40: no change</p> <p>41: Evidence: new section</p> <p>42-45: no change</p> <p>46 & 47: hearing a petition and motions – new sections</p>	<p>prehearing sessions or obey a scheduling order or is substantially unprepared or fails to participate in good faith, the tribunal or court shall dismiss the petition or enter judgment against the respondent. But such a judgment or dismissal can be set aside by application made within 7 days and a N20,000 fine.</p> <p>41: Evidence: new section (any fact required to be proved shall be proved by written deposition and oral examination in open court. Real evidence shall be tendered at the hearing. The court may limit the number of witnesses.)</p> <p>46 & 47: hearing a petition and motions – new sections (46-If no party appears along with a petition, it will be struck out. If the petitioner appears and the responder does not, the court can adjudicate as long as the petitioner meets his burden of proof and vice versa.</p> <p>47- all applications shall be made by motion supported by affidavit and rule or law accompanied by reliefs sought. Respondent must oppose within 7 days of the service on him, and the applicant may respond to the respondent within 3 days of being served.)</p>
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Source: Dr. Carl LeVan & Amarachi Utah, American University School of International Service (29 Sept. 2010), *accessed at* <http://carllevan.com/wp-content/uploads/2010/09/Electoral-Law-Comparison-2010-final.pdf>.

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APPENDIX III
A TABULAR COMPARISON OF CRIMINAL OFFENCES UNDER THE 2006 AND 2010
ELECTORAL ACT

SECTION VII ELECTORAL OFFENCES				
Provision	2006 Act		2010 Act	
	Section	Penalty (maximum fine and/or Imprisonment)	Section	Penalty (maximum fine and/or Imprisonment)
Offences related to registration	124	₦200,000, 2 years or both.	12 (2)-(3), 24(1) & 117	₦100,000, one year or both; ₦1,000,000, 12 months or both.
Offences in respect of nomination, etc.	125	₦200,000, 2 years, or both; ₦5,000,000, 5 years, or both	118	2 years; ₦50,000,000, 10 years, or both.
Disorderly Behavior at political Meetings	126	₦100,000, 12 months or both.	119	₦500,000, 12 months imprisonment or both.
Improper use, buying and selling of voters' cards	127	₦100,000, 12 months or both.	18(3)-(4), 23, 120.	₦200,000, two years or both; ₦500,000, 2 years or both; ₦1,000,000, 12 months or both.
Improper use of vehicles	128	₦50,000, six months or both.	121	₦500,000, six months or both.
Impersonation and voting by a person not qualified to vote	129	₦100,000, 12 months or both.	122	₦500,000, 12 months or both.
Bribery and conspiracy	131	₦100,000, 12 months or both.	124	₦500,000, 12 months or both.
Breach of secrecy In voting	132	₦50,000, six months, or both.	125	₦100,000, 6 months or both.
Wrongful voting, false statement	133	₦50,000, six months, or both.	16(2)-(3), 24, 126	₦100,000, one year or both.
Voting by unregistered persons	134	₦50,000, six months, or both.	127	₦100,000, 6 months or both.

Disorderly conduct at elections	135	₦100,000, 12 months, or both.	128	₦500,000, 12 months or both.
Other election day offences	136	₦50,000, six months, or both.	129	₦100,000, 6 months or both; 2 years.
Treating	137	₦100,000, 12 months, or both.;	N/A	N/A
Undue Influence	138	₦100,000, 12 months, or both; ₦100,000, 3 years or both.	130	₦100,000, 12 months or both.
Threatening	N/A	N/A	131	₦1,000,000 or 3 years.

OTHER CRIMINAL PROVISIONS				
Provision	2006 Act		2010 Act	
	Section	Penalty (maximum fine and/or Imprisonment)	Section	Penalty (maximum fine and/or Imprisonment)
Double nomination	33	₦50,000, 3 months or both.	32	₦100,000, 3 months or both.
Access to election documents	N/A	N/A	77	₦2,000,000
Contravention of section 227 of the 1999 constitution	81	Political Parties: ₦500,000 for first offence; ₦700,000 for second; ₦50,000 every additional day the offence continues. Individuals/Groups: ₦500,000, Three years, or both.	81	Political Parties: ₦500,000 for first offence; ₦700,000 for second; ₦50,000 every additional day the offence continues. Individuals/Groups: ₦500,000, Three years, or both.
Monitoring of political parties	86	Not less than ₦500,000.	86	Not less than ₦500,000.
Offences in relation to finances of a political party	87	Not less than ₦500,000.	88	A fine not less than ₦500,000.
Limitations on	93	₦500,000, 9 months	91	₦500,000, 9 months or both for

election expenses		or both for individuals.		individuals; 10 years for accountants.
Election expense of political parties	94	₱1,000,000.	92	₱1,000,000 plus up to add'l ₱200,000 per day.
Prohibition of certain conduct at political campaigns	97	₱50,000 or 6 months for individuals; ₱500,000 for political parties's first offence.	95	₱1,000,000, 12 months or both for individuals; ₱2, 000,000 for political parties.
Prohibition of use of force during political campaigns	98	₱50,000 or 6 months for individuals; ₱250,000 for political parties's first offence.	96	₱1,000,000, 12 months or both for individuals; ₱2,000,000 for political parties.
Limits on Political broadcast and campaigns	101-102	₱500,000.	99	₱500,000
Broadcast 24 hours preceding or on polling day	104	₱500,000 for corporations; ₱100,000 or 12 months for individuals.	101	₱1,000,000 for corporations; ₱500,000 or 12 months for individuals.
Campaign based o religion, tribe, etc.	105	₱100,000, 12 months, or both.	102	₱1,000,000, 12 months or both.

Signed by the Technical Working Group

Prof. Nsongurua Johnson Udombana

Chairperson

Prof. Muhammed Mustapha Akanbi

Member

Prof. Oluyemisi Bamgbose

Member

Prof. Ifeoma Pamela Enemo

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Prof. Muhammed Tawfiq Ladan

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