

ELECTORAL ACT 2022, NIGERIA'S GENERAL ELECTIONS 2023 AND THE ROLE OF THE MEDIA*

Abstract

A major determinant of democracy is the electoral process that provides the electorate the institutional framework for choosing representatives through a competitive free and fair election. It is accepted universally, that a credible election is the heart of a representative democracy because a credible election not only confers legitimacy on political leadership, it is also crucial to the sustenance of democratic order. There are many players in the electoral process in Nigeria including the Independent National Election Commission, the judiciary, the security agencies as well as the media. The media plays an important role in determining how free and fair the electoral process is in practice. It is common knowledge that the 2022 Electoral Act made some salient innovations that would afford great benefits to the Nigerian electoral process and that the extent to which these salient innovations will positively impact on the electoral process is dependent on the activities of the aforementioned players in the electoral process especially the media. It is against this background that this work examined the role of the media in bringing the innovations made by the 2022 Electoral act to bear in the 2023 election. The work found that if the media identifies its responsibility and work sincerely and honestly towards achieving same, then it can serve as a great force in fostering a credible election in 2023 and beyond.

Keywords: Electoral Act 2022, Nigeria's General Elections 2023, INEC, Role of the Media

1. Introduction

An election is a formal decision-making process by which a population chooses an individual to hold public office. According to Dye election is a major instrument for the recruitment of political leadership in democratic societies; the key to participation in a democracy; and the way of giving consent/legitimacy to government.¹ Elections are not necessarily about Election Day activities although it forms an important component. It encompasses activities before, during and after elections. It includes the legal and constitutional framework for elections, the registration of political parties, party campaigns, the activities of the electronic and print media in terms of access; it includes campaign financing, the activities of the security agencies and the government in power. It also includes the authenticity and genuineness of the voters register; the independence or lack of it of electoral agencies and organs and the liberalism or otherwise of the political process in the country and the independence of adjudicating bodies of elections.² Ideally, government should be representative and accountable; representative in the sense that its policies align with citizens' interests, and accountable in the sense that it is answerable to citizens for its conduct and responsive to their demands.³ The electoral system plays an important role in determining how representative and accountable a government is in practice. In a representative democracy, electoral systems decide how well voters can hold politicians accountable and which groups in society are more likely to see their interests represented.⁴ It gives voters some control over politicians who abuse their power: voters can punish or reward politicians through re-election or other career concerns, and this creates incentives for good behaviour. The most widely praised as the best system of government in our contemporary world is democracy, which allows for high level of peoples participation in decision-making and policy formulation through representatives. It is accepted universally, that a credible election is the heart of a representative democracy because a credible election not only confers legitimacy on political leadership, it is also crucial to the sustenance of democratic order.⁵ It would be safe therefore to assert that election represents the lifeblood of modern democracy; and the frequency, fairness and openness of such elections are crucial to the political stability of any polity.⁶ This is where the media comes in. The political and cultural impact of media is unmistakable from whatever perspective.⁷

*By **Anthony Chinedu ONAH, LL.M**, Lecturer, Department of Commercial and Property Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. Email: ac.onah@unizik.edu.ng; chineduonah@nigerianbar.ng. Phone Number: +2348064794333.

¹R T Dye, *Politics in America* (New Jersey: Prentice Hall, Upper Saddle Rivers, 2001)

² Iyayi, Festus. (2004) 'The Conduct of Elections and Electoral Practices in Nigeria' Paper delivered at the NBA Conference in Abuja on 24th August, 2004

³ C Kam, "Representation, Accountability and Electoral Systems"(2016) *Canadian Parliamentary Review/Winter*, pp17-21 at 17

⁴ T Person & G Tabellini, 'Electoral Systems and Economic Policy' in BR Weingast and DA Wittman, *Oxford Handbook of Political economy*, (UK: Oxford University Press, 2006) 723-728 at 724

⁵ K Animashaun, 'Regime Character, Electoral Crises and Prospects of Electoral Reform in Nigeria, (2010) *Journal of Nigerian Studies, Vol. 1 No. 1*, p. 2; Z O Alayinde, 'An Analysis of the Legal Regime of Election Administration in Nigeria (2016) *Journal of Law Policy and Globalization Vol. 46*, p. 110

⁶ K. Animashaun, *op cit*, p. 3; O Nnoli, *Introduction to Politics* (Revised 2nd Edn, Enugu: Snaap Press Ltd, 2003) p. 230

⁷ L Newman, 'Mass Media' <<https://lucian.uchicago.edu/blogs/mediatheory/keywords/mass-media/>> accessed 02/01/2023.

The media will have a central role to play in the 2023 general election in particular and in general, in the country's development. There is therefore no doubt that the media will be central and important in determining the success of the 2023 election and other subsequent elections that would be predicated on the 2022 Electoral Act. The existence of a viable media is crucial to the survival of any electoral system and in turn, to any democracy. This is because there can be no credible election without credible media that promotes transparency and accountability.⁸ This is even more so in a country like Nigeria where access to the state and information relating thereto are viewed as a means of guaranteeing one's security. Thus it would further be right to assert that the sustenance of any electoral system depends, among other things, on the activities of the media especially the existence of viable media that ensures that every process follows the legally prescribed behaviour and actions that must be in consonance with the objectives and goals that the nation embodying the system seeks to achieve. The media should be able to question any process which is not in consonance with the prescribed procedures. Electoral politics in Nigeria are primarily predicated on the activities of the following primary actors, to wit; political parties, INEC, the voting population, the security agencies and the Election Tribunals. It is the responsibility of the Media, just like the law, to question the inter-relationship between these actors and ensure that the general public are aware of the activities of these actors. It is no news that the Federal Government of Nigeria passed into law, the 2022 Electoral Act which shall regulate the 2023 general elections and subsequent elections unless same is amended or repealed. While one must commend the laudable innovations and introductions made in the said Act, it must be observed that there is no clear indication on how the said innovations and introductions would translate into a free, fair and transparent election. That is why all hands must be on deck to ensure an electoral regime that is free, fair and transparent. It is against the foregoing background that this work shall proceed to highlight a few of the innovations made by the 2022 Electoral Act and then discuss the role of the Media in actualizing the intendments of the Act in promoting a free and fair election.

2. The Media in a Democracy

The mainstream media, sometimes referred to as the Fourth Estate, plays an important role in elections and in monitoring government activities. Increasingly, the new media, dominated by the social media has, in recent times, become an active player in this role too. The impact the Media has on elections and government activities cannot be overemphasized. The Media, in all its ramifications, has played a significant role in elections and in monitoring government activities. In this wise, the mainstream media has been referred to as a 'watch dog' that protects democracy and citizen rights and holds politicians and government accountable for what they say and do. In the world of today, media has become as necessary as food and clothing. It has played significant role in strengthening the society. The media is considered as mirror of the modern society, in fact, it is the Media which shapes our lives in these modern times. The Media can be an efficient resource for transmitting useful information and educating the public about elections, and indeed in the 2023 elections. Ideally, the media serves several essential roles in a democratic society. Their primary purpose is to inform the public, providing citizens with the information needed to make thoughtful decisions about leadership and policy. The media act as watchdogs checking government actions. They set the agenda for public discussion of issues, and provide a forum for political expression. They also facilitate community building by helping people to find common causes, identify civic groups, and work toward solutions to societal problems. The media especially social media influences so many people's behaviour nowadays. Information can be spread after a few clicks of a button, whether it is true, false, speculation or gossip. The media can manipulate, influence, persuade and pressurize society, along with even controlling the world at times in both positive and negative ways; mentally, physically and emotionally. Government agencies and politicians, apart from the use to which they apply the mainstream media, use social media to connect directly with the public instead of relying on debates, news releases, and mainstream media reporting. Using social media, especially the platforms provided by social media giants Facebook and Twitter, allows them to frame their own message without going through the fact-checking processes that characterizes the mainstream media.

As the fourth pillar of democracy along with judiciary, executive and legislature, media of today has an all embracing role to act against the injustice, oppression, misdeeds and partiality of our society. In this wise it is suggested that the media has the responsibility to give equal platform to all candidates within the electoral process and provide unbiased and verifiable information to the general public in order to enable them make informed decisions during the elections. There is no doubt that information gives us more power because the more we know, the more we can effect change both on a personal and societal level. One way we acquire knowledge is through the media, whose role is to disseminate information to the general public, thereby empowering them.

⁸ F Aborisade, 'Nigeria's Electoral Legal Framework: Any need for Judicial Reconstruction and Legislative Reforms?' <<http://www.inecnigeria.org/wp-content/uploads/2015/07/Conference-paper-by-Femi-Aborisade.pdf>> accessed on 07/09/2022

The media cannot exist without an audience. That is why newspapers, magazines, and TV and radio stations with large audiences are considered successful and powerful. Because of this relationship between the Media and the people, journalists wield enormous power in our societies. However, in view of this enormous power they wield, they have a great responsibility to educate and inform the public honestly. Disseminating information can be seen as either manipulation or education, and it is the responsibility of a good journalist to educate and not manipulate.

It must be observed that public enlightenment is the forerunner of justice and the foundation of democracy. The primary duty of the journalist therefore is to further those ends by seeking the truth and providing a fair and comprehensive account of events and issues. Thus, it is the responsibility of those who are actors in the media space to serve the public with thoroughness and honesty. In the past, we got our news from newspapers, the radio and television, which provided us with what was going on in the world and in our own neighbourhoods at specific times throughout the day. CNN introduced the 24-hour news cycle in 1982 and our ability to be up to date at the click of a remote was born. However, with the social media and smart phones, we now have these news items at our fingertips at every moment in time. Social media has become increasingly relied upon by the public for news and information. This has led to social media being dubbed by society as the Fifth Estate⁹, a source for information and news outside of mainstream media with the same role of watchdog. Mainstream media and social media are both imperfect conveyers of fact because they decide what to share with the public and what political issues to emphasize, therefore limiting available information on other topics of equal importance. One fact is certain though; it is the fact that social media has been more vulnerable to abuse by their owners and by those who use them to advocate for their point of view. The new media predominantly characterized by the social media environment is dynamic and continues to develop in novel, sometimes unanticipated, ways that have serious consequences for democratic governance and politics. It has radically altered the way that government institutions operate, the way that political leaders communicate, the manner in which elections are contested, and citizen engagement. It has also transformed the political media system, and redefined the role of journalists in a complex way. It has further redefined the way elections are contested, and how citizens engage in political conversations without the need to meet physically or even be in the same vicinity.¹⁰

The traditional media system consisting of established mass media institutions that predate the Internet, such as newspapers, radio shows, and television news programs, coexist with new media that are the outgrowth of technological innovation. While the traditional media maintain relatively stable formats, the litany of new media, which includes websites, blogs, video-sharing platforms, digital apps, and social media, are continually expanding in innovative ways. New media can relay information directly to individuals without the intervention of editorial or institutional gatekeepers, which are intrinsic to traditional forms. The implication of the above is that new media have introduced an increased level of instability and unpredictability into the political communication process. That is why one must commend the traditional media which have incorporated their activities into the wide range of possibilities being offered by the New Media. Now you see that most traditional media outlets have websites, social media accounts, etc.

3. Roles of the Media

Media is generally in charge of information, education, entertainment, advertising and correlation of parts of society. Society is influenced by media in so many ways. It is the media for the masses that helps them to get information about a lot of things and also to form opinions and make judgments regarding various issues. According to Dhawan,¹¹ the roles of the media are broadly five, to wit, informative role, educative role, platform role, publicity role and advocacy role.

Informative Role: The first duty of the media is the duty to inform the people of what is going on in the society. In the context of this paper, it is the duty of the media to inform the public about the developments in our political space. In this wise, they should be able to inform the public about development in the laws, the personalities of the candidates for the election as well as the timetables for the election. It is based on these pieces of information by the media that the public are capable of making rational and accurate decisions in the electoral process.

⁹ W Zhang, 'The rise of Social media as the Fifth Estate changed the political environment' <<https://medium.com/the-public-ear/the-rise-of-social-media-as-the-fifth-estate-changed-the-political-environment-ca18640bffb7> accessed 02/01/2023.

¹⁰ In this wise, it is observed that the national awareness that the Labour Party and the 'Obidient Movement' has gathered in the recent most is attributed to the influence of social media.

¹¹ M Dhawan 'What are ten roles of media in society?' < <https://www.quora.com/What-are-ten-roles-of-media-in-society>> accessed 02/01/2023

Educative Role: There is no doubt that the members of the public, beyond being informed of the developments in the political space also need to know the significance of the said developments. There is also a need to educate the public on how the policies and regulations in relation thereto will affect their lives. Thus, the media should not just pass information to the public but also create a platform through which they would understand and comprehend the purport of the information passed. In this wise, the media should host interviews and press conferences aimed at educating the public on the implications of political development as well as government policies and regulations.

Platform Role: The media should provide the platform through which the various groups in society ventilate their opinions on political issues especially as it relates to the 2023 election and subsequent elections. Therefore, they must be diversified, objective, unbiased, and allow voices to be heard from all facets of the society. This platform should be given to the government, leaders, political parties, contestant in the election, corporate bodies as well as individuals. It is the media's duty to provide to the public an opportunity to hear all sides of a story through the creation of this platform.

Publicity Role: It also the responsibility of the media to act as an instrument of publicising politicians, leaders, celebrities, activists, intellectuals, etc. It is also through the media that the activities of the government especially political activities are publicized. Our politicians also use the media to publicize themselves as well as their mandate, cause, goal, or duty. Through the media, they can access the public on a widespread basis and draw attention to themselves.¹²

Advocacy Role: It is the responsibility of the media to broadcast and promote different viewpoints from different parties, whether it be social groups, political parties, religious organizations, etc. This is because the media is a marketplace of ideas.

Investigative Role: It is also the role of the media to investigate the activities of political actors. This include the responsibility to question or verify the information contained in the affidavit submitted by a candidate during an election in Nigeria.

The media has to be careful when playing these roles. It is important that the media upholds and performs these six functions/roles because if they do not, then they will not be representing themselves properly. This will in turn affect the next election and in turn, Nigeria's democracy. This function should include trainings for government spokespersons to give them the opportunity to learn about international experiences of encouraging transparency and enhancing communications between government officials and the media. Enabling the media to become more open, more effective and more independent actually serves to improve the environment for social political stability. A responsible government therefore works hard to improve the professionalism, accountability and freedom of the media. Beyond the foregoing function of the traditional media, the new media constituted mainly by social media, embody the spirit of democracy, enabling citizens to hold candidates and representatives accountable, monitor electoral fraud, and engage in political debate. However, this vehicle of participatory citizenship is not without challenges, among which are issues of ethics and integrity. The new media can serve as a platform for the dissemination of false or misleading information, lacking the gatekeeping processes and expertise of traditional media. This is why the convergence of traditional and new media as means of information dissemination has raised questions regarding where to draw the line between regulation and censorship and, relatedly, how to protect freedom of expression while safeguarding against inflammatory speech. What's more, despite the dramatic expansion of new media and technology throughout the world, there are still many groups, such as the elderly, the illiterate and the poor, with limited or no access to these resources. Nonetheless, new media have increasingly become an integral component of the media landscape and an important outlet for candidates, political parties, election management bodies, and citizens. Despite some of the drawbacks detailed above, increased worldwide Internet access will only further the importance of new media in democracy and elections. Citizens have more avenues to reach candidates and campaigns and share information than ever, presenting new opportunities and challenges for democracy promotion and new possibilities for democratic consolidation around world. That is why it is recommended that even the traditional media should find a way of taking advantage of the benefits that the new media offer.

4. The Salient Innovations in the New Electoral Act

The framework for electoral governance in Nigeria is primarily anchored on two instruments: the 1999 Constitution and the 2022 Electoral Act. These two documents contain rules and regulations that drive electoral governance in Nigeria. These regulations are aimed at protecting the integrity of the electoral process. Section

¹² *Ibid.*

153 of the Constitution established the Independent National Electoral Commission with the mandate to conduct elections in Nigeria for the offices of President, Vice President, Members of the National Assembly (both the Senate and House of Representatives), Governors, Deputy Governors, and members of state Houses of Assembly. However the details relating to the electoral process is contained in the 2022 Electoral Act. We shall proceed to highlight some of the salient innovations of the Act.

1. Section 3(3) of the Act makes provision for the time limit within which the Federal Government shall release the Independent National Electoral Commission Fund to the Commission. It provides that The Funds for general elections must be released to the Commission, at least, one year before the election. There was no such time limit in the 2010 Act. The question that arises is whether the Fund for the next general election has been released to INEC and if so, to what extent has the Commission been accountable in expending same. This interrogation ought to be done by the Media so as to inform and educate the people.
2. Section 9 of the Act provides that the Commission shall keep the Register of Voters at its National Headquarters and other locations, in electronic format in its central database, as well as in manual or hardcopy format. Under the former Act, this Register was only kept in manual or hardcopy format. This provision is laudable as it will promote transparency and effectiveness in the Commission's record-keeping and in tracking the number of registered voters who will be voting in the upcoming elections, thereby curbing illegal voting by non-registered voters.
3. Section 28 of the Act provides that the Commission shall, not later than 360 days before the day appointed for holding of an election publish a notice in each State of the Federation and the Federal Capital Territory stating the date of the election and appointing the place at which nomination papers are to be delivered. This is against the 90 days provided by the 2010 Act. This extension of time is intended to give the Commission and the political parties more time to prepare for the election.
4. Section 29(1) requires that political parties must conduct primary election and submit their list of candidates at least 180 days before the general elections. This is against the 60 days hitherto required by the 2010 Electoral Act. A perusal of the other sections of the Act will reveal the benefits accruing from the extension of time introduced by this section. By virtue of sub-section (2) of the Act, a list or information submitted by each candidate shall be accompanied by an affidavit sworn to by the candidate at the Federal High Court, High Court of a State, or Federal Capital Territory, indicating that he or she has fulfilled all the constitutional requirements for election into that office. The Commission is by sub-section (3) required to publish the personal particulars of the candidate within seven days in the person's constituency and by sub-section (4) empowered to issue certified true copies of the documents containing the particulars. Participants may by sub-section (5) bring an action in court for the disqualification of a candidate who provides wrong information. In view of the foregoing, the said extension of time gives more time to the people, especially the media to question or verify the information contained in the affidavit submitted by a candidate in an election.
5. Section 34 empowers political parties to conduct a primary election to replace a candidate who died during a legislative election and for a running mate to take over as the flag bearer in elections into the executive arms of government. According to sub-section (3) of the said section, If after the commencement of polls and before the announcement of the final result and declaration of a winner, a candidate dies, the Commission shall, being satisfied of the fact of the death, suspend the election for a period not more than 21 days ; and in the case of election into a legislative House, the election shall start afresh and the political party whose candidate died may, if it intends to continue to participate in the election, conduct a fresh primary within 14 days of the death of its candidate and submit the name of a new candidate to the Commission to replace the dead candidate. In the case of presidential or gubernatorial or Federal Capital Territory Area Council election, the running mate shall continue with the election and nominate a new running mate. The implication of the above provision of the Act is that we may never witness the 'Kogi incident' again, as in such instance, the running mate would become the flag bearer and then nominate another person as a running mate.
6. Section 47 has provided the necessary legislative backing for accreditation using smart card readers and any other voter accreditation technology that the Independent National Electoral Commission (INEC) deploys. An observation of the Election Petition cases conducted after the 2019 general election will reveal that majority of the elections that were upturned were predicated on the fact that 2010 Act does not make any provisions for the use of card readers or any other voter accreditation technology but only allows for manual accreditation. This is a fact that is almost known to most Nigerians. In view of the validation of such accreditation processes by the 2022 Act, there is the need for the Media to inform and educate the general public on this development as this will rekindle their hope in the electoral process.
7. Section 50 empowers INEC to conduct voting and transmit results in accordance with the procedure determined by the Commission. This shall on a literal interpretation include electronic transmission of

election results. Thus this section can be cited as providing legislative backing to electronic transmission of election results. This is contrary to section 52 of the 2010 Act that expressly prohibited the use of electronic voting machine.

8. Section 54(2) of the 2022 Act just like the 2010 Act makes provisions for people with disabilities and special needs. It is the role of the Media to spark up conversations that will bring this provisions to the intended audience as well as educate them on the procedures for accessing the benefits accruing from the said provision.
9. Section 65 empowers INEC to review the decision of returning officers with respect to elections. Under the 2010 Electoral Act, the decision of the returning officer was final on any question arising from or relating to unmarked ballot paper, rejected ballot paper, declaration of scores of candidates and the return of a candidate. Such decision was hitherto to the 2022 Act, only reviewable by an election tribunal or court of competent jurisdiction in an election petition proceeding under the Act.
10. Section 84 (12) provides that no political appointee at any level shall be a voting delegate or be voted for at the Convention or Congress of any political party for the purpose of the nomination of candidates for any election. The implication of the above provision is that anyone holding a political office – ministers, commissioners, special advisers, and others – must relinquish the position before they can be eligible to participate in the electoral process either as a candidate or as a delegate. This provision is a new innovation and has been a subject of controversy among persons of different strata.
11. Section 94 extended the period of campaigning in public by every political party to commence 150 days before polling day and end 24 hours prior to that day. By this provision, the campaign season will now start 150 days to the Election Day and end 24 hours before the election. This is against the hitherto 90 day's period provided by section 99 of the 2010 Act. This obviously allows for more time within which the Media would interrogate the activities of the political parties and their candidates through debates, press briefings, interviews, etc.

5. The Role of the Media in 2023 Elections

The role of the media in the 2023 election is not in any substantial way different from the traditional role of the media which has been highlighted above. Through the media, the public should get to hear directly from people who hold different political offices and those aspiring to occupy political offices about how well they have done and what they intend to do respectively. This can be difficult at times. However, we must appreciate the fact that the better informed the Nigerian public is about issues affecting our society, the easier it is for the people make better and informed decision in respect of who to cast their votes in their favour. This will also compel the Nigerian government to come to sensible decisions and to develop robust policies that command the confidence of our people. The media also has a vital role to play in promoting transparency and accountability during the 2023 elections. Whether it is scrutiny of the performance of the government or candidate for an election in respect of the posts they have previously held, unearthing corruption or reporting crimes by such candidates, the media has to be able to cover these important issues in an open and balanced way through investigative journalism. Of course, with these important roles comes responsibility. The media must operate in an ethical and responsible way. Media organisations, journalists and individuals must be accountable for their output and it is therefore vital that the boundaries that they operate within are clear and unambiguous. The code of ethics for journalists must be implemented fairly and consistently. The media also has a responsibility to provide high-quality output. The increased number of news outlets and internet users in Nigeria is quite impressive. However, the figure has little meaning if it does not also represent an increase in quality. In this wise, the media is urged to make sure that they exploit the benefits available through the new media and not insist on operating under the platforms available to the traditional media. There is need to ensure that encouraging media development in Nigeria is measured by the quality of coverage and reporting as well as the quantity of outlets. The development of the highest professional standards among journalists must also be encouraged. To be able to achieve the foregoing, the media must be able to operate in an environment free of fear. One in which they can investigate important national issues and express informed opinion without fear of persecution or prosecution. In order for the media to function effectively, journalists, bloggers, media organisations and individuals must be allowed to discuss and debate issues freely and safely within international standards and best practices.

6. Conclusion

As have been highlighted in this work, the way we all access the media in today's world has changed dramatically. We now expect, and even demand, to have the latest information at the tips of our fingers wherever we are - thanks to internet, smart phones and similar devices which enhanced the activities of the new media. The internet, with its incredible connective power, has created opportunity on a vast and growing scale; unlocking potential, revolutionizing access to information and transforming people's lives. The explosion of social media has also changed the way individuals and groups share information; and ideas and their outreach is phenomenal. In democracies, the media is fundamental to political life. It should provide facts that make us be

better informed about political matters. It should provide criticism and debate to ensure that that information is tested and examined from all points of view. It should also provide investigation and examination to ensure that power is checked and decision-makers are held accountable. All these should apply to all forms of media. This flow of information and ideas will then lead to necessary debate and discussions, crucial in Nigeria to allow for a free, fair and transparent 2023 election and other elections. While it is observed that the 2022 Electoral Act has made salient provisions that will positively impact on the electoral process in 2023 and beyond, it must be observed that the level to which the innovations made by the Act can be achieved is predominantly predicated on the activities of the media as we have highlighted above. It is believed that if the media identifies its responsibility and work sincerely and honestly towards achieving same, then it can serve as a great force in fostering a credible election in 2023 and beyond; and by extension, building the nation. In order to achieve this, it is recommended that the media should give equal platform to all candidates within the electoral process and provide unbiased and verifiable information to the general public in order to enable them make informed decisions during the elections.