

COMBATING ELECTORAL FRAUD USING THE RIGHTS-BASE APPROACH*

Abstract

This paper examines strategic efforts aimed at combating electoral fraud. The aim is to identify what makes a strategy effective and functional or otherwise. Two strategies are actually identified and examined accordingly. The first is the Agency Based approach which allows States delegate the duty of enforcing electoral laws to a specific agency which will shoulder the responsibility of enforcing compliance with electoral standards. The second approach, on the other hand, is the Rights Based approach. This approach recognizes and promotes the rights of citizens to take part in holding duty-bearers and violators of electoral standards accountable. The paper contends that though the first has enormous potential for combating electoral crimes, the second actually provides more realistic prospects for dealing with the complex electoral realities and electoral frauds foisted on the continent of Africa today.

Keywords: ‘Electoral Fraud’, ‘State Duties’, ‘Right Based Approach’, ‘Responsibility’, ‘Agency Based Approach’

1 Introduction

One of the major aspirations of the African Union today is for Africa to have “a universal culture of good governance, democratic values, gender equality, respect for human rights, justice and the rule of law” entrenched in the continent by 2063.¹ The possibility of this ever happening however depends on a number of factors of which the readiness of member States to combat electoral frauds heads-on actually tops the chart. The fact remains that whether states are ready and willing to do so does not detract from the fact that fraud in the electoral process undermines democratic governance and strips democracy of the relevance of its basic principles, uniqueness and connotations.

Besides, electoral fraud is a direct affront to basic fundamental rights and freedoms such as the freedom of association, freedom of assembly, freedom of expression and the right to elect one leader amongst several others important rights and freedoms that are universally recognized and protected today as fundamental characters of modern democracy. In actual fact, these rights are not mere traits of democracy, they are fundamental thresholds and pillars of democratic governance because democracy is actually about the right of people to decide and direct the course of governance in their respective state through direct participation, or indirect

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¹African Union, ‘Agenda 2063-the Africa We Want’ See *Aspiration 3*

participation through elected representatives.² Either of these, democracy recognizes, elevates and protect these rights to such a level where they become a standard of operations particularly in deciding who emerges as leader or direct the affairs of the state. However, with electoral fraud, the democratic process is not only threatened, the rights are consistently in jeopardy every time electoral fraud is successfully perpetuated.³

In context, the point here is, electoral fraud is a direct assault on the expression of electoral rights and as such, a major threat to democratization process in Africa today.⁴ As a matter of fact, electoral fraud is not materially different from a coup de tat as both aim to foist unpopular 'leaders' on the people.⁵ While a 'leader' who got into political office through electoral fraud wears the cloak of a democratically 'elected' leader, a military ruler makes no pretense about who he is or what the law 'says' or the people thinks- he must be obeyed at all cost. To protect democracy in Africa, curbing electoral fraud becomes an existential issue for obvious reasons.

First, electoral fraud is antithetical to the rule of law and electoral rights. Secondly, it is corrosive to political stability, the integrity and competence of State agencies as well as the fundamental character of the electoral process which gradually losses its participatory nature. Thirdly, the efficacy of the electoral process and the integrity of electoral management bodies like the Independent National Electoral Commission gradually loses its appeal and this is very unhealthy for the sustenance of democratic culture. In situation as these, doubt, cynicism and apathy becomes the prevailing response to democratic values and ideology thereby giving way to impunity and arbitrariness which breeds 'opportunism', 'clientelism' and 'god-fatherism' in politics.⁶ Not to forget, transparency, accountability and commitment in public service also takes flight as the government of the day is left to savage the remnant of its integrity and authority in the minds of the people and the international community.⁷ Therefore, a free, fair, credible and inclusive electoral process is not only fundamental to the actualization of Aspiration 3, it is key to the sustenance of each African countries democratic structures and values and as such, all States must demonstrate serious commitment to it.⁸

However, the pertinent question that must be asked is: how does the African Union intend to achieve this before the check off date of 2063? How are States expected to go about this? Given the political reality in the continent, one is obviously not in doubt that it will be through member states but

²The Universal Declaration of Human Rights (UDHR) 1948; the International Covenant on Civil and Political Rights (ICCPR), 1966; International Convention on the Elimination of all forms of Racial Discriminations (ICERD); Declarations on the Right and Responsibility of Individuals, Groups and Organs of Society (DRRIGOS); Convention on the Rights of Persons with Disability (CRPWD); African Charter on Human and Peoples Rights (African Charter) and other treaties.

³ See IFES: 'Electoral Crime and Crime' < <https://www.ifes.org/issues/electoral-crime-and-crime>> accessed February 26, 2020

⁴ See the Right to Participate in the Governance of one's State enshrined in Article 13 of the African Charter; freedom of association- Section 40, CFRN, 1999 (as amended); freedom of expression- Section 39, CFRN, 1999 (as amended); and Freedom From Discrimination- CFRN, 1999 (as amended), Section 42.

⁵ O Ozan Varol, 'The Democratic Coup d'Etat' in Vol 53, No. 2, *Harvard International Law Journal* (Summer 2012) < <https://pdfs.semanticscholar.org/647a/81452b5de971ab9cae4253146f6ecf36621f.pdf> > accessed June 13, 2020

⁶ J Hopkin, 'Conceptualizing Political Clientelism: Political Exchange and Democratic Theory' being a Paper prepared for *APSA annual meeting*, Philadelphia, 31 August – 3 September 2006. Panel 46-18.

⁷ S Stokes; 'Political Clientelism.' In Susan C. Stokes and Carles Boix, eds., *The Oxford Handbook of Comparative Politics* (Oxford: Oxford University Press: 2007)p. 23

⁸ See the Right to Participate in the Governance of one's State enshrined in Article 13 of the African Charter; freedom of association- Section 40, CFRN, 1999 (as amended); freedom of expression- Section 39, CFRN, 1999 (as amended); and Freedom From Discrimination- Section 42, CFRN, 1999 (as amended)

the issues then is-how will countries like Nigeria go about this.⁹ The relevant issue here is actually not about the desire to have a credible electoral process but more about the legal and institutional frameworks in many African countries which are not only weak, the political structures in these countries are not independent enough to deter manipulation from political leaders, such that even if given the chance, many African leaders will perpetuate themselves in office for as long as they can.¹⁰ Agreed, the AU is committed to the ideals of democracy such that its position on unconstitutional change in government is made known,¹¹ the fact is that as an African ‘aspiration’, its actualization must be state driven. States must take full responsibility for the implementation of aspiration 3 either by developing, adopting or adapting the rights approach in addition to strengthening institutional process.

Therefore, this paper will reflect on potential and actual strategies that can be deployed by States to effectively combat electoral fraud. The assumption here is that the issue is not really with electoral standards as there are several of these inscribed in several international and national laws but with their implementation. The argument is that where the implementation strategy is faulty, the actual implementation will be defective. Therefore, what makes a strategy effective or otherwise will be one of the issues examined in this paper. To do this, two strategies have been identified and will be examined accordingly. The first is the Agency Based approach (ABA) which allows States delegate the duty of enforcing electoral standards to a single government agency which will be saddled with the responsibility of enforcing electoral laws. This approach leverages on existing normative framework which criminalizes conducts by setting electoral standards. The second approach, on the other hand, is the Right Based approach (RBA). The RBA is a development theory which, when deployed within the context of electoral fraud, promotes the rights of citizens to take part in holding violators of electoral standards accountable.

The idea is that citizens must be accorded a space within policy and legal framework to support government’s efforts.¹² The paper is divided into four parts: part one sets out the introduction above: part two examines the meaning of electoral fraud through the lenses of the definition prescribed by Fabrice Lehoucq and Ani Casimir et al. Part three explores the Agency Based approach and the Right Based approach while part four concludes with some basic recommendations.

2. What is Electoral Fraud?

Electoral fraud has a number of synonyms which may warrant some of them being used interchangeably.¹³ For instance, the concept is also referred to as “electoral malpractice,”¹⁴ “electoral crime”¹⁵, “vote rigging”¹⁶, “electoral manipulation”¹⁷ “electoral

⁹ B Munslow, ‘Democratisation in Africa’ in Vol. 46, Issue 4, *Parliamentary Affairs*, (1993) Pages 478–490,

¹⁰ C Falter, ‘Africa’s ‘Leaders for Life’ < <https://www.cfr.org/background/africas-leaders-life>> accessed June, 13, 2020. See also K Somaville, ‘Keeping it Family: How Africa’s Corrupt Leaders Stay in Power’ < <https://www.global-geneva.com/keeping-it-family-how-africas-corrupt-leaders-stay-in-power/>> accessed June 13, 2020

¹¹ African Charter on Democracy, Elections and Governance Cap 8, See Articles 2 (3), (4), (10), (12) & 3 (3), (4), (7), (10); 4; 17. See also Aspiration 3 on An Africa of Good Governance, Democracy, Respect for Human rights, Justice and the Rule of Law in AU Agenda 2063.

¹² C N Musembi ; A Cornwall, ‘What is the “Rights-Based Approach” all about? Perspectives from International Development Agencies’ in IDS Working Paper 234 < <https://www.ids.ac.uk/download.php?file=files/dmfile/Wp234.pdf> > accessed March 24, 2020

¹³ H Peter ; I Argersinger ‘New Perspectives on Election Fraud in the Gilded Age’ in *Political Science Quarterly*. The Academy of Political Science. 100 (4): 669–687.

¹⁴ M T Aluaigba; ‘Democracy Deferred: the Effects of Electoral Malpractice on Nigeria’s Path to Democratic Consolidation’ < <https://www.eisa.org.za/pdf/JAE15.2Aluaigba.pdf> > accessed June 13, 2020

¹⁵ N Chikodiri; C. Vincent & A Otu; ‘Elixir of Electoral Fraud: The Impact of Digital Technology on the 2015 General Elections in Nigeria’ in Volume 4, *Journal Cogent Social Sciences* (2018) < <https://www.tandfonline.com/doi/full/10.1080/23311886.2018.1549007> > accessed April 17, 2020

corruption”¹⁸, and many other such sobriquets as the context may allow. Therefore, depending on what is used in context, the general idea is usually about some unethical, illegal and generally unacceptable conduct which interferes with the electoral process. Giving the fluidity of the acts or omissions which may therefore come within the scope of a particular concept, it becomes practically difficult to prescribe a one-side-fit-all definition to it. However, the basic benchmark for determining what it is or mean is actually not lost on all.

Generally, electoral fraud as a concept has been used broadly to describe every deliberate acts and/or omissions which offends electoral standards. Electoral standards in this context refers to all administrative, procedural and substantive guidelines and principles set by States through their laws to govern the conduct of general elections. Determining the specifics of what constitutes electoral fraud will therefore be a function of what the law says about it per time. However, for the purpose of this paper, the definitions prescribed by Fabrice Lehoucq and Ani Casimir et al will be examined for analysis.

To Fabrice Lehoucq, electoral fraud is the ‘clandestine and illegal efforts aimed at shaping election results’.¹⁹ This definition underscored one of the fundamental character of electoral fraud which is its illegal and intrusive nature. Electoral fraud is illegal and its impact on the electoral process is offensively interruptive. It disrupts the electoral process thereby undermining the credibility of the process and its outcome. Somehow, this definition would have sufficed for generalization but for the focus on “**clandestine**” conducts which makes it inherently limiting. The emphasis on clandestine conducts inherently excludes, by implication, a wide range of other brazen acts carried out in the open such as vote trading, voters intimidation, ballot box snatching, stuffing and destruction of electoral material amongst others. Given that there are actually acts which are carried out in the secret, a great number of these acts which constitute electoral fraud are however carried out in the open, in clear violation of electoral standards.

Conversely, excluding open conducts such as these limits the scope of electoral fraud and brings within its contemplation conducts which ordinarily should have been a healthy and legitimate closed-door strategic sessions such as meeting meant to discuss campaign strategies or political briefings within the scope of electoral fraud.²⁰ Electoral fraud are illegal acts or conducts which runs counter to electoral standards and Fabrice Lehoucq rightly noted this. Ani Casimir et al²¹ also re-echoed this same view by defining it as the “illegal interference with the **process of election** with the aim of interfering with the mandate of the people”.²² While this definition

¹⁶ A Awopeju ; ‘Election Rigging and The Problems of Electoral Act in Nigeria’ in Vol 2, No. 2.4 Quarter IV *Afro Asian Journal of Social Sciences* (2011) 2229 – 5313; R. M Alvarez; T. E. Hall & S. D. Hyde, ‘Election Fraud: Detecting and Deterring Electoral Manipulation’ (Brookings Institution Press: 2008).

¹⁷ N Cheeseman ; K Brian; ‘How to Steal an Election in Broad Daylight’ <<https://foreignpolicy.com/2018/05/21/how-to-steal-an-election-in-broad-daylight/>>accessed April 17, 2020

¹⁸ P D Finn; ‘Electoral Corruption and Malpractice’ in 8 *Fed. L. Rev.* 194 (1976-1977) <<https://heinonline.org/HOL/LandingPage?handle=hein.journals/fedlr8&div=19&id=&page=>>accessed June 13, 2020

¹⁹ F Lehoucq; ‘Electoral Fraud: Causes, Types and Consequences’, in *Annual Review of Political Science* Vol 6 (2003) p233-256.

²⁰ S Christensen, ‘Mapping Manipulation: Digital Observation of Electoral Fraud,’ (2011) Thesis Submitted to Uppsala University, Department of Government: page 9.

²¹ A Casimir, E Omeh, and C Ike, ‘Electoral Fraud in Nigeria: A Philosophical Evaluation of the Framework of Electoral Violence’. *Open Journal of Political Science*, 3, (2013) 167-174. doi: [10.4236/ojps.2013.34023](https://doi.org/10.4236/ojps.2013.34023).

²² *Ibid.*

actually lends further credence to the illegal nature of electoral fraud, limiting it to acts or conducts which interferes with “**the process of elections**” alone makes it inherently inadequate. The reason is because the concept of electoral fraud covers a wide range of acts which interferes directly or indirectly with the entire electoral process and not just the ‘process of election’ alone as mentioned by Ani Casimir et al. For instance, Yusuf Isma’ilaa and Zaheruddin Othmana classified electoral fraud into three: the manipulation of rules (the legal framework),²³ the manipulation of voters (preference-formation and expression)²⁴ or the manipulation of voting (electoral administration)²⁵ in the electoral process.²⁶

Any or all of these three could take place at pre –election, election period, and the post-election phases²⁷ such that, it will be incorrect to limit the concept of electoral fraud to actions which interfered with the election phase alone.

That said, another important aspect of the concept which Fabrice Lehoucq and Ani Casimir et al highlighted is the target of the acts which constitutes electoral fraud. To Fabrice Lehoucq, those who perpetrate electoral fraud do so with the aim of undermining election results. To them, the target is the outcome of the election in terms of figures and statistics. However, to Ani Casimir et al, the target is the ‘mandate of the people’ and not just some abstract figures. To them, the real issue must be examined from the context of its impact on the right of the people to voluntarily choose their leaders and not some abstract figures with no real political or legal effect.

Therefore, unlike Lehoucq who described the aim in terms of the effect on “election results”, Ani Casimir et al gave it the needed context and gravitas by equating it to a “mandate” which means at least, three things: one, every elected leader holds elective office in trust and at the instance of the people. Two- the real victim of electoral fraud is the people whose ‘mandate’ is stolen and not just some political parties or their candidates.²⁸ Lastly, in adopting/adapting strategies to combat electoral fraud, the State need to recognize the effect of electoral fraud on the right of the people and make provisions to address it.²⁹

²³ The manipulation of rules involves the distortion of electoral laws so as to benefit one party or contestant in an election. Electoral rules are manipulated to some extent in virtually all States, democratic or otherwise, but electoral rule manipulation can be classified as a form of electoral corruption when it seriously distorts the level playing field subtending elections, as, for example, when the rules governing candidacy prevent certain political forces from contesting elections, or when large sectors of the adult population are excluded from the franchise. *Ibid.* See Sarah Birch (2009)

²⁴ The manipulation of voters takes two principal forms: efforts to distort voters’ preferences and efforts to sway preference expression. Voters’ preferences are distorted by means of a variety of illicit forms of campaigning: campaign tactics that are deceptive, activities that violate campaign finance laws (typically through over-spending), the use of State resources to support the campaign of a particular candidate or party, or severe bias in media coverage of the election. These techniques are designed to alter voters’ true preferences. The other main form of voter manipulation involves the alteration of how preferences are expressed at the polling station, through vote-buying or intimidation in the aim of increasing the vote of a specific political force. *Ibid.* See Sarah Birch (2009)

²⁵ The manipulation of voting takes place through a variety of different forms of electoral maladministration, from classical acts of fraud – personation, ballot-box stuffing, mis-reporting – to other more subtle acts that skew the conduct of an election in favour or against a particular contestant. These can include the under-provision of voting facilities in opposition strong-holds, lack of transparency in the organisation of the election, bias in the way electoral disputes are adjudicated in the courts, and so on. *Ibid.* See Sarah Birch (2009)

²⁶ S Birch; Electoral Corruption, Institute for Democracy and Conflict Resolution’ (IDCR) Briefing Paper, (2009) <http://repository.essex.ac.uk/4484/1/05_11.pdf> accessed April 6, 2020

²⁷ Yusuf Isma’ilaa and Zaheruddin Othmana ‘Electoral Fraud and the Challenges of Democratic Consolidation in Nigeria’s Fourth Republic’ < <https://www.futureacademy.org.uk/files/images/upload/ISSC%202016%2041.pdf> > accessed February 27, 2020

²⁸ African Charter, article 13, UDHR, article 21, ICCPR, article 25, CEDAW, article 5 (2)

²⁹ See Communication 272/03: The Association of Victims of Post Electoral Violence & Interights v Cameroon

3. Curbing Electoral Fraud

There is no debate about the fact that for a sustainable democracy in Africa, African States must combat electoral fraud frontally. How this is to be done is however where the problems really are. This paper identifies at least two strategic approaches that can be deployed to combat electoral fraud. The first is the Agency Based approach while the second is the Right Based approach. The ABA approach relies extensively on enforcing compliance using State agencies while the second advocate's citizens' role in checking criminality in the society. These strategies will now be examined.

Agency-Based-Approach

The Agency-Based approach is anchored primarily on the duty of States to protect using legislations and other measures necessary to highlight and address issues of public concerns.³⁰ This approach gives context to states obligations under relevant international instruments and as such, complements existing institutional efforts in curbing crimes in the society. By creating the needed legal and operational environment for agencies to work, the State demonstrates its commitment to ensuring a crime free society for all. The ABA therefore makes practical sense in that it helps States set standards, criminalizes and penalize conducts which are inimical to set standards using domestic laws and regulations. The power to enforce these standards are then delegated to an agency and by so doing, everyone knows who is responsible for what, when, how and who to approach in case of breach for remedy.³¹ However, in all of these, citizens have no direct role to play beyond complying with the same law as it is as the implementation the law has already been delegated to an agency created or recognized for that purpose.

One of the major positives of this approach is the conceptual clarity it brings to bear on efforts aimed at combating electoral fraud. Going by Chad Vickery and Erica Shein, electoral fraud is difficult to conceptualize and deal with due to its relative nature which is influenced by the "widely variant historical, cultural and institutional contexts in which election fraud occurs".³² This conceptual difficulty makes it difficult for States to fashion out appropriate and effective strategy to deal with it. However, with the ABA, this issue is dispensed with as the law is used to clarify what is acceptable and what is not.³³ The ABA therefore addresses the definitional ambiguity which the concept introduced thereby setting the context for a more pragmatic response from the State.³⁴

Secondly, the ABA help States narrow down their commitments to the needs of the agencies they have delegated to combat electoral fraud. With this, a State can effectively identify and capture its commitments in a budget for planning purposes. With this also, a State is better positioned to allocate and manage already limited resources by eliminating duplicity and waste in the deployment of funds. This makes it easy to track, identify and hold agencies responsible for assigned tasks, since responsibility is centralized and resources are properly channeled. A follow-up to the above is that the ABA enhances coordination and collaboration amongst agencies on the electoral chain. With the ABA, agencies can cooperate and leverage on each other strengths and resources to enhance the conduct of general elections. For instance, the Independent National Electoral Commission (INEC) which is responsible for the conduct of general elections in Nigeria and the Nigerian Police Force which is saddled with the responsibility of the internal security in Nigeria are better placed to work together for the security of election, electoral personnel and materials across the country if they collaborate. Actually, there must be some understanding between the heads of these agencies to work together to achieve government's aim of ensuring the conduct of a free, fair and inclusive elections in the country.

This notwithstanding, this approach has a number of weaknesses. One, it cannot rectify inherent weaknesses identified in the law(s) on which it is operationalized. This is due to the fact that doing so is obviously not the primary responsibility of the assigned agency and an attempt to do so will be an attempt

³⁰ African Charter, article 1

³¹ See article 1, African Charter.

³² Alvarez, Hall, and Hyde, Election Fraud note

³³ Id. Fn. 20

³⁴ V Chad; S Erica; 'Assessing Electoral Fraud in New Democracies: Refining the Vocabulary' May 2012

at overreaching its mandates. It will take the Executive or the Legislature to propose an amendment to the law to deal with such issues. Therefore, the harm this does is that in situations where there are obvious gaps in the law such as where the law did not identify or criminalize some ignoble acts, such non-recognition becomes a potential loophole which mischief makers may exploit to perpetuate electoral fraud. Take for instance, the immunity granted against criminal prosecution for some levels of government officials. This may be exploited to perpetuate electoral fraud knowing fully well that they cannot be prosecuted. This situation played out in the recently concluded elections in Kano State where the Deputy Governor of Kano State was arrested along with the Commissioner in Charge of Local Government and Chieftaincy Affairs in the State for disrupting the collation of the governorship election results during the 2019 Presidential/Governorship elections. While the Commissioner was prosecuted, the Deputy Governor was released because he enjoys immunity.³⁵ Instances as these expose the electoral process to further ridicule.

Another issue with the ABA is the issue of capacity- this approach fails to take account of the financial and human capacity implications of an agency being solely responsible for the onerous activities involved in conducting elections and prosecuting all cases of electoral fraud arising from the elections.³⁶ For instance, INEC which has just about 120 Legal Officers serving both at the agency's Headquarters in Abuja and the 36 State Offices across the country is saddled with the responsibility of handling all the day to day legal matters of the agency in addition to all legal issues arising from the conduct of general elections in all the 57,023 voting points across the country.³⁷ It is practically difficult to see how these 120 legal officers will effectively prosecute thousands of electoral irregularity arising from multiple registrations, vote buying, disruption of electoral process, ballot box snatching, stuffing and abduction identified or recorded all over the country during the conduct of general elections.³⁸

Another downside of the ABA is its susceptibility to manipulation from an incumbent. An incumbent in this regard is used narrowly to refer to the Executive Governor and his Deputy as well the President and his Vice. These levels of public officers enjoy wide constitutional immunity against prosecution as well as enormous political authority to influence actions in their favour. Even where these officials are not interested in interfering with the electoral process, there are others who are willing to do so for a fee or for free because of the benefit they stand to derive. Either way, corrupt electoral officials, party agents, security officers and even political thugs etc., are available tools in the hands of an incumbent or their surrogates such as ministers and commissioners to perpetuate electoral fraud.³⁹

The relevance of these to this discourse is that an incumbent has enormous political power and influence to interfere directly or provide the needed cover and resources for others to interfere with the electoral process with almost no consequences following. From these therefore, the ABA provides no full proof to electoral malpractices, and as such, its advantages are outweighed by the shortfalls identified above. Therefore, the option opened to countries like Nigeria is either to explore alternative approach or adopt an approach which can complement the ABA. This paper will now examine how the Right Based Approach could be useful in this regard.

b. Right-Based Approach

The Right-Based approach is a development strategy designed to protect, promote and mainstream human rights principles in States policies and operations. This strategy encourages States to assign roles to the

³⁵ See Premium Times; 'Police arrest Kano Deputy Governor as PDP leads after 43 local govts' <<https://www.premiumtimesng.com/news/headlines/319402-just-in-police-arrest-kano-deputy-governor-as-pdp-leads-after-43-local-govts.html>> accessed March 19, 2020

³⁶ F Okeye; 'Prosecution of Electoral Offenders in Nigeria: Challenges and Possibilities' (2013) <<https://library.fes.de/pdf-files/bueros/nigeria/10405.pdf>> accessed March 1, 2020

³⁷ See Punch, INEC Creates 57,023 more Voting Points for Elections' <<https://punchng.com/inec-creates-57023-more-voting-points-for-elections/>> accessed March 19, 2020

³⁸ *Op cit.* fn. 30

³⁹ Punch, 'Incumbency Factor and Nigerian Democracy' <<https://punchng.com/30737-2/>> accessed March 03, 2020

citizens and its agencies equally in ways that are mutually reinforcing and complementary. By this approach, the electorates become active stakeholders both in ensuring that the right candidate emerge as elected leader and also in holding duty-bearers (agencies) and violators accountable. Tackling electoral fraud using the RBA can be effective because it creates a balance for shared- responsibilities between the people and State agencies against violators and non-performing stakeholders.

The RBA balances power, duties and responsibilities in the society by consciously taking into consideration the rights of the people in the formulation and implementation of States policies. It analyzes obligations, responsibilities, inequalities and vulnerabilities by infusing and promoting sustainability through citizens participation, accountability and empowerment, —especially the right of the most marginalized to participate in policy formulation in a bid to hold (duty bearers) accountable. The government has a major role to play in this regard as it is its duty to ensure that all discriminatory practices and unjust distributions of power which impede and undercut human rights in the society are discouraged and sanctioned.⁴⁰

Beyond these therefore, the RBA addresses three fundamental theoretical questions: one, do the people have a right to participate in decision making process in the State; two- are the people empowered to hold right violators accountable and lastly- are State actors accountable? Answers to these questions provides the needed legal and institutional framework for operationalizing the RBA.⁴¹ Quite unlike the ABA which recognizes and promotes the role of State’s agencies in combating electoral fraud, the RBA promotes citizen’s right in participation in governance by mainstreaming the following principles: ‘participation’, ‘accountability’, ‘non-discrimination/Equality’, ‘empowerment’ and ‘legality’ in strategies designed to combat electoral fraud:

Participation – everyone is entitled to contribute directly or indirectly in the decision-making processes of the society. Participation in this regards must be active, free, and meaningful. It must give attention to issues key issues that affects the people and it must be without discrimination.

Accountability – everyone is accountable- the duty-bearers as well as right violators. No one is above the law nor immune to being held accountable. The government is to see to it that there are appropriate laws, policies, institutions, administrative procedures and mechanisms to enhance the accountability of electoral violators.

Non-discrimination and equality – equality before the law. No preferential treatment. No discrimination in the application and enforcement of the law. Anyone can bring an action against electoral violations. All types of discrimination must be prohibited, prevented and eliminated.

Empowerment – everyone must know and be able to exercise their right to participate in governance and to hold violators accountable. The framework for empowerment must be copiously and adequately spelt out. Resources must be adequately channeled to empower people.

Legality – rights and duties must be legislated. Roles and responsibilities must be clearly spelt out in the law. The process of accountability must also be founded in the law.

This approach has a number of positives which States can take advantage of. First, the State can leverage on the help of citizens and Civil Society Organizations (CSOs) in combating electoral fraud. With citizens’ help, the demand on States reduce while the pressure on violators increases. This is made possible because the duties are shared between the people and relevant agencies. Leveraging on citizens and CSOs assistance can go a long way particularly in the area of prevention, investigation and prosecution. For instance, the electorates and CSOs can help gather evidence, testify in court and also

⁴⁰ J K Boesen and T Martin, ‘Applying a Rights-Based Approach. An Inspirational Guide for Civil Society’ (Danish Institute for Human Rights, 2007), < www.crin.org/docs/dihr_rba.pdf > accessed 20 April, 2020

⁴¹ See ‘What is a Human Rights Based Approach?’ < <http://careaboutrights.scottishhumanrights.com/whatisahumanrightsbasedapproach.html> > accessed April 20, 2020

initiate prosecution where the law allows. This approach is very important especially where the electorates suffer direct harm such as physical assaults, damage to property, and even where he is prevented from voting as a result of electoral fraud. In this situation, the electorates and CSOs need not wait for the State to take the lead as they can initiate civil or criminal proceedings against the violators.

Secondly, the RBA reduces the possibility of administrative bias or abuse of discretionary power as citizens and CSOs can act as effective check. This can actually take place in two major ways- one, in the area of prosecution of electoral offenders and secondly- in checking official excesses or abuse of office. In the first, the monopoly of investigation and prosecution is taken away by liberalizing opportunities to investigate and prosecute and as such, every eye-witness becomes a competent person to bring an action in court.

This actually generates the second effect as it helps reduce potential for official bias which may play out in the exercise of official discretion. For instance, taking decisions to prosecute public officials for electoral malpractices has proven to be one of the most difficult thing for an agency. Actually, it is difficult not necessarily because it is not possible to do so but because of the political status of the violator involved. Where it involves a sitting Governor or a high ranking member of the ruling political party, INEC has always shown some reluctance to initiate prosecution against such. Take for instance the case of the Governor of Kogi State who was accused of double registration during the run-up to the Kogi Gubernatorial election in 2019.⁴² Double registration is an offence under the Electoral Act 2010 (as amended) and it carries a fine of about N100, 000 or imprisonment for a term not exceeding one year or both.⁴³ Till date, no serious action has been taken against the governor.⁴⁴

Another case at hand is that of a Senator of the Federal Republic of Nigeria who is the wife of one of the chieftain of the ruling political party in Nigeria-All Progressive Congress (APC). This Senator was caught on camera during the 2019 National Assembly/State of House of Assembly elections influencing an electorate to vote for the ruling APC before she can give him money.⁴⁵ The act of inducing an electorate to vote for a candidate on Election Day on election ground constitute at least three offenses under the Electoral Act: (a) violations of the secret ballot system;⁴⁶ (b) bribery/conspiracy to bribe;⁴⁷ and (c) campaign on election ground.⁴⁸ The minimum punishment for any of these is 6 months' imprisonment or fine or both. Unfortunately, no action has been taken against this Senator till date. However, if the electorates have been giving the right to take action against violators, possibly this violator would have been prosecuted.

Again, it is highly debatable whether actions can be taken or maintained against the INEC, the security agencies or their officials for their complicity in electoral fraud. Presently, the only action that can be taken against INEC is that which challenges election outcomes and even at that, INEC can only be joined as a necessary party and not the main actor. The fact is that some level of electoral malpractices cannot be perpetrated without the connivance of INEC officials or security agents. Take for instance, alteration of election results or the mass thumb printing of electoral forms on Election Day without such being noted in Incident Form cannot happen without complicity on the part of an INEC Official or security agent. In actual fact, it is highly unlikely that electoral malpractices such as mass thumb printing of electoral materials can be done and not recorded without the connivance of some government officials

⁴² G Odogun, 'Gov Bello's Alleged Double Registration Still Pending —INEC' < <https://punchng.com/gov-bellos-alleged-double-registration-still-pending-inec/> > accessed April 22, 2020

⁴³ See Electoral Act, 2010 (as amended), Section 12 & 13 of the

⁴⁴ *Ibid.*

⁴⁵ Independent Newspaper, 'We Don't Trust Igbos Again, Tinubu Says After Casting Ballot' <<https://www.independent.ng/we-dont-trust-igbos-again-tinubu-says-after-casting-ballot/>> accessed April 22, 2020

⁴⁶ Section 125 of electoral Act, 2010

⁴⁷ *Ibid.* Section 124

⁴⁸ *Ibid.* section 129

and this is actually where empowering the electorates and CSOs become relevant.⁴⁹The RBA therefore suggests empowering citizens by granting them locus to check potential and actual official abuse of office.

However, despite the positives of this approach, it is not without its own downsides. In actual fact, a major downside of this approach is in the fact that it lacks a centralized coordinating system for checking frivolous litigation and abuse of court process. The potential for a floodgate of litigations is actually activated when every electorate and CSOs who witnesses any malpractices can investigate and institute an action in court against the duty bearers or violators of electoral standards. Imagine the thousands of cases that could be filed against the INEC for issues such as late distribution of electoral materials on Election Day or even the non-distribution of PVC possibly due to time constraints. It goes without saying that any lapse in the electoral process makes everyone a potential litigant. Lack of effective coordinating mechanism may therefore undermine its relevance since electoral management bodies may end up using its limited resources and time to defend actions in court than to discharge its statutory duties.

Consequently, the government and its agencies may end up dealing with the consequences of non-performance than actually devoting time and resources to discharge their duties as they should since failure, negligence or refusal to act, or to act timeously becomes a potential ground for action by a litigious electorate. No doubt, while such propensity should be discouraging, it may actually be a strong incentive for the State to be more responsive and this actually is one of the goals of the RBA. This aside, this approach also presents a very strong disincentive against violations by third parties as anybody or CSOs could investigate and take action against a violator. Thus, where this becomes a culture in the society, the daring recklessness which many exhibit towards electoral standards may greatly diminish if not eradicated.

4. Conclusion

Both strategies have unique advantages which can be leveraged on by developing countries in combating electoral fraud. However, it is left to the State to adopt the strategy that best address its peculiarities.

But for Nigeria as a country, the recommendation is that the government adopt both. Luckily, Nigeria already operates the ABA such that amending existing electoral laws to amplify citizens' participation beyond mere voting becomes easy.

Citizens' right to hold violators accountable should be recognized and protected. The quest for the conduct of a free and fair election can be achieved if citizens have the opportunity of taking part directly in holding violators accountable within a framework which defines the standard and context for such while the INEC continues to drive the electoral process. Thus, to achieve this, the government should:

Recognize the right to vote by amending the Constitution to reflect electoral rights as a fundamental right; Enact a law or amend the Electoral Act, 2010 to legalize the right to take actions against violators; Set the context and condition on which citizens can institute actions against violators; and Set time frame for which an action can be instituted and determined.

⁴⁹ K Salami, '2019 Election: Army, SSS, used to Intimidate Voters, INEC Officials-U.S Report' < <https://www.premiumtimesng.com/news/headlines/381980-2019-elections-army-sss-used-to-intimidate-voters-inec-officials-u-s-report.html> > accessed April 22, 2020. See also Ade Adesemoju, 'Two INEC officials charged with Electoral Malpractices' < <https://punchng.com/two-inec-officials-charged-with-electoral-malpractices/> > accessed April 22, 2020. See also OO Okunuga, 'Nigeria Decides 2019 Elections (INEC OFFICIAL CAUGHT RED HANDED) election malpractices' < <https://www.youtube.com/watch?v=prOBMQJJWUI> > accessed April 22, 2020