

# Electoral Reform and Democratic Consolidation in Nigeria: Review of 2022 Electoral Act (Areas for Further Legislative Action)

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# Introduction

- Nigeria embarked upon transition from military authoritarian rule to democracy in 1999 within the framework of liberal democracy, otherwise known as representative or electoral democracy.
- Basically, elections are the indispensable mechanisms for constituting government and governance, because it is through elections that qualified and participating citizens elect and legitimize leadership in the executive, legislative and, in some cases, even in the judicial branches of government (Jega 2023)
- In the democratic dispensation that we adopted and try to practice, only elected public officials who truly reflect the genuine choices of the electorate and who are responsible and responsive to citizens' needs and aspirations could catalyze and drive good governance that could, also, in particular, ensure the protection and defence of their rights and objective interests.

# Intro...

- Regrettably and unfortunately, for 24 years, Nigeria has been muddling through democratic development, with aspiration for democratic consolidation, which have been remarkably constrained by enormous challenges
- Among the key challenges are: the lack of sufficient integrity of the electoral process, inadequacy of quality of representation and the failure of governance to satisfactorily address the fundamental needs and aspirations of citizens for physical quality of life, human security and human dignity.
- Addressing these persistent challenges would require continuous, concerted efforts to reform the electoral process, improve the integrity of the preparation and conduct of elections, which has a direct correlation with quality of representation and governance, which are primary requirements for democratic development and consolidation

# Intro...

- The periodic review, updating and reforming the legal framework for elections, especially in countries in transition to democracy, such as Nigeria, is an absolute requirement for democratic development and consolidation.
- It is therefore necessary for the 10<sup>th</sup> National Assembly to give priority to an early review of the Electoral Act 2022, so as to substantially improve the legal framework for electoral integrity, taking into consideration outstanding issues not addressed by it, as well as emerging issues, which have been observed in its implementation in the 2023 general elections. As Itodo, of YIAGA-Africa observed, there are notable “ambiguities, complexities and inadequacies” (2023) in the Electoral Act 2022, which need to be addressed/redressed to make the preparations and conduct of elections much better in the next electoral cycle towards the 2027 general elections.

# Contextualizing Electoral Act 2022

- Good constitutional provisions and primary parliamentary legislation, are necessary and required as the legal framework for elections in representative/electoral democracies. In Nigeria, and in a few other electoral jurisdictions, such a parliamentary legislation is popularly called an Electoral Act.
- An Electoral Act can be defined as “a necessary legislative instrument that guides, oversees and manages the administration of an election. It includes rules and regulations that empower relevant agencies [such as an election Management Body] to conduct the elections legally” (stears.co 2022)
- The 1999 elections were conducted within a ‘legal’ framework of a military decree, rather than an Act of parliament, on account of it being a transitional election from military to civil democratic rule

# Contextualizing...

- Presidential Election (Basic Constitutional and Transitional Provisions) Decree No.6 of 1999 (Adopted 17/2/99) Published in the Decrees of the Federal Republic of Nigeria 1999, Vol.2, pp.383-509) was that 'legal' framework used in 1999
- Legislative constitutionally sanctioned parliamentary legal framework for elections commenced in 2002, in preparation for the 2003 elections. Thus far, we have had 7 electoral legislations by the National Assembly passed into law
- It commenced with the good practice of passing new legislation or amending existing legislation before the next elections. However, this good practice was abandoned, in spite of demands and advocacy by both INEC and CSOs after the 2011 elections.

# Contextualizing...

- Thus, Nigeria had two electoral cycles (2011-2015 and 2015-2019) without desired reforms, until a year to the 2023 election, in the third electoral cycle (2019-2023), when the Electoral Act 2022 was passed.
- It is necessary that Nigeria returns to the good practice, of reviewing the legal framework in each electoral cycle, which enhances democratic development and consolidation.
- Members of the National Assembly have an obligation to remedy this situation, in good time within an electoral cycle, consistent with, especially, the ECOWAS and AU protocols/charter to which Nigeria is a signatory [African Charter on Democracy, Elections and Governance 2007 and ECOWAS Protocol A/SP1/12/01 of 2001]

# Legislative Framework for Elections since 1999

- Presidential Election (Basic Constitutional and Transitional Provisions) Decree No.6 of 1999 (Adopted 17/2/99) Published in the Decrees of the Federal Republic of Nigeria 1999, Vol.2, pp.383-509)
- Electoral Act 2002 No. 4 Laws of the Federation of Nigeria (59 pages)
- Electoral Act (Amendment) Act 2003)
- Electoral Act 2006 (79pages)
- Electoral Act 2010 (Updated) (published by PLAC 118 pages)
- Electoral (Amendment) Act 2010
- Electoral (Amendment) Act No.2, 2010
- Electoral Act 2022 (110 pages)

# The Electoral Act 2022

- The Electoral Act 2022 can be said to be the best legal framework for preparation and conduct of elections in Nigeria's history, thus far!
- It represents a landmark in Nigerian legislation. With 153 sections, the Act covers a wide range of issues, meticulously organized into different parts, to give legal backing to, as well as govern and regulate, the Nigerian electoral environment and its processes
- The Act contains commendable value-additions, which supersede the previous legislations, and which if appropriately put to good use, would significantly enhance the integrity of Nigerian elections.

# The Electoral Act...

- Broadly, the Electoral Act 2022 seeks to: strengthen internal democracy with political parties; more decisively/effectively address electoral offences; strengthen inclusion of people with disabilities (PWDs), give legal backing to use of technology in elections; and protect INEC's independence, especially with regards to having finances to enable preparations and conduct of elections without obstruction and constraints (Electoral Hub 2023).
- Specifically, the Act provides the following, among other things:
  - It gives legal backing to INEC for the use of technology in elections, in the areas of verification and authentication of voters at the polling units; for electronic transmission of results, and for using an electronic register of voters (Sections 47 (2) & (3), 50(2) and 62(2))
  - It improves funding regime for INEC to prepare for and conduct elections without financial constraints, by providing that funds for the conduct of the general elections must be released to INEC at least a year before the elections (Section 3 (3)).

# The Electoral Act...

- It improves sanctions and penalties for a range of electoral offences for candidates and political parties.
- It provides for earlier commencement of campaigns by moving the period from 3 months to an election to 5 months ( Section 94).
- It permits political parties to choose the method of conducting their primaries.
- It disqualifies political appointees of the executive from being voting delegates at party primaries and conventions, and requires them to resign at least 30 days to election if they choose to contest as candidates in the elections (Section 84(12))

# The Electoral Act...

- It mandates political parties to conduct primaries at least 180 days before of the election and to submit the list of candidates to INEC at least 60 days before that date of election (Section 29(1))
- It empowers INEC to use only the number of accredited voters in the determination of cases of over-voting (Section )
- It introduces a provision, which allows aspirants to challenge the accuracy of information provided by candidates in their sworn Affidavits (Section 29(5))
- The Act covers a broad spectrum of electoral offences and provides a wide range of penalties, including fines, disqualification for participation in future elections and imprisonment for individuals, political parties and institutions that engage in the listed offences
- It gives INEC the power to review declaration of results made by returning officers under duress

# Areas for Further Legislative Action: Recommendations

- Although it can be said that the Electoral Act 2022 is the best in Nigeria's history, with good provisions, which if used appropriately could add value to the integrity of Nigerian elections; it is not perfect; and there is scope for further legislative action, to incorporate additional provisions drawing on experience with its implementation, and global best practices, as well as remove ambiguities, clarify and strengthen some of its sections.
- It is in this context that the following recommendations are offered:

# ... Recommendations

- **Relating to Use of Technology in Elections**
- Remove the ambiguity evident in Section 64 of the EA22. As has observed, “The Section is unclear on the stages the collation officers are required to compare physical copies of results and electronically transmitted results, thereby making the results management process susceptible to manipulation and misinterpretation” (Itodo, 2023, p. 1). These should be clarified in the Act, or if INEC is to issue regulations and guidelines for this, it should be clearly mandated.
- Make electronic transmission of results mandatory, from the next general elections in 2027, including uploading of polling unit level results and result sheets used at different levels of result collation. INEC would have enough time to prepare for this, if the Act is amended early enough in the ensuing electoral cycle

## ... Recommendations

- Make the transparent testing/mock exercise of electoral technologies, with the participation of key electoral stakeholders, mandatory with appropriate timelines
- Align the reconfiguration of technological devices used in between elections (presidential and governorship), with election dates and timelines, when drawing up timetable and schedule of election activities

# ... Recommendations

- **Relating to Voting Rights and Inclusivity**
- Introduce either (1) early voting for eligible voters on election duty, such as INEC staff, observers and their drivers, security personnel, and journalists, Or (2) make special arrangement as is done in other electoral jurisdictions to enable them vote on election day, especially for presidential elections, which is a single national constituency
- Introduce Diaspora voting, at least for presidential elections, to enable citizens to vote, especially those on essential service abroad, such as military, paramilitary and other security personnel abroad, Embassy staff, and other citizens, who are not dual citizens (unless constitutional provisions expressly permit dual citizens full scale participation)
- Notwithstanding Sections 54, which improved inclusion of persons with disability (PWDs), There is need to enhance inclusion of women, if necessary by up to 35% of elective positions in parliament, and in all political parties' candidate lists

# ... Recommendations

- **Relating to Political Parties**
- Stipulate sanctions for failure to submit register of party members not later than 30 days before the date of party primaries, congresses or conventions, in relation to Section 77 (3), which the political parties have observed in the breach in the 2023 elections without penalty
- Proscribe cross-carpeting not only for members of the National Assembly but also for elected executives, governors and Chairmen of LGAs. And empower INEC to prepare for elections to fill the vacancy once it has evidence of the act of cross-carpeting. The legal obstacle that INEC cannot fill such vacancies unless they have been declared vacant by Speakers (NA and SHAs) and Senate President is unrealistic/counter-productive as in practice they have failed to declare such vacancies, because the 'de-campees' invariably move to their parties, with majority control of the legislature!

# ... Recommendations

- Instead of Sections 86 and 87, which places all the responsibility of monitoring party finances with INEC, given the prevailing tendency of parties and candidates to violate campaign finance limits, this responsibility should either be handled by a newly created agency (in the context of unbundling INEC) or given to an Inter-Agency Committee consisting of INEC, Security and anti-corruption agencies, etc.
- Sections 31 and 33 specify conditions regulating withdrawal of candidature and substitution. However, there is need to place stringent conditions for candidate withdrawal and replacement to prevent abuse of this provision.
- Introduce rigorous security screening of candidates before the party primaries
- Empower INEC to also screen and if necessary disqualify candidates whose credentials show that they are unqualified or in respect of whom it has evidence of forgery and other forms of criminality

# ...Recommendations

- **Relating to Electoral Dispute Resolution and Judicial Adjudication**
- Notwithstanding provisions of Section 29(5), which allows aspirants who participated in primaries to pursue pre-election litigation, there is need for the legislation to allow even candidates outside the political parties, as well as tax-paying citizens to file suits against candidates who provide false information to INEC regarding their candidature
- Although Sections 132(8) & (9) have given timelines within which the Tribunals and courts of appellate jurisdiction should issue verdicts, there is need, particularly in respect of elected executive positions, to ensure that all cases are resolved and judgements made before the date of swearing-in

# ... Recommendations

- **Relating to Institutional Independence and Effectiveness of INEC**
- The National Assembly should amend both the constitution and the electoral act to:
  - Review the process of appointments into INEC, specifically to divest/minimize the involvement of the President in appointment of Chairman and National Commissioners of INEC, in order to free the commission from the damaging negative perception of “he who pays the piper dictates the tune”. The Justice Uwais Committee recommended that the responsibility for advertising, screening, shortlisting and submission to Council of State for recommendation to Senate for confirmation hearings, for this category of officers, should be entrusted to the National Judicial Council (NJC). On second thought, and for obvious reasons, I will recommend a joint committee of the National Assembly be given this responsibility, with a criteria, for transparency, non-partisanship and stakeholder engagement for the process. The applicants/nominees for these appointments should be subjected to public scrutiny with regards to knowledge, skills, good character and non-partisanship. Guidelines should be provided for submitting petitions against any nominee during this process.

# ... Recommendations

- In any case, the Senate screening process should be more serious and rigorous. Also, there should no longer be the patronizing “Take a bow and go”!
- Professionalize lower level administrative appointments, including headship of state offices of INEC. In this regard, the appointment of Resident Electoral Commissioners should be divested from the president and given to the Commission at INEC, with powers to hire and fire. Once the appointment of Chairman and National Commissioners is sanitized, infused with public scrutiny for integrity and non-partisanship, then the Commission should be entrusted to hire and fire competent and skilled staff for administrative roles at both the headquarters and state offices of INEC. Thus, there will be clear lines of authority and directives, which would prevent the kind of unwholesome situations we have seen, in which RECs pander more to their partisan political bosses who nominated them into office, and ignore the lawful directives of the Commission.
- We have seen, in 2023 elections, the damaging effect of how people in the corridors power get their client/partisan nominees appointed, without being thoroughly screened, and then they are influenced to compromise the integrity of elections.

# ... Recommendations

- **Other Critical Issues**
- The increasing phenomenon of vote buying and vote selling (vote trading!) needs to be explicitly proscribed, with stiff penalties provided. Section 121, which deals with bribery and conspiracy is insufficient to decisively deal with this phenomenon, which is increasing, and which is destructive to the integrity of the elections.
- INEC needs to be unbundled to improve its efficiency and effectiveness in the preparation and conduct of elections. Accordingly, as recommended by the Justice Uwais Electoral Reform Committee in 2008:
  - Current statutory responsibility of INEC with regards to prosecution of electoral offenders should be reassigned to an Election Offences Commission. So as to accelerate prosecution and punishment of offenders and address the impunity with which such offences are committed

# ... Recommendations

- Electoral boundary and constituency delimitation, should be reassigned and entrusted to the National Boundary Commission, or such other agency as may be created
- Registration and monitoring of the activities of political parties should also be taken away from INEC and entrusted to another federal body/agency
- There is need to review the manner by which every “Dick and Harry” party/candidate vies for the presidency, and even governorship, making the cost of elections relatively high. A legal threshold need to be provided, which political parties and candidates have to cross, beyond mere registration as a political party, before they can vie for the presidency or even governorship elections. There are models of this in many electoral jurisdictions, that Nigeria can learn from, and adapt to our context.

# Conclusion

- As I-IDEA (2014) has noted, there are 3 categories of electoral reforms: those which involve constructive changes in the political environment within which an EMB operates; administrative reforms, which focus on changes and improvement related to the day-to-day work of an EMB; and legal/legislative reforms, which involve constructive changes and value additions to the legality of the processes, procedures and regulations guiding the mandate of an EMB, and which may or may not address the larger political environmental issues.
- Indeed, there are other critical, structural and systemic, and value-orientation issues that need to be addressed separately as they cannot be fully and satisfactorily addressed within the context of an Electoral Act
- While priority should be focused on the Electoral Act amendment, some constitutional amendments and policy decisions need to be pursued to address some of the systemic and structural issues that seriously impinge upon the integrity and quality of elections, no matter how good the legal framework turns out to be.

# Conclusion...

- Recommendations for a few of these would suffice:
- Policing and security sector reforms are necessary and desirable to engender a more conducive environment for not only free and fair, but also peaceful, elections
- The National Orientation Agency (NOA) need to be empowered to effectively and impactfully shoulder most of the burden of Voter and civic education, to empower citizens on the desirability of electoral integrity, democratic development and good governance; to enlighten citizens about the value of the vote, so that they can register to vote, know how to vote so as not to waste their votes, come out on election day, regardless of the constraints; and choose wisely for responsible, knowledgeable, selfless, experienced and skillful people who, as representatives in legislatures and executive arms of government, will feel compelled to be responsive to the needs and aspirations of citizens, in appreciation of the mandate given to them by qualified voting citizens to occupy such public, elective, leadership positions of responsibility and respectability.
- Proportional representation should be introduced either as a substitute for the First Past the Post (FPTP) system currently in use, or to supplement / complement it. This will minimize the “winner take all” politics and its associated tensions and conflicts, as well as and broaden inclusivity in representation

# Conclusion...

- Majority of Nigerian politicians need to reorient themselves and have a remarkably improved mindset for constructive engagement with elections. As is often said, democracy cannot be built without democrats, and many of these politicians exude undemocratic dispositions as reflected in the tendency to see elections as a do-or-die affair, using all means necessary. While change of attitudes cannot be legislated, serious effort need to be focused on how to nurture and entrench enlightened self-interest among the politicians specifically and Nigerian elite generally, so that hands are joined and placed on deck in the pursuit of electoral integrity and democratic development and consolidation
- Therefore, clearly, beyond the periodic review of the Electoral Act, which is necessary and desirable, and which is here strongly recommended, other attitudinal, policy, systemic and structural reforms are imperative and must be pursued accordingly and simulteneously for consolidated democratic development in Nigeria

Thank You!

# References

- NILDS. Amended Electoral Act 2022
- International IDEA. 2014. Electoral Law Reforms in Africa: Insights into the Role of EMBs and Approaches to Engagement. Policy Paper. Stockholm, Sweden: The International IDEA.
- Jega, A.M. 2023. “Organizing free, fair, inclusive and transparent elections as a necessary and indispensable mechanism for the protection of citizens’ rights and interests by government”, being a contribution to a Panel Discussion at the ECOWAS 5<sup>th</sup> Legislative Parliamentary Seminar, on the theme: The Challenges of Unconstitutional Regime Change and Presidential Term Limits in West Africa, Winneba, Ghana. September 30.
- PLAC. 2022. “Key Provisions in the Electoral Act 2022” Online: plac.org. March
- Stears. 2022. “What is an Electoral Act?” [www.stears.co](http://www.stears.co) December 20.
- Itodo, S. 2023. “Ambiguities, Complexities and Inadequacies with the Election Legal Framework (Electoral Act 2022)”. October 16.

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