

# New Electoral-Act in Nigeria, Democracy and the Challenges and Prospects for Free, Fair and Credible Elections

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## Abstract

Against the need to have free, fair and credible elections in Nigeria, this paper focuses on the new Electoral Act 2022 and uses the Democratic Elitism theory as a framework for examining the challenges and prospects of the new legislation in guaranteeing credible and acceptable elections in Nigeria. The data collected through secondary sources revealed that the new electoral act holds great prospects in strengthening elections and electioneering in Nigeria, these provisions include but are not limited to, transmitting results electronically, releasing funds early to the Independent National Electoral Commission (INEC), and early commencement of campaigns, power of the electoral empire to review results declared under duress, the neutrality of INEC officials, etc. This study argued that these new improvements are capable of re-writing the negative narrative of elections in Nigeria. In this regard, it is recommended among other things, that government, INEC and citizens must be proactive and ensure that politicians and anti-democratic forces of the state do not manipulate these innovations or stop their implementation as stated in the electoral act as is the case with previous legislations.

**Keywords:** Electoral-Act-2022, Elections, Nigeria, Democracy, INEC.

## Introduction

As one of the most important feature of a democracy, election provides citizens the opportunity to enter into social contract with their leaders and elect those who will represent them in government to make policies that will reflect their yearnings and aspirations. Writing on the imperativeness of election Mohammed (2017: 1) remarked that: "...the overriding importance of election in a representative democracy cannot be overemphasized. Remarkably, one of the striking features of sophistication in the practice of democracy is the ability of democratic institutions to engender free, fair and credible elections, in which the pillars of rule of law, social justice and accountability are deeply rooted and guided by the process and conduct of the election".

It is, however, unfortunate to discover that flaws in the electoral act in most countries have led to rigging, malpractices and other irregularities resulting in an electoral outcome that is neither free, fair, credible nor acceptable. In Nigeria, Edoh (2003: 70) pointed out that: "even, under the supervisory eyes of the British, during the 1959 elections, incidents of violence, stuffing of ballot boxes as well as obstructions and intimidations of opponents were reported here and there".

It is the electoral act that determines the outcome of the elections, if it will be credible and acceptable or not, the electoral act provides the guide and the legal framework that will make it possible to have a peaceful and credible process. For instance, in post-independent Nigeria, the elections of 1964, 1965, 1979, 1983, 1999, 2003, 2007 and 2015 were accused of irregularities and fraud as a result of lack of effective and efficient electoral acts (Abe 2008; Aluko, 2009; Awopeju, 2009; Mohammed, 2015). Elaigwu (2007: 9) supported the above statement when he argued that in Nigeria: "the electoral process has been crises-ridden... It seems each successive election since then has suffered worse fortune than earlier ones. The

result is that governments emerge with a trust deficit or crises of legitimacy, which often complicates the dynamics of federalism”.

No doubt, there has always been an attempt by the Nigerian government after every election to modify the previous electoral act to take care of inadequacies or deficiencies observed during the elections. This brings to the fore the role of the legal framework as a prerequisite for free, fair and credible elections. Recently, the Nigerian-State has passed a new law that will guide elections and electoral affairs in the country, it is heart-warming to note that this new law contains clauses that serve as watershed to the former, these new improvements include but not limited to the timely release of fund to the electoral empire, electronic transmission of results transmitting as opposed to the hitherto manual method of result collation and transmission, enhancement of voting conditions for people living with disability (PwDs), timely conduct of primaries and extended campaigns, over-voting, explanation on replacement of dead candidates, authorizing the electoral body to re-visit results declared under duress, and enabling law strengthening the neutrality of the electoral body and entire process etc (Electoral-Act-2022).

Given these innovations, the questions that demand answers are: Will these new provisions in the electoral act stop the deep seated culture of election rigging in Nigeria? Is there any prospect of having free, fair, credible and acceptable elections with the 2022 electoral act? What are the new challenges the new electoral law will be confronted with? How can these challenges be tackled? Against this background, this paper aims to examine the challenges and prospects of the new electoral act in guaranteeing free, fair, credible and acceptable elections in 2023 and prospects for future elections in Nigeria. The study employed qualitative data and summarizing content analysis to investigate the role of the new electoral act in future elections in Nigeria. The rest of the paper is divided into five components. Following this introduction is the methodology. The next part of the study seeks to conceptualize elections, free and fair elections and the electoral act. The third component provides theoretical legitimacy to the study. The fourth section will take us through the historical chronicles and context of electoral amendment while the fifth section will focus on the 2022 electoral act and future elections in Nigeria, thereafter, some conclusions will be drawn and recommendations provided.

## Conceptual Issues and Theoretical Framework

It is imperative to begin this section with a clarification of the basic concept used in this paper. This becomes necessary given that in the Social Sciences; concepts are always interpreted differently based on the ideological leaning and orientation of the analyst. The basic concepts that require clarification in this study include Elections and Free and Fair Elections. Democracy which is the most popular form of government globally recognizes regular, free and fair elections as the most acceptable medium for the citizens to choose their leaders and institute leadership and confer political power and authority (Abdulkadir, 2015; Shehu, 2015). According to Dowse and Hughes (1983: 322) election is defined as:

A procedure recognized by the rule of an organization, be it a state, a club, a voluntary organization or whatever, where all, or some, of the members, choose a smaller number of persons to hold an office, or offices, of authority within that organization.

Implicit in this definition is the fact that election is the bedrock of democracy, when and where it is generally accepted, it eliminates legitimacy crisis and serves as means by which political officeholders and the government derives the consent of the people that they govern (Umar, 2009). Despite this important role of election in a democracy, the mere conduct of an election does not guarantee its acceptability and creditability. For an election to be accepted and credible, it must be free and fair. What it takes for an election to be free and fair is summarized as follows:

when they are administered by a neutral authority; when the electoral administration is sufficiently impotent

and resourceful to take specific precautions against fraud; when the police, military and courts treat competing candidates and parties impartially; when contenders all have access to the public media; when electoral districts and rules do not grossly handicap the opposition; . . . when the secret of the ballot is protected; when virtually all adults can vote; when procedures for organizing and counting the votes are widely known; and when there are transparent and impartial procedures for resolving election complaints and disputes (Diamond 2008:25)

Different competing theories try to explain the primacy of elections and its actors in the process of democratization. This notwithstanding, this study adopts key formulations of the Democratic elitism theory. The theory of democratic elitism is a bold step by Karl Mannheim and other scholars to reconcile the Elite theory and Democratic theory. To understand this reconciliation, there is a need to understand the basic tenets of the elite theory and democratic theory. The elite theory is of the view that every society is ruled by a few individuals. Thus, society is divided into two groups- the rulers and the ruled. The rulers are the few minorities who constitute the elites while the ruled form the majority. The elites, who are few but dominate all spheres of society, make decisions and formulate policies for the majority.

According to Ikpe (2010), the elites are those who command influence and make decisions for the governed in all cases the majority. The governing elites for Paveto () are those who directly or indirectly play an important role in government. Consequently, the elites are the powerful few who perform all political functions, monopolize power and enjoy the advantage inherent in the control of power and the distribution of scarce resources, Mosca (cited in Ikpe, 2010). Instructively, in his postulation, the “Iron Law of Oligarchy”, Mitchell posits that every organization, however its original arms, is ultimately reduced to an oligarchy, that is the rule of a few. The basic characteristics of this theory are that power is concentrated in a privileged few. As a means of institutionalizing the instrument of control, elites are unified; hence, all democratic societies are governed by minorities.

On the other hand, democratic theory places a premium on the participation of the people that is the masses or the ruled, in decision-making process. Democracy, therefore, is a system of government where people – the majority actively participates in governance. It is predicated on a democratic culture that supposes the existence of a modern state that can protect the rights of its citizens and extract obligations from them. The core principles of democracy is that it is founded on a culture upholds the norms and values that emphasize the freedom of the individual, freedom from state abuse and the infringements of the rights of other individuals. It further guarantees equality before the law, as well as provides opportunities for all citizens to have equal access to cultural and material resources, that guarantee their basic livelihood, IDEA (2000). In his views, Guaba (1981), observed that unlike other forms of government, democracy does not allow political leadership to wield absolute powers, basically through the principle of shared powers and checks and balances. In support of democratic elitism, Mannheim (1979) in Guaba (1981) argued that society did not cease to be democratic by entrusting the actual shaping of policy to the elites. This means that the elites in playing their roles as leaders must uphold the principle of equality before the law, and in formulating and implementing policies, the interest of the weak or ruled must be considered. It is therefore evident from the forgoing that democratic elitism which is a product of the reconciliation of the elite theory and democratic theory.

However, democratic elitism also demands that the few who rule must rule following the felt needs of the people. The import of this theory in this paper is that given the burgeoning population of Nigeria and the dearth of democratic principles, electoral acts and their implementation is critical in the democratization process of Nigeria. Hence, with such electoral act that aims to deepen the process of democracy by empowering the people through the instrument of the ballot, the political elites will therefore place greater premium on the masses and thus cause governance to be representative in its true form.

## Historical Context of Electoral Amendment

As with most African democracies, Nigeria continues to grapple with challenges in conducting free, fair and credible elections. Unfortunately, most elections have been marred by electoral violence, widespread irregularities, electoral fraud and pre and post electoral litigations (Ayoade 1988), this is further worsened by the clear cut religious, regional and ethnic sensitivities. Consequently, since 1923 when the elective principle was introduced to the first post-independence election, Nigeria has faced a major electoral crisis owing to the inadequacies of the electoral law or a combination of the inordinate ambition of Nigeria politicians to control power and determine the distribution of resources therein. Accordingly, Adekanye (1990) asserts that elections in Nigeria have often been marked by political tension, crisis, political assassinations and a high level of violence including ballot stuffing and ballot box snatching. The effect of this is that the Nigeria fractured public has become increasingly alienated from freely exercising her franchise.

In an attempt to re-engineer a more workable electoral body and sustainable electoral law, successive governments have attempted to restructure the electoral act and in some cases change the name of the electoral body to reflect some level of independence. As Omotola (2010) succinctly noted, between 1959 and 1999, the apex electoral commission was renamed six times. Before the civil war the electoral commission was named the Electoral Commission of Nigeria (ECN, 1959-1963), then the Federal Electoral Commission (FEC, 1963-1966). In the later part of the 1970s, the body was renamed the Federal Electoral Commission (FEDECO, 1976-1979). During the Babangida regime (1986-1993) it was e-designated to the National Electoral Commission while General Abdusallami Abubakar, in the far reaching effort to entrench the independence of the Commission changed it to the Independent National Electoral Commission (INEC).

## 2022 Electoral Act and the Future of Elections in Nigeria

As a critical factor in the process of democratization, the history of elections in Nigeria have been considered to be undesirable and a cog in the wheel of good governance, according to Omotala (2010), elections are meaningfully democratic if they are largely participatory and competitive, free and fair, thus elections as a leadership change mechanism, are instrumental to democratic transition and consolidation. As a core process, the independence and credibility of the electoral governance structure determine the general acceptance of the outcome of elections. Instructively, from the appointment of the electoral umpire(s), to the voters' registration process, display and review of voters register to the political party selection process and general elections, are largely determined by the independence of the electoral system. More importantly, Brutton () states that the regularity, openness and acceptability of elections signals whether basic constitutional, behavioural and attitudinal foundations are being laid for sustainable democratic rule.

Undoubtedly, electoral reforms where populist, are aimed at instituting changes and making the electoral process freer, fairer and more credible. Owing to the historical antecedents of Nigeria elections, the new electoral law signed on 25th February 2022 repeals the 2010 electoral act and with some modifications and innovations have some of the most robust electoral rules of any emerging democracy. Some major changes that bear the prospect for credible elections in the newly signed act include:

1. Financial Independence of the Commission: the creation of an Independent National Electoral Commission Fund as contained in the 2022 electoral act has empowered the Commission with some level of financial autonomy. Accordingly, the Commission will be funded through government subventions (to be released a year before the election), dividends from the Commission's investments, aids and grants. As a departure from the provisions of the 2010 electoral act and improvement in the 2022 electoral act, the Commission is now empowered by law to directly receive funds for the

conduct of elections.

2. Introduction of the Biometric Voters Accreditation System (BVAS): with the introduction of electronic accreditation and voting, the Independent National Electoral Commission (INEC) has been enabled by law to conduct and transmit election results electronically. It further provides that the Commission with the powers to keep the register of voters provided the register shall be kept in electronically and a manual copy. With this innovation in the display of electronic voters register, the general public can identify illegal/underage voters and check the status of their registration. The act also affords voters the leisure to undertake a change of their voting points electronically.
3. Extension of Time-Frame for Campaigning/Early Party Primaries: The new electoral law has increased the time frame of engagement between political office holders and the electorates. As a departure from the 2010 electoral act which provides for political campaigns to begin 60 days before elections, the 2022 electoral act provides for 180 days of campaign before elections. Again, the Commission shall by the new electoral act within 360 days before the day of the election, publish a notice in each state of dates for elections unlike the 90days provision in the previous electoral act.
4. Revision of the Definition of Over-Voting: in strengthening votes cast and ensuring free, fair and credible elections, the new electoral act has redefined the recurrent crisis of over-voting by ensuring that the number of accredited voters as captured on the biometric voter's machine is equal to the number of votes cast. Instructively, this new electoral act addresses the loophole with which the incidence form avails political office holders to compromise the political outcomes.

## **Implications of the 2022 Electoral Act for Future Elections in Nigeria**

Despite the growing trust deficit of Nigerians with the performance of the government, Lewis (2003) observes that Nigerians continue to display considerable patience with the democratic system and that they have limited tolerance for non-democratic potential alternatives. Chequered a historic antecedent of inflated voters register, political violence during campaigns and elections, outright fraudulent voting and collation of votes, and intimidation of voters and political opponents, the 2022 electoral act holds great prospects for a democratic election in 2023 through the increased level of enabling laws for deepening electoral tenets and electoral transparency through the use of technology. Accordingly, (Goldin, Kraman & Ofosu 2014) argued that these technological solutions such as electronic voting machines, polling station webcams and booths, and biometric identification equipment bear the promise of rapid, accurate and ostensibly tamper-proof innovations that are expected to mitigate fraud in the processes of registration, voting or vote count aggregation.

Interestingly, with the outcomes of some off-season elections in states like Anambra, Osun and Ekiti, the outcome and acceptability of the electoral process have gained some ground, suggesting that voters' confidence has largely improved which invariably impacts on the credibility of the elections. The deployment of the INEC Result Viewing Portal (IREV) and the use of BVAS will function as an anti-rigging technological device to authenticate voters, transmit results and provide the electorates with a real-time opportunity to track their votes. The BVAS as an advancement of the previously used Smart Card Reader keeps a tally of all verified voters and transmits the collated information to the central INEC server.

Hence, according to the analysis of voter registration data by INEC preparatory to the 2023 elections, there is an upsurge in the number of new registrants as the Commission recorded 12.29 million new registrants and with the Automated Biometric Identification System (ABIS) that identifies double/multiple registrants, illegal/under-aged voters, deceased voters, the Commission identified over 2.78 million ineligible registrants (INEC database 2022).

This further underlines the immediate impact of the electoral act as it has thrown up increased confidence that with the implementation of the act, final election outcomes will reflect the actual voting pattern of the

electorates. This will greatly impact the quality of political leadership and bring about the much-needed dividends of democracy that have hitherto been a daunting challenge in Nigeria.

## Conclusion/Recommendation

As has been established in this paper, free, fair, regular and credible election in every democratic setting is key to development and citizens' engagement. The increasing political apathy of any citizenry is born out of the seeming frustration and alienation from active participation in the political process in this case the exercise of the franchise. The argument to the effect of whether electoral governance will contribute to election depends basically on the independence and professionalism of the electoral body. Consequently, the character of the political elites is largely determined by the strength or weakness of the political system which invariably impacts the political psyche of the voting public. With the very unfortunate outcomes of elections in Nigeria, historically, elections rather than being an avenue for voters to determine who governs them, it has only passed for a continuous four-year ritual. This is owed to the deep-seated politicization of the electoral process and flawed electoral laws.

Conclusively, the 2022 electoral act with its constitutional provisions has empowered the electorates through the ballot to determine to a very large extent the character and nature of leaders who govern them at every stratum of the political ladder. In effect, with the 2023 elections and the increased political awareness which has greeted the signing of the act, Nigeria's electoral history might just be on a good trajectory.

Nevertheless, the 2022 electoral act still bears some hallmark of shortcomings as the recent elections in Kenya has approved that Diaspora voting and quick resolution of electoral matters with the establishment of special electoral courts is possible. Hence, policymakers in Nigeria should consider the extension of voting rights to the diasporas, establish specialized electoral courts to try electoral offences and handle swiftly pre and post-electoral matters while also creating opportunities for INEC ad-hoc workers to vote before the scheduled dates for elections wherein they participate.

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