



LEGITIMACY AND VOTE BUYING SYNDROME IN NIGERIA: IMPERATIVES FOR PROMPT LEGAL SANCTIONS

JOSEPH I. AREMO PhD (IFE),

Department of Public and International Law, Faculty of Law, Elizade University,
Ilara- Mokin, Ondo State, Nigeria.

Abstract

Credible elections are characterized by inclusiveness, transparency, accountability and competitiveness while the hallmark of participatory government through these processes is anchored on the principle of voluntariness. The voters reserve the right to exercise their franchise without fear or favour; material or financial inducements. Nigerian experience at an election since independence has been quite challenging. In a democratic setting, free, fair and credible elections are the only acceptable and appropriate means through which citizens of a country can choose their representatives; but recently held elections in Nigeria have been reportedly characterized by money inducement popularly called “vote-buying” in order to sway the mind of the electorate to vote a particular candidate or party. It has become imperative to examine the various means of vote buying; appraise the effect of such unchecked occurrences in our democracy, and interrogate the roles of the major actors during the conduct of elections. This is done through desk research. Findings showed that vote buying is a brand of corruption and undue influence which tends to question the supposed legitimacy the government claims to have acquired. In addition, the electoral umpire, the political parties and sometimes the security agents are contributorily culpable. Therefore this paper argues that there is no better time than now to have a changed value system that promotes the voluntary exercise of franchise by the electorate devoid of any pecuniary inducement. Besides, the provisions of the Electoral Act are quite commendable in handling electoral matters in Nigeria, but an urgent need to back it up with political will is required.

Keywords: vote buying, legitimacy, syndrome, imperatives and legal sanctions

Introduction

An election is the most important pillar of democracy all over the world where a democratic system is in practice. The success of democracy largely depends on how a country conducts its elections. A credible election enhances State legitimacy as it provides the platform, for equal opportunities for all eligible citizens to participate as voters in selecting their representatives.³³ This franchise is a right that can only be restricted by the law. Thus, a credible election is transparently conducted, devoid of thuggery, ballot stuffing and vote buying, political manipulations and amongst other factors.

Since the return of democracy in Nigeria on 29th May 1999, vote buying has steadily grown in scale and brazenness.³⁴ Several videos and images have emerged, showing the unabashed sharing of cash, food and valuable items among the electorate by politicians and parties during elections in Edo, Anambra, Ondo and Ekiti States.³⁵ Sadly as it may be noted that “money politics” with a pejorative connotation has gradually taken the centre stage in the political process in the country.

The role that money and vote buying plays in Nigerian politics in recent times has attracted great concern to all and sundry and more so, such material inducements decided who gets what, when and how³⁶. It is pertinent to observe that it is not in any way being suggested that the use of money by political parties or any person or group of persons in politics has an inherent corruptive influence.³⁷ Prosecution of an election from the campaign point through primaries to the general elections is capital intensive, but where electorates are induced with material and financial benefits to teleguide them towards voting a particular candidate or a party becomes a worrisome situation. Therefore, it becomes imperative to examine the phenomenon of vote buying being a blemish on public policy, the electoral process and its implication on the issue of the legitimacy of products of such processes. This is with a view to determining why this ugly monster has become a recurring decimal in the nation’s electoral and political landscape.

Conceptual Frameworks

a. The Concept of Legitimacy

³³ Open Election Data Initiative, “What are credible elections?” <<https://openelectiondata.net/en/guide/electional-integrity/credible-elections>> accessed on 23 April, 2022

³⁴ Freedom Onuoha and Jide Ojo, “Practice and Perils of Vote Buying in Nigeria’s recent elections” <<https://hdl.handle.net/10520/EJC-14020ea106>> accessed on 18 April, 2022

³⁵ Ibid.

³⁶ Ovwasa O. Lucky, “Money Politics and Vote Buying In Nigeria: the Bane of Good Governance” (2014) 5 (7) *Mediterranean Journal of Social Sciences* 99

³⁷ Ibid.

Legitimacy is a crucial aspect of all power relations. Without legitimacy, power is exerted through coercion; with legitimacy, power can be exerted through voluntary or quasi-voluntary compliance.³⁸ Quasi-voluntary compliance is motivated by a willingness to comply but backed up by coercion, particularly coercion that ensures that others will obey the law. This holds for both power exerted by a State and by armed non-state groups. Also, the concept can be understood as an acceptance of authority by both elite and non-elite groups, although not all citizens are equally able to confer legitimacy.

Legitimacy implies the right and acceptance of an authority, usually a governing law or a regime.³⁹ Whereas authority denotes a specific position in an established government; an authority viewed as legitimate often has the right and justification to exercise power. Political legitimacy is considered a basic condition for governing, without which a government will suffer legislative deadlock and consequently collapse. According to Weber, a political regime is legitimate means that its participants have certain beliefs or faith in it. In his words, “the basis of every system of authority, and corresponding of every kind of willingness to obey, is a belief, a belief by which persons exercising authority are lent prestige.”⁴⁰

As remarked by Dworkin⁴¹, any argument for legitimacy must be able to account for the fact that political obligations are not consensual; he is critical of standard explanations like the social contract. He captures the essence of integrity when he states that any State that accepts integrity as a political ideal has a better case for legitimacy than one which does not.⁴² In his observation, he opines that a “political society that accepts integrity as a political virtue thereby becomes a special form of community, special in a way that promotes its moral authority to assume and deploy a monopoly of coercive force.”⁴³

Legitimacy is symbiotic, multidimensional and constantly shifting. Beetham⁴⁴ while emphasising the symbiotic and multidimensional nature of legitimacy, opines that legitimacy is not in terms of the different sources

³⁸ A McCullough, *The legitimacy of states and armed non-state actors: Topic guide* (Birmingham, UK: GSDRC, University of Birmingham 2015) 3

³⁹ Wikipedia < [https://en.m.wikipedia.org/wiki/legitimacy-\(political\)](https://en.m.wikipedia.org/wiki/legitimacy-(political))> accessed on 29 April, 2022

⁴⁰ Talcott Persons (ed), *Max Weber, The Theory of Social and Economic Organization* (New York: Free Press 1964) 382

⁴¹ Culled from MDA Freeman, *Lloyd's Introduction to Jurisprudence* (9th edn, Sweet & Maxwell, 2014-2nd Impression) 605

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ Beetham, David. *The Legitimation of Power* cited in A McCullough, *op.cit.* 4

from which authority arises, but in terms of three dimensions upon which all legitimacy relies. According to him, for an authority to be legitimate:

- it must conform to established rules;
- the rules must be justifiable in terms of people's beliefs; and
- there must be evidence of consent by the subordinate.

The implication of all these shows that the recognition of the authority of the leaders confirms that legitimacy is a panacea to the success or otherwise of every governance

b. The Concept of Vote Buying

Many scholars view vote buying as a simple economic transaction: parties and candidates distribute material benefits to individual citizens in exchange for support at the ballot box. This term has no specific definition but as defined by Etzioni-Haley⁴⁵, it is an exchange of private material benefits for political support. Vote buying, in its literal sense, is a simple economic exchange. Candidates "buy" and citizens "sell" votes, as they buy and sell apples, shoes, or television sets.⁴⁶ The act of vote buying by this view is a contract, or perhaps an auction, in which voters sell their votes to the highest bidder. As in the English *vote buying*, the Spanish *compra de votos*, the French *achat de voix*, or the German *Stimmenkauf*.⁴⁷ The commercialisation of votes is a phenomenon of great concern across the globe.

In principle, the idea of this trading refers to a commercial transaction, the exchange of goods and services for money (or other forms of payment) - a routine operation that competent inhabitants of the modern capitalist understand without difficulty.⁴⁸ The commodity that changes hands in acts of vote trading carries a well-defined institutional meaning too. Votes are formalized expressions of preference by individual members of decision-making bodies. Therefore, vote trading propositions may target either electoral choices or electoral participation. They may be intended to persuade individuals to vote in certain ways, or to vote or to not vote in an election, party's congress or convection.

⁴⁵ Etzioni-Haley, Eva "Exchange Material Benefits for Political Support: A Comparative Analysis", in Dalam Heidenheimer, et al. (eds). *Political Corruption: A Handbook* (New Jersey: Transaction Publishers. 1989) 287

⁴⁶ Frederic Charles Schaffer and Andreas Schedler, "What is Vote Buying? The Limits of the Market Model" <<http://www.gsdr.org>.> accessed on 28 April 2022

⁴⁷ Ibid.

⁴⁸ Frederic Charles Schaffer and Andreas Schedler, *op.cit.*

Vote buying is a form of bribery and corruption that infects the electoral processes with irregularities and manipulations. It is legally defined as “any reward given to a person for voting in a particular way or for not voting.”⁴⁹ Vote buying is a complex and undemocratic global phenomenon that cuts across developing and developed countries alike; countries such as United States, the United Kingdom, Nicaragua, China, Kenya, Uganda, Zimbabwe, Malawi are also affected⁵⁰ As remarked by James, “vote buying has a long history in well-established democracies, such as the United States and Great Britain”⁵¹ and is “widespread in many emerging democracies.”⁵²

Nigerian Elections and Vote Buying Syndrome

Recently conducted elections in Nigeria have witnessed the phenomenon of negotiation and exchange of money for votes. Vote buying has been an integral element of money politics in Nigeria which takes place at multiple stages of the electoral cycle; prominent during voter registration, party candidate nomination, campaign and election day.⁵³ Nonetheless, it is more rampant on election day, shortly before or during vote casting.

Hence, elections have lost their representative value and have, increasingly, been turned into a democratic means to legitimize and institutionalize undemocratic regimes. This has been the most obvious trend in Nigerian electoral politics in recent times. Elections at all tiers are engineered in such ways through manipulating electoral laws, the electoral commissions, and the legal system that effectively developed an intended mechanism of preventive representation.

Furthermore, vote buying is not only restricted to general elections but it also features in the party’s primaries as well as congresses and conventions of political parties to pick their officers. In 2018, the People’s Democratic Party Presidential Primaries was reported to have engrossed in vote buying of delegates.⁵⁴ Also, among the major political parties in the country jostling up for general elections in 2023, the ruling All Progressive Party and the main opposition party, the People’s Democratic

⁴⁹ USLEGAL, “Vote buying,” <https://definitions.uslegal.com>. (accessed October 29, 2018)

⁵⁰ John James Kennedy, “The Price of Democracy: Vote Buying and Village Elections in China,” (2009) 2 (4) *Asian Politics & Policy* 617

⁵¹ Ibid.; Gram Matenga, “Cash for Votes: Political legitimacy in Nigeria,” <<https://www.opendemocracy.net/gram-matenga/cash-for-votes-political-legitimacy-in-nigeria>.> accessed 10 February, 2020

⁵² PS Jensen, MK Justesen, “Poverty and Vote-buying: Survey based evidence from Africa,”(2014) 33 *Electoral Studies* 220

⁵³ Matenga, Gram, “Cash for Votes: Political Legitimacy in Nigeria” <https://www.opendemocracy.net/gram-matenga/cash-for-votes-political-legitimacy-in-nigeria> (accessed on 23 April, 2021)

⁵⁴ It Port Harcourt Presidential Primaries of the Party was reportedly captioned as “Dollar rains at Port Harcourt PDP Presidential Primaries 2018” <<https://www.vanguardngr.com/2018/10/dollar-rains-at-port-harcourt-pdp-presidential-primaries-2010/amp/>> accessed on 5 May, 2022

Party have been criticized for fixing outrageous fees for the collection of the expression of interest and nomination forms. This was described by the Pan Yoruba Socio-Political Group, *Afenifere* as the height of political insensitivity and an open invitation to thievery by any candidate of the parties that get elected.⁵⁵ With this high cost placed on the expression of interest and nomination of candidates, the stage seems to be set for volatile money-politicking and vote-buying in the upcoming general elections.

How legitimate is the Government formed from electoral processes characterized by vote buying?

It is often held that the establishment of electoral democracy is key to the creation of political legitimacy. Many empirical studies have revealed that electoral democracy has necessary implications for the establishment of legitimacy.⁵⁶ Even in successful and stable Nordic democracies, there is scant evidence that legitimacy is created on the input side of the political system.⁵⁷ As noted by Raz⁵⁸, there is a relationship between consent and legitimate political authority and this is distinguished into three ways:

- i. consent of those governed is a necessary condition for the legitimacy of political authority;
- ii. consent is not directly a condition for legitimacy, but the conditions for the legitimacy of authority are such that only political authority that enjoys the consent of those governed can meet them;
- iii. the conditions of legitimate political authority are such that those governed by that authority are under an obligation to consent.

Legitimacy is important for the achievement of development in a democratic government. It is public acceptance and recognition of the moral rights of leaders to govern, create and implement political decisions. The legitimacy of the relationship between the leader and the led, the association is determined by the led because

⁵⁵ “ Cost of parties nomination forms: Height of Political insensitivity, open invitation to thievery – Afenifere” while the All Progressive Party fixes her fee at one hundred million naira per an aspirant; the People’s democratic Party fixes hers at forty million naira <<https://www.vanguardngr.com.com/2022/04/cost-of-parties-nomination-forms-height-of-political-insensitivity-open-invitation-to-thievery-afenifere/amp/>> accessed on 5 May, 2022

⁵⁶ Bo Rothstein, “Creating Political Legitimacy: Electoral Democracy Versus Quality of Government” (2009) 53(3) *American Behavioural Scientist* 311

⁵⁷ Ibid.

⁵⁸ Raz, Joseph, *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford: Oxford University Press 1995) 356

acceptance and recognition of authority only flow from the governed.⁵⁹ The higher level of confidence obtained from the reception and public recognition of the government in power, the higher the level of public support for the policies made by the government, and conversely.⁶⁰ In general, why legitimacy becomes important for government leaders as it will bring political stability of possibilities for social change, recognition and community support for the authorities will create a stable government that can implement decisions for public benefit. The government which has legitimacy would easily overcome her challenges rather than the government that lacks legitimacy.

Hence, political legitimacy depends at least as much on the quality of government than on the capacity of electoral systems to create effective representation. Where the electoral processes that produce the public office holders are enmeshed in vote trading, the quality of government formed from the processes tends to suffer political legitimacy.⁶¹ Inducement either to vote for a candidate or party or abstain from voting questions the purported legitimacy acclaimed by the product of such electoral processes.

Vote Buying and the Electoral Act 2022

Vote buying is the emerging rigging method used by politicians and their agents. It corrupts the electoral process and it is an act of corruption. It is a punishable offence under Nigerian electoral law. There cannot be vote buying without vote selling. According to Adojutelegan, “vote-selling is an open form of bribery that substantially corrupts the Nigerian electoral system.”⁶² Under the old regime of the electoral Act, it was an electoral offence to be involved in vote buying and any culprit upon conviction was liable to a fine or a prison term. Accordingly, section 130 of the Electoral Act, 2010 provided:

A person who— (a) corruptly by himself or by any other person at any time after the date of an election has been announced, directly or indirectly gives or provides or pays money to or for any person for the purpose of corruptly influencing that person or any other person 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 (b)

⁵⁹ Nazifah, “The Importance of Legitimacy in the Implementation of Development” 2015 (17) 4 *South East Asia Journal of Contemporary Business, Economics and Law* 45

⁶⁰ *Ibid.*

⁶¹ Bo Rothstein, *op.cit.*

⁶² Nat Adojutelegan, *Vote-Selling: Infrastructure and Public Services*, Doctoral Thesis, University of Walden, 2018; E. Uchenna-Emezue, *Regulating the inflammatory cost of Nigeria’s democracy* (2015) 11 *African Policy Journal* 31

being a voter, corruptly accepts or takes money or any other inducement during any of the period stated in paragraph (a) of this section, commits an offence and is liable on conviction to a fine of ₦100,000 or 12 months imprisonment or both.

However, with the new Electoral Act recently passed by the National Assembly and assented to by the President of the Federal Republic of Nigeria, the penalty for vote buying or selling has been increased. Section 22 of the Electoral Act, 2022 provides:

Any person who —

(a) is in unlawful possession of any voter's card whether issued in the name of any voter or not; or

(b) sells or attempts to sell or offers to sell any voter's card whether issued in the name of any voter or not; or

(c) buys or offers to buy any voters' card whether on his own behalf or on behalf of any other person,

commits an offence and is liable on conviction to a fine not more than ₦500,000 or imprisonment not more than two years or both.

It appears that to ensure that financial or material inducement is forestalled, the Act sets a limit to the amount of money that political parties and their candidates can spend during the entire process of the election. The maximum election expenses to be incurred by a candidate at a presidential election shall not exceed ₦5,000,000,000 whilst for a candidate in respect of a gubernatorial election shall not exceed ₦1,000,000,000.⁶³ The maximum amount of election expenses to be incurred by a candidate in respect of Senatorial and House of Representatives seats shall not exceed ₦100,000,000 and ₦70,000,000 respectively.⁶⁴ In the case of a State Assembly election, the maximum amount of election expenses to be incurred by a candidate shall not exceed ₦30,000,000.⁶⁵ In the case of a chairmanship election to an Area Council, the maximum amount of election expenses to be incurred by a candidate shall not exceed ₦30,000,000 while for Area Council's Councillorship election, the maximum amount of election expenses is set at ₦5,000,000.⁶⁶ Besides, No individual or other entity is allowed to donate more than ₦50,000,000 to a

⁶³ Section 88 (2) & (3).Electoral Act, 2022

⁶⁴ Ibid. section 88 (4)

⁶⁵ Ibid. section 88 (5)

⁶⁶Ibid. section 88 (6) & (7)

candidate.⁶⁷ The consequence of violating any of these financial limits attracts on conviction a fine of 1% of the amount permitted as the limit of campaign expenditure under this Act or imprisonment for a term, not more than 12 months or both.⁶⁸

Furthermore, Election expenses of every political party shall be submitted to the Independent Electoral Commission in a separate audited return within six months after the election and such return shall be signed by the political party's auditors and countersigned by the Chairman of the party and be supported by a sworn affidavit by the signatories as to the correctness of its contents.⁶⁹ Any political party that contravenes this commits an offence and is liable on conviction to a maximum fine of ₦1,000,000 and in the case of failure to submit an accurate audited return within the stipulated period, the court may impose a maximum penalty of ₦200, 000.00 per day on any party for the period after the return was due until it is submitted to the Commission.⁷⁰ Also, where a political party incurs election expenses beyond the limit set by the Act, such a party commits an offence and is liable on conviction to a maximum fine of ₦1,000,000 and forfeiture to the Commission, of the amount by which the expenses exceed the limit set by the Commission.⁷¹ The Commission is mandated to make available for public inspection during regular business hours at its headquarters and State offices the audit returns of the political parties with the following information: the names, addresses, occupation, and amounts contributed by each contributor to a party.⁷²

However, although the Act criminalises acts of both “the seller” and “the buyer” of votes, the attainment of compliance to this legal provision remains a challenge. There has been no strong political Will on the part of the Commission and other relevant Law Enforcement Agents to arrest and prosecute the culprits. Thus, violators, most times go unpunished, thereby not deterring the prospective vote buyers and sellers.

Factors that trigger Incidents of Vote Buying

Several factors account for seamless vote trading during elections in Nigeria. Moral decadence and decline in the value system and the nation's ethos provide a fulcrum for the electorate to trade their votes. In addition, the inability of many political parties and the contestants to put in place comprehensive manifestoes for scrutiny by

⁶⁷ Ibid. section 88 (8)

⁶⁸ Ibid. section 88 (10)

⁶⁹ Ibid. section 89 (3)

⁷⁰ Ibid. section 89 (4)

⁷¹ Ibid. section 89 (7)

⁷² Ibid. section 89 (8)

the voters is also a contributory factor⁷³ Instead of well-defined manifestoes to guide the electorate to make a rational political choice, meaningless slogans, demagogic and rabbleroising speeches are made.⁷⁴ Such speeches either overestimate or underestimate the political perception of the voters, but are rarely educative and convincing. Many voters seem to be unimpressed by all the tricks of the parties and the candidates, hence, the need to bribe them for their votes.⁷⁵

Also. There may be political cynicism on the part of the voters who believe that political officeholders are incurably corrupt, self-seeking and incompetent, that politics is a dirty and dishonourable enterprise, and that the whole political process is a fraud and a betrayal of the public trust. This cynical view of politics is further accentuated by unfulfilled promises made by winners of past elections.⁷⁶ Thus, asking for a pay-off is another way by which the people receive their share of the national cake. On the other hand, the candidates who gave money to voters probably believe that they are investing against electoral failure.

Poverty is another catalysis to vote buying. The electorate tends to make end meets during an election. Politicians either as candidates or prospective appointees of their principals do sometimes “buy” votes of the electorate to ensure that their hope is not dashed. This penchant of politicians to win elections, even at the party primary level, at all costs, makes desperate contestants engage in all sorts of malpractices including offering financial and material inducements to voters. Working on the poverty of the people, Nigerian politicians have been known to distribute foodstuff and other consumable materials to voters shortly before the elections and some time on election day, contrary to the provision of the extant electoral law that prohibits such practice. It is common knowledge to see candidates throwing some money into the air during campaign rallies, making people scramble for it and sometimes in the process, casualties are recorded.

In another development, with an avalanche of evidence of vote buying even before law enforcement agents at various polling units in the time past, and low prosecution of the culprits, the electorate most times assumes that the law is nothing but a *paper tiger*. In some instances, mostly among the ruling party, many voters tend to believe that with the cover of the incumbency, if they are arrested for vote buying, the machinery of justice could be manipulated to get them off the hook. This reason and

⁷³ Ovwasa O. Lucky, “Money Politics and Vote Buying in Nigeria: The Bane of Good Governance” (2014) 5 (7) *Mediterranean Journal of Social Science* 103

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ovwasa O. Lucky, *op.cit.*

amongst others provide a breeding ground for the commercialization of votes of the electorate to undermine the integrity and credibility of the electoral system. However, despite such concerns, democracy continues to exist and so does trustworthy government by objective standards, but their existence is far from enough for a legitimate government. Legitimacy rests on more than effective governance; it requires popularly acceptable justifications for who holds the reins of power, who the leadership is, and for the policies promoted.⁷⁷ Doubts about government effectiveness and fairness in providing services and security undermine the popular belief in its trustworthiness and certainly weaken its claim for legitimacy. Loss of confidence in the very rules of the game undermines the justification of legitimacy.

Conclusion and Recommendations

Vote buying is a very serious malady that has crept into the nation's electoral system which has dealt a heavy blow to the credibility of the electoral system as well as the legitimacy of the government elected through the process. What is particularly worrisome is the brazen nature vote buying has assumed in recent times and its attendant danger to the nation's democracy. It is imperative to put in all measures to stem the tide of this menace. Government must show strong political Will to arrest, prosecute and get this problem stamped out from the electoral system. In addition, the various electoral commissions should strengthen their manpower to enable thorough monitoring of the conduct of political parties before and during the elections to ensure strict compliance with the enabling laws. Installation of monitoring gadgets or collaboration with relevant non-governmental organisations or corporate bodies that can provide such monitoring technologies to record all activities at various polling units during elections is imperative at this juncture.

Furthermore, whistle-blowing should be encouraged by the electoral umpire to provide information on infractions of the electoral laws and guidelines by political parties and candidates. There is also an urgent need for attitudinal change from the perspective of the voters. It is electoral misconduct as bad and illegal as ballot stuffing and it requires all stakeholders such as the electoral commissions, law enforcement agencies, the political parties, the media, civil society organizations and the entire citizenry to collectively tackle headlong. Unless this scourge is addressed it will destroy the fabric of the nation's democracy. Voter education, strict enforcement

⁷⁷ Jack Knight and Melissa Schwartzberg , (eds.) *Political Legitimacy* (New York University Press 2019) 393

and more punitive measures for vote buyers and sellers have the propensity to deter the would-be culprits.

The time is now that the products of the electoral system should be politically legitimate, reflective of the wishes and consents of the electorate free from any form of inducement. Consideration of issues raised in this paper by all the stakeholders in the electoral system with a view to applying the suggestions proffered will rescue the nation's electoral system from the commercialization of votes and the question of legitimacy characterizing the processes be resolved.