

**LEGAL FRAMEWORK FOR CONDUCT OF FREE AND FAIR ELECTIONS IN NIGERIA:
A JURISPRUDENTIAL OVERVIEW***

Abstract

In every democratic nation such as Nigeria, free, fair and credible elections are vital for the economic, social and political development of such a nation. An adequate legal framework has been recognized as a prerequisite for the conduct of free, fair and credible elections. There has been a lot of controversies, irregularities and challenges with the conduct of elections in Nigeria since 1960 till date. These challenges include all manner of electoral offences including poor performance by the electoral body on the dates of elections. These challenges have been recurrent decimal as typified in the elections in Nigeria, particularly in the Fourth Republic: 1999, 2003, 2007, 2011, 2015 and 2019. Indeed, there has always been an attempt after every round of election to amend the legal framework or electoral laws in order to take care of the deficiencies, irregularities and challenges noticed during the previous elections, yet it appears that the problem with the electoral legal framework in Nigeria has defied the solutions proffered so far. Therefore, this paper intends to assess the legal framework particularly the 2022 Electoral Act with view to addressing the previous challenges in the older laws. The methodology adopted in this research is the doctrinal method of research as well as historical method whereof primary, secondary and tertiary sources such as the constitution, case laws, textbooks, journals, newspapers and internet materials were widely consulted. We also adopted the NALT citation guidelines. The research findings show that the National Assembly and National Electoral Commission have made several electoral law reforms over the years to ensure the conduct of free and fair elections, but the laws seem not to be adequate; that the problem of election in Nigeria is not that of inadequacy of laws but their implementation by the stakeholders; that some of the provisions of the extant legal framework on election in Nigeria, do not promote free and fair elections. This research however recommends among other things that, there is need for change of character by Nigerians who try to win election at all cost and by all means; need to punish all offenders irrespective of the position in society and more laws to strengthen the INEC against intrusion by other bodies.

Keywords: Free and fair elections, electoral law, reforms, amendments.

1. Introduction

The term ‘legal framework on the conduct of free and fair elections generally refers to the combination of legislations and rules relating to the conduct of free and fair elections in a given country¹ A legal framework on free and fair elections includes the applicable provisions in the Constitution, the Electoral laws and other laws that affect elections in a country.² The Nigerian legal framework on the conduct of elections can be traced back to 1922, after the enactment of the Clifford Constitution of 1922 which introduced the ‘elective principle’.³ The elective principle made provisions for the election of four representatives to represent the Lagos and Calabar regions in Nigeria.⁴ Since then till date Nigeria has made several electoral laws to ensure free and fair elections. The most fundamental principle defining free and fair elections is that they must reflect the expression of the will of the electorates.⁵ To achieve this, election should be transparent, inclusive, accountable and there must be equitable opportunities to compete in elections.⁶ Free and fair elections constitute the basis of any true representative democracy. In other words, election is the cornerstone of democracy and it is essentially a contest for the votes of adult members of the society by aspirants to political office. In addition, free, fair and credible elections are vital for economic, democratic and political development of any nation practicing democracy.⁷ It is trite that one of the essential requirements for a free and fair election is the presence of a viable legal framework which regulates generally the conduct of free and fair election, including the establishment of an electoral

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¹ Open Election Data ‘what is the legal framework for elections and why is it important’ <<https://openelectiondata.net>> accessed on 10th March 2022 by 12:32pm.

²*Ibid*

³ V.N. Enebeli, ‘A Legal Evaluation of Nigeria’s Electoral Jurisprudence’ *Journal of Law, Policy and Globalization* (2022) Vol. 118 p.1

⁴*Ibid*

⁵ USAID, ‘Supporting Free and Fair Elections’ <<https://usaid.gov>> accessed on 11th March 2022 by 1pm.

⁶*Ibid*

⁷*Ibid*

management body.⁸ The legal framework also set out electoral modalities and guidelines for effective electioneering.

Nigeria's electoral process has since independence in 1960 to the last general elections 2019 been inundated with spiraling malpractices and electoral irregularities.⁹ Elections in Nigeria have continued to be marred by violence, intimidation, killings, wide spread fraud and rigging etc. this trend worsened with each round of elections as typified by the 1999, 2003, 2007, 2011, 2015 and 2019 polls.¹⁰ This ugly trend has threatened the political stability, economic development and national security of this country. It has also created a question mark about the integrity of Nigeria's electoral process.¹¹ It is as a result of these, that the successive governments including the present administration have made and reviewed several electoral laws and laws to ensure the conduct of free, fair and credible elections in Nigeria. Before the amendment of 1999 Constitution and the repeal of the *Electoral Act 2006*, there were clamours and agitations from well-meaning Nigerians for a reform of the Nigeria's electoral system and the need to address the shortcoming of the legal framework that was subsisting as at that time with a view to addressing the problem of delay which was bedeviling the administration of justice in hearing election petition and various electoral irregularities in Nigeria as at that time.¹² This led to setting up of the Uwais Electoral Reform Committee.¹³ The report of that committee birthed the extant legal framework on the conduct of free and fair elections in Nigeria today.¹⁴ Consequently, the legal framework for free, fair and credible election in Nigeria, comprises of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act 2010 (as amended) the INEC Regulation and Guidelines for the Conduct of Election 2019 and the current Electoral Act Amendment Bill 2022. These laws laid down rules and regulations guiding and regulating the activities of the electoral body and the conduct of elections, prior, during and after elections. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) for instance recognizes the existence of INEC and its functions saddled with the responsibilities for the conduct of elections.¹⁵ It equally makes provisions for qualification, disqualification and tenures of candidates.¹⁶ Just recently, in efforts to ensure a viable legal framework for the conduct of free and fair elections come 2023 and beyond, the Nigerian President Muhammadu Buhari signed into law a new electoral law, the Electoral Act Amendment Bill 2022 which according to him made some progressive provisions which will ensure hitch free elections in Nigeria, henceforth.¹⁷ We shall therefore, appraise these laws in order to see how they have guaranteed the conduct of free and fair elections in Nigeria and the lapses in the laws which have also hindered the conduct of free and fair elections. We shall also give recommendations on how the laws can be improved to guarantee hitch free election come 2023 general election and subsequently.

2. Clarification of Concepts

A good understanding of this seminar paper may be elusive without an insight into some key concepts. These concepts include:

Election – According to Dickerson,¹⁸ election is a democratic avenue through which the people or group express their preference for a particular person or group express their preference for a particular person or group whom they feel can best protect their welfare. Election can also be defined as a formal act of collective decision that occurs in a stream of connected antecedent and subsequent behaviour.¹⁹ It involves the participation of the people in the act of electing their leaders and their participation in governance.²⁰ Election is seen as a decision making process whereby a population makes a decision on individuals that would represent them in running the affairs of

⁸ Otiye Igbuzor, 'Electoral Act Amendment Bill 2021 and the way forward' <<https://guardian.ngpolitics>> accessed on 11th March 2022 by 1:27pm

⁹ John Tor, 'Election Fraud Political Stability in Nigeria's Fourth Republic'. *Nigerian Journal of Administration and Political Studies*, 2013, Vol. 5 No1 pp. 173-194. See also J.O. Odey, *Another Madness Called Election 2007*. (Snaap Press 2007) pg. 27-77.

¹⁰ M.A. Ali, 'The Challenges and Prospects of Free, Fair and Credible Election in Nigeria; A Theoretical Perspective' *International Journal of Management Research and Review* 2018 vol. 8 No4 pp.42-53

¹¹ *Ibid*

¹² Z.O. Alayinde, 'An Analysis of the Legal Regime of Election Administration in Nigeria' *Journal of Law, Policy and Globalization*, 2016, Vol.46 p.110.

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ See *The Constitution of the Federal Republic of Nigeria 1999 (as amended)*, Section 153

¹⁶ See *The Constitution* (supra), Section 65, 105 66

¹⁷ Segun Adewole, 'Buhari Signs Electoral Act Amendment Bill into Law' <<https://punchng.com>> accessed on 12th March 2022 by 1.49pm.

¹⁸ M.O. Dickerson, *An Introduction to Government and Politics; A Conceptual Approach* (Nelson Canada Press, 1990) p.84

¹⁹ P.O. Momah, 'Electoral Commissions and the Conduct of Elections in Nigeria: The Role of INEC', *In Elections and Governance in Nigeria's Fourth Republic*, p.37

²⁰ *Ibid*

the state.²¹ It is described as the act or power of electing someone to fill an office or position.²² We can therefore, define election as a democratic process by which people select a person or persons for a position by way of vote.²³

Democracy – According to the *Webster Dictionary*,²⁴ democracy is the government by the people, rule of majority, a government in which the supreme power is vested in the people and exercised by them directly or indirectly. Democracy is a human right, as such, it is included in a number of the most important International Human Rights standards such as the *Universal Declaration of Human Rights. Article 1* provides that: ‘Everyone has the right to take part in the governance of his country, directly or indirectly or through freely chosen representatives’.

Legal framework – The term legal framework on elections generally refers to the combination of legislations and rules related to elections in a given country.²⁵ A legal framework for election includes the applicable provisions in the Constitution, the electoral law and other laws that affect elections, such as a law on political parties.²⁶ It also includes any regulations attached to the electoral law.

Electoral Umpire – In Nigeria, this body is saddled with the responsibility of carrying out election. It is defined as a person appointed to supervise election at the precinct level or a local representative of an electoral board.²⁷ In Nigeria, the legally recognized electoral umpire is the Independent National Electoral Commission (INEC)²⁸ thus, both the Constitution and Electoral Act recognize the INEC as the body with the responsibility to register political parties in accordance with the provisions of the Constitution and Act of the National Assembly.²⁹ It also monitors the operation and organization of political parties in Nigeria including their finances, conventions, and party primaries. INEC also registers voters and educate the electorates on how to exercise their civic duty.³⁰

Voting – Voting is defined as the formal expression of opinion or choice made by an individual or body of individuals in an election.³¹ It can also be described as the action, or process of indicating choice, opinion or will on a question, such as the choosing of a candidate by some recognized means such as ballot.³²

Free and Fair Election – A free and fair election refers to an election that is free from all forms of fraud or malpractices.³³ An election is said to be free and fair when it is conducted in a peaceful atmosphere free from all forms of individual harassment and other coercive or non-coercive means by political parties to bend the will of voters, which are not in the Constitution or Electoral Act.³⁴ Free and fair election also means that all registered political parties have equal rights to contest the elections, campaign for voters support and hold meetings and rallies.³⁵ It is an election in which all voters have an equal opportunity to register, where all votes are counted and where the announced results reflect the actual vote cast.

3. Analysis of the Legal Framework on Free and Fair Election in Nigeria

There are various electoral laws in Nigeria governing the entire process of election in Nigeria. The major legal frameworks regulating the conduct of election in Nigeria are discussed below:

²¹*Ibid*

²²E.E. Omezue Nnali, ‘Appraising the Electoral Process in Nigeria; The need for our votes to count’ *An International Journal of Management Social Sciences and Conflict Studies* 2020 Vol.3 No.3, P.361

²³*Ibid*

²⁴*Webster Dictionary* ‘The Meaning of Democracy’ <www.merriam-webster.com> accessed on 11th March 2022 by 3pm

²⁵Open Election Data, ‘What is legal framework for election, why is it important’ <<https://openelectiondata.net>> accessed on 12th March 2022 by 3:3pm

²⁶*Ibid*

²⁷Meriam Webster, ‘Definition of Umpire’ <www.merriamwebster.com> accessed on 12th March 2022 by 4.03pm

²⁸See *The Third Schedule of the Constitution (supra)*, paragraph 15, part 1

²⁹*Ibid*

³⁰See *The Constitution (supra)*, Section 4

³¹Collins, ‘Definition of Voting’ <collinsdictionary.com> accessed on 20th February 2022 by 3pm

³²*Ibid*

³³Civics Academy, ‘What are free and fair elections’ <<https://civicsacademy.com.za>> accessed on 12th March 2022 by 8.05pm

³⁴*Ibid*

³⁵*Ibid*

Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution is the major law that governs the electoral process in Nigeria. In other words, we can say that the Constitution is the first and most important legal framework in Nigeria.³⁶ This is because it reigns supreme on issues relating to electoral process such as the electoral body in charge of organizing elections, courts, and tribunals which determine complaints arising from the conduct of elections.³⁷ The Constitution is the fulcrum upon which all other laws in Nigeria hang on.³⁸ On account of its supremacy, if the National Assembly or any other law making body makes any law, that of the Constitution shall have overriding effects. The Constitution provides that: 'if any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency, be void.'³⁹ The effect of the above provision is that the Constitution is the ground norm, the supreme law and any other law which goes contrary to its provision will fall flat and die to the immutable glory of the Constitution. This was what formed the decision of the court in the case of *Inspector General of Police v. ANPP and Ors*,⁴⁰ the court held that the provisions of the Public Order Act which provided that a permit is needed from the governor before people can assemble in public, is contrary to the provision of the human rights of freedom and expression and association which is contained in the 1999 Constitution, Sections 39 and 40. Therefore, the provisions of the public order Act were held by the court to be unconstitutional null and void to the extent of their inconsistencies. Similarly, in *Benjamin v. Kalio*,⁴¹ the Supreme Court held that the evidence is the 23rd item provided for in the exclusive legislative list, hence the River State House of Assembly lacks the legislative competence to enact on it. In the same vein, any law dealing with elections that contradicts the provisions of the Constitution shall be of no effect. The Constitution also directs that the activities of political parties shall conform to the provisions of Chapter Two of the Constitution.⁴² The Constitution equally, prescribes certain qualifications that persons vying for some offices created by the Constitution must meet, before they can participate in elections into those offices.⁴³ Having stated this, let us now look at some of the provisions of the Constitution which promotes free and fair elections in Nigeria:

Right to Peaceful Assembly and Association; the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 40, provides for the right of persons to form a political party or association. It states that every person shall be entitled to assemble freely and associate with other persons and in particular he may form or belong to any political party, trade union, or any other association for the protection of his interest, provided that the provisions of this section shall not derogate from the powers conferred by the Constitution of INEC concerning the political parties to which that commission does not accord recognition. The purport of this section is that everybody has the right and freedom to form or join any political party of his choice for the purpose of conducting and winning election to any of the elective positions recreated by the Constitution. Thus, in Nigeria nobody is precluded from forming or joining any political party or association for the purpose of election except for those political parties not recognized by INEC. Thus, by this provision, the Constitution gives equal and level play grounds to everybody to form or join political party for election. Freedom to join and participate in political parties is one of the fundamentals of free and fair elections.

- a. Qualifications for Election – The Constitution in Sections 65, 105 and 131 provides that a person shall be qualified for election in the various elective offices if:
 - He is a citizen of Nigeria and has attained the age of 35 years.
 - A member of the House of Representative, he is a citizen of Nigeria and has attained the age of 25 years.
 - He has been educated up to at least a secondary school leaving certificate or its equivalent.
 - He is a member of a political party and he is sponsored by that party. Here the Constitution lists the criteria for one to be qualified and it is clear and unambiguous such that nobody can say that he does not understand the above provisions, before participating in electoral process.
- b. Disqualifications for elections – The Constitution in Sections 66, 107, 137, 182 provides that no person shall be qualified for election to the Senate or the House of Representatives, if the following exists:
 - He has voluntarily acquired the citizenship of a country other than Nigeria or has declared allegiance to such other 'party'
 - Under the law in any part of Nigeria, he has been adjudged to be a lunatic or declared to be of unsound mind.

³⁶V. N. Enebeli, 'A Legal Evaluation of Nigeria's Electoral Jurisprudence' *Journal of Law, Policy and Globalization* 2022, vol.118 p.3

³⁷*Ibid*

³⁸*Benjamin v. Kalio* (2018) 15 NLR (pt.164) p.38

³⁹See the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Section (1) & (2)

⁴⁰(2007) 18 NWLR pt.1066 p.457

⁴¹Supra

⁴²See the Constitution (Supra), Section 224.

⁴³See the Constitution (supra), Section 131.

- He is under a sentence of death imposed on him by a competent court of law or Tribunal in Nigeria or is under a sentence of imprisonment or fine for an offence involving dishonesty or fraud or for any other offence imposed on him by any court or Tribunal or constituted authority.
- Within a period of less than ten (10) years before the date of the election to the office of the president, he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of contravention of the code of conduct.
- He is an undischarged bankrupt having been adjudged or otherwise declared bankrupt under any law in force in Nigeria or any other country.
- He is a person employed in the civil or public services of the federation or state and does not resign, withdraw or retire from the employment at least 30 days before the date of the election.
- He is a member of any secret society.
- He has been convicted of a criminal offence by a competent court of law.
- He has presented a forged certificate to the Independent National Electoral Commission.
- c. Supervision of Election – The Constitution in Section 78 provides that the registration of voters and the conduct of elections shall be subject to the direction and supervision of the INEC.

The above provisions of the Constitution are targeted at ensuring a peaceful, free and fair elections in Nigeria. However, despite these provisions, there are a number of shortcomings, lapses in the Constitution which in our humble view affect free electoral processes in Nigeria. These shortcomings include:

- i. The Constitution directs that the activities of political parties shall conform with the provisions of chapter two of the Constitution. However, this provision in Section 224 is flawed because of its non-justiciability embedded in Section 6(6) of the Constitution, one therefore wonders why the Constitution mandates political parties to conform to a provision over which the courts cannot have jurisdiction.
- ii. The Constitution in Section 225 provides that any fund sent to a political party from outside Nigeria should be paid over or transferred to INEC. In my humble view, this provision will expose the INEC to the temptation of hurdling the money especially if such a political party involved is an opposition party, thereby frustrating the financial strength of such party. Such provision should be amended to provide that such money should be disclosed to INEC and made public.
- iii. The Constitution does not specifically provide for the power of INEC to disqualify candidates whose submitted claims are found to be false.

Electoral Act 2010 (as amended)

In line with its Constitutional power to make laws for the peace, order and good government of the country or any part thereof with respect to item 22 under the exclusive legislature list, the National Assembly enacted the Electoral Act 2010. The Electoral Act of 2010 was originally enacted in 2006 but was amended in 2010,⁴⁴ its provisions made some marginal improvements over and above the 2006 Electoral Act, but it was definitely not sufficient enough to bring about an overhaul of the Electoral system in the terms recommended by the Uwais Panel.⁴⁵ It is because of this that *the Electoral Act 2010 (as amended)* was passed by the National Assembly after much deliberation and debate. With regards to electoral processes, the Act provided that the Commission shall compile, maintain and update continuously a National Register of Voters from each state and the Federal Capital Territory and Local Government, which will include the names of all persons entitled to vote in any Federal, State, Local Government or Area Council elections in Nigeria.⁴⁶ The Act provides that the registration of voters, updating and revision of the register of voters shall stop not later than 30 days before any election in Nigeria, and the registration shall take place at registration centers designated for that purpose and shall be communicated to that general public by the commission.⁴⁷

Part one of the Act, provides for the establishment and functions of the Independent National Electoral Commission. The Commission is established by *the 1999 Constitution, Section 153* and it is a body corporate capable of suing and being sued. *The Electoral Act* provides for the functions of the Commission as conferred on it by the Constitution as follows:

- That INEC has the power to conduct voter and civic education.
- The Commission has the power to promote knowledge of sound democratic election processes

⁴⁴*The 2010 Electoral Act repealed the 2006 Electoral Act*

⁴⁵M.O. Alabi & O.T. Omololu, *Uwais Report Electoral Act 2010 and the Future of Democratic Elections in Nigeria* (First Law Concepts, 2006) pp.207-236

⁴⁶*See the Electoral Act 2010 (as amended), Section 9*

⁴⁷*See the Electoral Act (supra), Section 9(5)*

- Conduct any referendum that is required to be conducted under the provisions of the Constitution or any other law or Act of the National Assembly.⁴⁸

Unlike the 2006 Electoral Act, the 2010 Electoral Act prohibits the substitution of candidates by political parties except in cases of death, or self-withdrawal.⁴⁹ There was also provision on the prescription of the order of the election in the 2010 Act, Section 25(1). This provision has been criticized as self-seeking as it was designed to serve the interest of the serving members of the National Assembly.

Another commendable provision in the 2010 Act is the provision of Section 33 which bars political parties from substituting candidates after submission. This is to prevent the kind of ugly incident which made it possible for voters not to know the candidates up to the point of voting.

Apart from the above commendable provisions, the 2010 Act made some provisions on the aspect of conducting free and fair election. For example, the Act provides that the days of an election in Nigeria will hold on a date appointed by INEC by the Constitution.⁵⁰ The dates that apply to elections are: Election to each House of the National Assembly will hold not earlier than 150 days and not later than 30 days before the House stands dissolved or where the election is to fill a vacancy occurring more than 90 days before such date, not later than 30 days.

The Act also provides that every political party shall not later than 60 days before the date appointed in the general election, submit to the Commission in the prescribed forms, the list of the candidates political party proposes to sponsor at the elections which shall be published within 7 days of receipt, provided the Commission does not disqualify the candidate for any reason.⁵¹ Another important provision of the Act is Section 69 which provides for the declaration of result, it states that in an election to the office of the President, Governor whether or not contested or in any contested election to any elective office, the result will be ascertained by counting the votes cast for each candidate, the candidate who receives the highest number of votes will be declared elected.

Again, the 2010 Act stipulates for a continuous voters' registration system.⁵² An applicant for registration under the continuous registration system shall appear in person at the registration venue with proof of identity of voters and prevent voting by non-human objects as witnessed in the 2007 general election in Ondo State.⁵³ The Act equally imposed stiffer punishments for culprits engaged in the buying and selling of voters cards.⁵⁴

However, despite these commendable improvements, the *2010 Electoral Act* (as amended) was its own shortcoming and weakness. The law makers are not omniscience devoid of human flaws, thus the presence of those shortcomings. These legislative gaps have manifested itself in different facets on our polity for instance: the arbitrary substitution of names of candidates by political parties. The procedure of voter's accreditation before actual voting commences, for which the INEC introduced in 2011 was not officially provided for under the 2010 Act. The provision of Section 25(1) of the Act has been criticized to be self-seeking as it was designed to serve the interest of the serving members of the National Assembly; it robs the INEC of the unfettered power which it had under Section 26 of the Electoral Act 2006 to determine the dates of election. The refusal of the 2010 Act to create an Electoral Offences Commission notwithstanding the creation of several electoral offences is another shortcoming. The introduction of card readers which led to the disenfranchisement of many electorates were not captured in the 2010 Electoral Act. It is as a result of the shortcomings particularly the deficiencies and mischiefs noticed during the 2015 and 2019 general elections that led to the clamour and calls from the amendment of the 2010 Act. Fortunately, *The Electoral Act Amendment Bill* which seeks to address the identified shortcomings have just been assented to law by the President Muhammadu Buhari.

Electoral Act 2022

On 25th February 2022 the Nigeria's president Muhammadu Buhari signed into law the long anticipated Electoral Law.⁵⁵ *The Electoral Amendment Bill of 2022* is now a law and an amendment to the *2010 Electoral Act*. The new Act is expected to help Nigeria improve her electoral process from the previous ones. The new law is believed to

⁴⁸*The Electoral Act 2010* (as amended), Section 2

⁴⁹See *the Electoral Act, Section 33* which provides that a political party shall not allowed to change a substitute its candidate whose name has been submitted pursuant to Section 31 of this Act, except in the case of death or withdrawal by the candidate.

⁵⁰See *the Electoral Act 2010* (as amended), Section 25

⁵¹*The Electoral Act* (as amended), Section 31

⁵²*The Electoral Act* (as amended), Section 10(2)

⁵³A.A. Steve, 'An Appraisal of Electoral Malpractice and Violence as an Albatross in Nigeria's Democratic Consolidation' <<https://researchgate.net>> accessed on 11th March 2022 by 8:12pm

⁵⁴*Ibid*

⁵⁵*Vanguard*, 'Buhari and the Electoral Amendment Bill' <<https://vanguardngr.com>> accessed on 12th March 2022 by 8:18pm

have progressive provisions that will aid hitch free election come 2023 and beyond. Some key provisions of the new law include:

- i. Early release of the election funds to INEC: The Act in Clause 3(3) provides that all funding required for a general election is released not later than one year before the general elections. This will help the electoral body to prepare well in advance to avoid the issue of election postponements that was common in the past elections.
- ii. Electronic Transmission of results: The new law provides that the INEC, has the authority to decide whether election results are sent electronically or manually. Electronic transfusion of results will enhance free and credible elections.
- iii. The right to review election results declared under duress: The new Electoral Act empowers INEC to evaluate declarations and returns made under dubious circumstances. The measure will radically alter the results management process, discouraging politicians from pressuring election workers to declare manipulated election results.⁵⁶
- iv. Political neutrality: Clause 8(5) grants political neutrality to INEC personnel. This implies that a politician or member of a political party cannot be an INEC official. The clause further specifies punishment of N5,000,000 or imprisonment for a term not exceeding two years or both if convicted for any INEC official that breaches this provision.
- v. Legislation for electronic voter accreditation: The new Electoral Act allows electronic transmission of results, it equally allows voters to be electronically accredited using smart card readers or any other technical equipment determined by INEC.⁵⁷
- vi. Over voting redefined: The Electoral Act stipulates that the total number of accredited voters will become a deciding factor in the election's legality.⁵⁸
- vii. The Electoral Act 2022, Clause 34 allows political parties to hold primary elections to replace a candidate who dies after the polls have begun but before the final results are announced and a winner is declared.
- viii. The Act, Clause 84(12) stipulates that anyone holding a political office, such as 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.

Despite the beautiful innovations and improvements contained in the new Electoral law, there have been issues arising from the provisions of the law. Notable among the issues is the provision of Section 29(5) and 84(12) of the Act. The two provisions have delisted the jurisdiction of State and Federal Capital Territory Abuja High Courts to hear and determine the pre-election disputes. In addition to that, *locus standi* to institute pre-election cases has been restricted to aspirants within the same political party. The implication of these is that the Federal High Court will now witness so many pre-election disputes that may probably overstretch the judges of the court, while the State and Federal Capital Territory High Courts will now concentrate on other issues within their jurisdiction; we humbly submit that this will slow down the administration of justice in pre-election matters. Secondly, members of the public have no right to challenge a candidate that submitted false information or document to the INEC, this have denied the members of the public who may have interest to sue a candidate who submitted false information the right to challenge such. Others, including the President Muhammadu Buhari have argued that *Section 84(12)* should be amended by the National Assembly as the Section constitutes disenfranchisement of serving political office holders from voting or being voted for at conventions or congress of any political parties.⁵⁹ Others have equally agreed that the amendment is not necessary as it is made to curb the situation where some political office holders will be in power and seeking for a re-election. Be it as it may, the new Electoral Act is a commendable development as it has some new provisions which if well implemented will contribute to having a free and fair election in 2023 and beyond.

INEC Regulations and Guidelines for the Conduct of Election 2019

As stated earlier, the regulatory body for elections in Nigeria is the Independent National Electoral Commission (INEC). In exercising the powers conferred on it by the Constitution and the Electoral Act, issues guidelines for the conduct of elections into any elective office in Nigeria.⁶⁰ Before the 2019 Regulations and Guidelines, INEC used other guidelines.⁶¹ However the 2019 regulations and guidelines supersede all other regulations on the

⁵⁶The Electoral Act 2022, Section 50

⁵⁷The Electoral Act 2022 (supra), Section 65

⁵⁸The Electoral Act 2022 (supra), Section 47

⁵⁹The Electoral Act (Supra), Section 51

⁶⁰Agency Report, 'Buhari Writes NASS, seeks Amendment of Section 84(12) of the Electoral Act'

<www.premiumtimeng.com> accessed on 12th March 2010 by 8:28pm

⁶¹Olusola John, 'Nigeria; Overview of Electoral Laws in Nigeria' <<https://monday.com/nigeria.com>> accessed on 12th March 2022 by 8:34pm

conduct of elections that have been issued by the Commission and it shall remain in force until replaced by a new regulation.

The 2019 Regulations and Guidelines apply to all conduct of elections in the various elective offices from the President to the Councilors of Area Councils. Some salient provisions of Regulation and Guidelines on the conduct of free and fair election are highlighted below:

- Eligibility of voters: Rule 2 of the Regulations and Guidelines provides that a person is eligible to vote when he meets the following criteria.
 - a. He/she is a Nigerian
 - b. He/she is registered as a voter
 - c. His/her name appears in the register of voters
 - d. He/she presents a valid permanent voter card (PVC) at the polling unit.
- Where to vote: The Regulations and Guidelines provide that voting in an election shall take place at the polling units and voting points as provided under Rule 3 of the Regulations and Guidelines.⁶²
- Accreditation and voting procedure at elections: The Regulations and Guidelines provide that the method of voting in Nigeria must be in accordance with the continuous accreditation and voting system (CAVS) procedure, the *Election Manual*, and other guides issued by the Commission. Accreditation and voting shall commence at 8:am in the morning and close at 2:00pm provided that all voters are already in the queue.⁶³
- Access to polling units and collation centers – Rule 48 provides that the persons to be allowed access to the electoral material distribution centers, poll units, collation centers are:
 - a. Voters at polling units only
 - b. INEC officials on election duty
 - c. Security agents
 - d. Candidates or their accredited polling agents
 - e. Accredited journalists/media
 - f. Accredited domestic and foreign observers

This particular provision is to prevent political thugs and miscreants from disrupting or causing violence at the collation centers or polling units. The 2019 Regulations and Guidelines has its own shortcomings, for example the provision on the prohibition on the use of mobile telephones by election collation officers which INEC said, it is in order for collation officers to remain focused on their assignment, that collation officers are not allowed to make or receive telephone calls during collation, but now that the new Electoral Act has made provisions for review of result done under duress, this prohibition may no longer be necessary, the collation officers have the right to use phone in case of any security challenge. The 2019 Regulation and Guideline has also been criticized by the opposition parties alleging that the views of political parties were not taken into consideration in drafting the guidelines. Other contentious issues in the guideline is the flawed accreditation procedure which allows fake voters whose names are not on the voters' register including people with fake PVC or voters not properly accredited being allowed to vote. The opposition political parties also complained that the time between when voting is finished and results are announced could allow all sorts of malpractice to happen.

4 Electoral Offences and Punishments

The 2022 Electoral Act like the 2010 Act made provisions for punishment for those who breach the Electoral Act. These offences and punishments are captured in Sections 114 (Offences in relation to registration); 115 (Offences in Relation to Nomination); 116 (Disorderly Behaviour at Political Meetings); 117 (Improper Use of Voters Cards); 118 (Improper Use of Vehicles); 119 (Impersonation and Voting when not Qualified); 120 (Dereliction of Duty); 121 (bribery and conspiracy); 122 (requirement of secrecy in voting); 123 (Wrongful Voting and False Statements); 124 (Voting by Unregistered Person); 125 (Disorderly Conduct at Elections); 126 (Offences on Election Day); 127 (Undue Influence); and 128 (Threatening Violence). The offences carry prison terms of 1 million naira or 2 years in prison; or 500, 000.00 (five hundred thousand naira) or one year while some carry prison term of 6 months or 200, 000.00 (two hundred thousand naira) or even 100, 000.00 (one hundred thousand naira) depending on the nature. Of particular interest in these provisions is section 126 (4) which pegs prison term of 24 months for any person who tampers with electoral materials or devices. There is no provision for fine if this offence is committed. This is aimed at ballot box snatchers or those who violently collect electoral materials. The Act also in section 121 (6) provides that if a candidate for an election has knowledge or sponsored an offender of the Electoral Act that he will be also punished as the main offender. That is to say that if a candidate for an election sponsored a person who committed offence such as bribery or undue influence or violence, the candidate will not be spared by the law. It is our hope that this provision will be used to invalidate the election of a person who

⁶²The INEC Regulation and Guidelines for the Conduct of the Electoral Act 2007, 2011 and 2015

⁶³The INEC Regulation and Guidelines for the Conduct of Elections, Rule 3, 2019.

sponsors violence or who buys votes in an election. However, in the recently conducted governorship election in Anambra State on 19th November, 2021, there was massive non-compliance with the provisions of the *Electoral Act 2010*, (then in operation) as the INEC did not arrive at the polling stations in time; votes were bought freely and other vices perfected by stakeholders contrary to the Act⁶⁴. In similar vein, the State House of Assembly Election which took place at Ngor Okpala State constituency of Imo State in Feb. 2022, did not do better as ballot boxes were allegedly taken and thumb printed by APC members and the results were still returned to the party notwithstanding protests by the opposing party (PDP)⁶⁵.

5. Conclusion and Recommendations

It is our view that if the following suggestions are implemented that we would have better free and fair elections in Nigeria. Firstly, The National Assembly should appeal the judgment of Hon. Justice Evelyn Anyadike of the Federal High Court, Umuahia which nullified section 84 (12) of the Electoral Act 2022 which provides that political appointees at both State and Federal Levels should resign their appointments before taking part in their party primaries or convention. Our reason for contending so is because, the Judge misinterpreted section 318 of 1999 Constitution on the issue of who is a public servant. Political Appointees are not employed in the public service of the state or the federation to enjoy the provisions therein which is meant for career officers. The mischief contained in section 84(12) of the Electoral Act 2022, is to prevent political appointees from using their office to the disadvantage of ordinary party members who may be contesting elections at the primaries. It is only civil or public servants as defined in section 318 of the Act that are public servants entitled to 30 days notice resignation before date of election and not political appointees because the later are not employed or engaged in the public service of the States or Federation. Secondly, the Constitution should be amended to allow the establishment of Electoral Offences Commission or Tribunal to try those who breach the provisions of *sections 114- 128* of the new Act. The provision in *section 145* that offences herein shall be tried by a Magistrate Court or a High Court of a State/FCT does not encourage free and fair elections. This is because a victorious politician in a governorship election or presidential election can always tell the Attorney-General to enter a *nolle* and kill such cases at the State Courts and offender would be set free. Electoral Offences Tribunal or Commission would not give chance for such to happen because it will have more powers to adjudicate on matters before it. Thirdly, though the provision for trial of electoral offences is to be done by State High Courts or Magistrates Courts for the time being, those arrested should be tried properly and sentenced early enough to serve as deterrent to other people because electoral violence is one of the major factors that spoil free and fair election in Nigeria. That vote buying is still prevalent is because the masses do not see it as bad and those caught are normally not punished according to law. Fourthly, trial of a election petitions should be based on the substance of the petition and not based on technicalities. This frequent throwing out of petitions based on technical grounds dampens the spirit of those who are involved in the electoral process. Fifthly There is need to further amend the Constitution to further guarantee and strengthen the independence of INEC by making the Commission not to be subject to the directive and control of any person or authority in the exercise of all its operation. Hence INEC should have total financial independence. Finally, there is need for change of character by all politicians and infact all the electorate on the issue of elections. Every person should try to obey the Electoral Act so that we can do elections as it is done in other countries that have accepted to be democratic. A situation where politicians procure weapons, drugs, charms and etc for youths to use on the dates of elections is not good for democracy. The ordinary citizen who asks for money before he can vote is not helping matters as those who give the money have no respect for their interests after paying money to be voted for.

⁶⁴ Kabir Yusuf, *etal* 'Analysis; Anambra 2021 Governorship Election Record 'Historic Low' Voter Turn Out'. <<https://www.premiumtimes.com/news/headlines/49588-analysis-anambra2021> > accessed on 26/3/2022 by 10 am.

⁶⁵ Vanguard, 'APC Wins Imo by Election' , < <https://www.vanguard.com/2022/02/apc-wins-imo-by-election>> accessed on 26/3/2022 by 10am