

Legal Measures for Combating Electoral Malpractices in Nigeria

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Abstract

This paper interrogates the role of the law in curbing electoral malpractices in Nigeria. In Nigeria, the electoral process dates back to 1923, after elective principle was introduced under the the Clifford Constitution of 1922. Ever since, electoral malpractices have manifested in many ways in Nigeria's electoral process. Electoral malpractices manifests in many ways such as multiple and under-aged registration in the voter's register, bribing of electoral officers, intimidation of voters, vote merchandising, falsification of election result, creation of illegal polling unit, snatching of ballot materials, stuffing of ballot boxes and declaration of a loser as a winner among other infractions. Electoral malpractices have produced governments with questionable legitimacy as they are not a product of popular will of the electorate. This has resulted in apathy among the electorate as perpetrators of electoral malpractices are not prosecuted. The paper recommends, among other things, transparent and competitive process in the recruitment of electoral officers to superintend elections in Nigeria.

1. Introduction

The history of electioneering in Nigeria dates back to 1923 consequent upon the introduction of elective principle under the 1922 Constitution of Sir Hugh Clifford. The principle provided for one seat for Calabar and three seats for Lagos in Legislative Council. By this pioneering initiative, politics and politicking made their debut in the Nigerian Nation. The 1922 elective principle provided for 12 months residential qualification in the two areas the principle covered. The other conditions were that eligible voters must be British protected persons or subjects and 100 pounds financial qualification. The Clifford's principle held sway till 1959 General Elections when the whole country was unified into a single electoral system. During the hegemony of the elective principle, electoral malpractices were limited to falsification of residency of a person in Calabar or Lagos.¹ Electoral malpractices in the 1959 general elections

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¹ S Edeh, *Nigerian Colonial Constitution* (Spectrum Books 2015) 82.

which ushered in Nigerian Independence was fraught with multiple registration in the roll and multiple balloting. This trend was also the posture that characterized the 1964 general election.

The 1979 and 1983 general elections which were conducted under universal adult suffrage expanded the frontiers of electoral malpractices in Nigeria. The elections were marred by voter registration infractions such as double or multiple registration, underage voting, multiple voting, voter intimidation, thuggery, falsification of result and destruction of some public infrastructure following the announcement of election results.² The 1993 general election which was annulled without a declaration of a winner was widely acclaimed to have represented the will of the electorate. The election was conducted under 'Option A4' ballot system which was a departure from the secret ballot system. Option A4 system required voters to queue behind posters of the candidates they desired to vote for. Although option A4 model was a radical departure from international best practice in the conduct of elections, Nigerians were satisfied that the system made the ballot to count.³ Despite this transparency, there were prevalence of electoral malpractices in the form of underage registration, vote merchandising and falsification of results during collations.⁴ The elections between 1999 and 2023 experienced electoral malpractices in a higher degree and sophistication. Bribing of electoral officers, underage and multiple registration in the voters register, intimidation of voters, vote buying including dollarization of payment system, falsification of election results, declaration of a loser as the winner, creation of illegal polling unit, snatching of ballot boxes and ballot papers and stuffing of ballot boxes among many other infractions marked the elections.⁵ Electoral malpractices have therefore been a persistent and recurring feature in Nigeria's electoral process prior and after independence.

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² F Okoye, *The Prosecution of Electoral Offenders in Nigeria: Challenges and Possibilities* (Friedrich-Ebert-sifting 2013) 3-9.

³ O Bamisaye and O Awofeso, *Democracy and Democratic Practice in Nigeria: Issues, Challenges and Prospects* (MacGrace Publishers 2011)108.

⁴ D Uduma and E Emerole, 'The Effect of Electoral Malpractices on the Sustenance of Democracy in Nigeria' (2015) 5, *International Journal of Advance Legal Studies and Governance*.

⁵ B Sule, 'The 2019 Presidential Election in Nigeria; An Analysis of the Voting Pattern, Issues and Impact' (2019) 5(2) *Malaysian Journal of Society and Space* 129-140.

2. Nature of Electoral Malpractices

Electoral malpractice generally refers to an instance where acceptable norms and principles that confer credibility on elections are desecrated and in their stead, falsehood, manipulation and cheating by any means are deployed to sway the outcome of elections. Electoral malpractices are illegalities committed by government officials responsible for the conduct of elections, political parties, groups or individuals with sinister intention to influence an election in favour of a candidate.⁶

Electoral malpractices are a recurrent decimal in the annals of history of elections in Nigeria save that the degree varied and continues to vary from one election to another. Before independence in 1960, Nigeria which existed as the amalgamation of two protectorates (North and South) since 1914 witnessed many elections. The September, 1923 election in Calabar and Lagos following the introduction of Clifford Constitution of 1922 was the first one. In the election, the only seat for Calabar was won by Improvement League while the three seats for Lagos in the legislative council were won by the Nigeria National Democratic Party (NNDP). The second and third elections in 1928 and 1933 were won by the NNDP both in Calabar and Lagos. Subsequent elections were held between 1938 and 1943 under the Clifford's elective principle until 1946 election which was conducted under the indirect system based on Sir Arthur Richard's Constitution. The 1959 general election was held across 312 single member constituencies nationwide. The 1964 election may be said to be one where outright malpractice began.⁷

The Northern Peoples Congress (NPC), being the party controlling the central government influenced the arbitrary abductions, arrest, detention and intimidation of opponents. Evidence of these illegalities was submitted to the President by United Progressive Grand Alliance (UPGA) demanding for the postponement of the elections but the government refused. Despite the boycott of the elections by UPGA, the NNDP without the participation of opposition political parties claimed victory in the West and forcefully retained power amidst crisis.⁸ The September, 1978 election was not different from the 1964 election as it was characterised by ethnic colouration of the political parties, regional politicking and unhealthy political parties' rivalry. The 1983 election result indicated

⁶ E Ezeani, 'Electoral Malpractices in Nigeria' in G Onu and A Monoh (eds), *Election and Democratic consolidation in Nigeria* (1st edn Spectrum Publishers 2016) 415.

⁷ B Powel, *Elections as Instruments of Democracy*. (Yale University Press 2000) 78.

⁸ A Gboyega and Y Aliyu, *Nigeria Since Independence*: (Heinemann Educational Books (Nig) Ltd 1989) 211.

that the National Party of Nigeria (NPN) had transformed itself into a super power as other political parties alleged that the process was massively rigged to give the NPN a second term in power.⁹ Electoral malpractices constitute a variety of all illegal and unethical acts perpetrated to give electoral advantage to a candidate or a political party. They therefore relate to all manner of actions and conducts carried out by non-state and state actors in the electoral process.

3. Forms of Electoral Malpractices in Nigeria

Electoral malpractices constitute one of the most serious problems confronting democracy in Nigeria. A detailed study of electoral malpractices in Nigeria reveals its intensity, pervasiveness and various forms.¹⁰ Electoral malpractices pertaining to infringement of Electoral law include quasi-military organisations, voting by unregistered persons, registrations of under-aged persons as voters, voting by under-aged persons, impersonation in polling stations, misconduct in respect of ballot papers and ballot boxes among others. Generally, malpractices under this model are those malfeasance which have been cognizable under the Electoral Act and enshrined as Electoral Offences.

Another form of electoral malpractice is the one relating to improper and unethical infringements. This includes possession of voters cards of other voters, assaulting election officials, collecting money to issue voters cards to the owners, bribery, arrest of opposition members, multiple voting, forgery of election results, creation of illegal polling stations, forcing voters to cast their ballot outside their conscience and all other acts done to give advantage to a candidate over other contestants.¹¹ Where an unethical act has been criminalized under the Electoral Act or any other Statute, the Act transmute to the first brand herein.

The third form of electoral malpractice relates to those wrong doings or improper conduct by the electoral umpire. The elements of this brand of electoral malpractices include such electoral malpractices by the Independent National Electoral Commission (INEC) officials as unlawful possession of ballot papers and boxes, illegal possession of voters cards, stealing of ballot boxes keys, stuffing of ballot boxes, falsification of results, forgery of result sheets, tampering with ballot boxes, unauthorised declaration or release of election results and any other act perpetrated by an electoral official for the purpose of giving advantage to

⁹ *ibid* 213.

¹⁰ E Ezeani, 'Electoral Malpractice in Nigeria: A case Study of 2003 General Elections' (2005) *Nigerian Journal of Sciences* 45

¹¹ JO Odeh, *This Madness Called Election 2003* (Snaap Press Limited 2003)15.

a given candidate or pecuniary gains. The three forms of electoral malpractices reared their heads in all elections that have been held in Nigeria.¹²

4. Causes of Electoral Malpractices

A number of factors have been identified to be responsible for electoral malpractices in Nigeria and prominent among them is endemic poverty. It has been said that more than half of the people that engage in electoral malpractices find it difficult to comfortably eat what they like, dress well or live in a house they like. Virtually all the basic needs of life are difficult for them to attain because of their poor economic condition. As a result, they become ready-made instruments that can be used for any horrible assignment whether illegal in order to eke a living. Sometimes, poverty-ridden persons want to impress politicians by doing any unsavory act to show that they are ardent supporters and believers in the electoral contenders.

As at 2019, about 68.7 per cent of Nigerian graduates were unemployed while over 50 per cent live under average economic wellbeing. In 2022, the National Bureau of Statistics stated that 67.3 per cent of Nigerians were multi-dimensionally poor. It follows that more than half of the population of the nation is vulnerable to commit any electoral malpractice to eke a living. Thus, it is not unlikely for such poverty-ridden and unemployed Nigerians to quickly embrace the dangerous option of rigging election in exchange for survival.¹³ Inadequate planning is also responsible for electoral malpractices and this is the case when political parties or candidates do not sufficiently prepare for elections. Electoral malpractices may also manifest when there is no sufficient readiness in terms of a political party sale of manifestoes. It can also be in the form of inadequate or late allocation of funds for campaigns or to the Independent National Electoral Commission. Consequently, candidates of political parties manipulate electoral process to be ahead of others without addressing the areas of deficiency. In respect of the INEC receiving election funds late, officials of the electoral umpire become susceptible to corrupt advances to gain advantage in their electoral pursuit. A great number of members of

¹² O Nnoli, 'The 1987 Local Government Elections in the Eastern Zone of Nigeria: Plateau, Benue, Anambra, Imo, Rivers, Cross River and Akwa Ibom State' in I Jinadu, E Ada and T Edoh (eds), *The 1987 – 1988 Local Government Elections in Nigeria*, Vol 1 case studies (National Electoral Commission Lagos: 1999)50.

¹³ O Medea, 'Poverty and Nigeria Youth: Implication for the Country's Development (2019) 24(4) *Journal of Canadian Social Sciences* 34-54.

political parties engage in campaigns or attend party rallies for pecuniary gains and such uncommitted members can go extra miles when their expectations are not satisfied. What they do in such circumstance is to engage in rigging of any form to compensate for the funds earlier collected.¹⁴ It is further contended that when a candidate is imposed on the electorate, electoral malpractices become inevitable. Candidates and their political parties desire to win elections even when they know that they are not embraced by the electorate.

It is also believed that electoral malpractices are facilitated by the absence of or poor political education as civic education is a necessary precursor to reduce electoral manipulation. When this is not sufficiently done, the consequent is bound to be in the negative. It is expedient to regularly keep political gladiators, political parties and the citizenry informed of the tenets of elections to engender free, fair and transparent electoral process. Electoral malpractices manifest in the absence of confidence in the electoral system,¹⁵ greed, abuse of political power, alienation, marginalization, exclusion and political economy of oil.¹⁶ Penury and unemployment are also causal agents of electoral malpractices.¹⁷ Other causal factors of electoral malpractices include ineffectiveness of security, culture of impunity, weak institutions and penalties, poor governance and proliferation of small arms and light ammunition.¹⁸ Some other causes of electoral misconduct are expressed in partisanship of traditional rulers who are supposed to be the custodians of cultural heritage of the people, zero-sum politics, poor handling of election petitions, lack of faith in the judiciary, ideological bankruptcy in political parties, zero-tenure practice of some African leaders and the humongous emoluments paid to political office holders¹⁹

5. Effect of Electoral Malpractices in Nigeria's Democracy

Electoral malpractices are impediment to democratization process. Nigeria having had a bitter experience of massive electoral corruption since 1979, there are a myriad of ways the nation has been impacted by the problems created by the conduct of elections devoid of transparency.

¹⁴ *ibid.*

¹⁵ M Aliyu, O Wakili and B Olukayode, 'Electoral Malpractice as A Challenge to Sustainable Development in Nigeria' (2020) 8(1) *Global Journal of Political Science and Administration* 15-25.

¹⁶ O Igbuzor, 'Electoral Violence in Nigeria' (2009), papers accessed 22 February 2023.

¹⁷ A Maslow, 'Theory of Human Motivation' (1954) 50 *Psychological Review* 338 - 339.

¹⁸ J Galtunq, 'Violence, and Peace' (2011) 6 *Journal of Peace Research* 167 -192.

¹⁹ T Ugiagbe, 'Electoral violence in Nigeria: implications for security, peace and development' (6 September 2010) accessed 24 February 2023.

Electoral malpractices have adverse effect on democracy as they negate the essential purpose of elections as a basis for governance. A government which by electoral malpractices sustains itself in power against the wishes of the majority of the electorate is bereft of legitimacy.²⁰

Electoral malpractices undermine a cardinal principle of democracy that the welfare of the citizenry is the primary objective of government. Election is the people's most effective weapon of making a government responsible and accountable. It is through election that the people are able to remove a bad government and install one that will promote their wellbeing. Knowledge of this fact makes every democratic government to be accountable. If a government sustains itself in power through electoral malpractice, performance becomes irrelevant in assessing the suitability of the government in another election. An administration can neglect the people's welfare, loot the nation's treasury and still manipulate itself back to power through electoral malpractices.²¹

Contest for elective positions is perceived as an investment. The effect is that the expenditure must be recouped once the contenders win elections and assume power. There is therefore a tendency for heightened looting of public treasury. It follows that dividends of democracy can never be delivered to the citizenry because money meant for public projects is diverted into private tills.²² Other effects of electoral fraud are expressed in political protests, the debasement of political parties as a vehicle for peaceful transfer of power,²³ chaos, violence and anarchy.²⁴ There can also be arson, looting, displacement of families, turmoil among the people.²⁵

6. Regulatory Framework for Combating Electoral Malpractices

It has been said that the Constitution of the Federal Republic of Nigeria 1999 as amended, the Electoral Act 2022 and Independent National Electoral Commission Regulations and Guidelines for the Conduct of

²⁰ Nnoli (n 12) 67.

²¹ Eziani (n 10) 45 – 47.

²² J Ilo, 'Political Finance Regulation in Nigeria: the Legal Framework' in N Obiorah (ed), *Political Finance And Democracy in Nigeria: Prospects and Strategies for Reforms* Centre for Law and Social Action Lagos (Spectrum Books 2004) 84.

²³ T Aluaigba, 'The Irony of Democracy: the Nigerian experience' in SF Kamilu (ed), *Democracy in Nigeria's Fourth Republic: Myths, Realities, Challenges And Prospects* (Triumph Publishing Company 2012) 103.

²⁴ E Obadare, 'Democratic Transition and Political Violence in Nigeria' (2019) 16 *Journal of African Development* 199 – 219.

²⁵ O Ejigbile, 'Threat that Electoral Malpractices pose on the Innocents' (Paper Delivered at the Independent National Electoral Commission (INEC) Stakeholders Forum, Lagos, March 2nd – 4th 2015) 9.

Elections 2022 are the legal framework for curbing electoral irregularities in Nigeria.²⁶ Other than the three instruments, there are some statutes that though they are not solely electoral enactments, may be invoked to punish electoral offenders. A person may be prosecuted and convicted for electoral malpractices under Corrupt Practices and Other Related Offences Act 2004, Criminal Code Act 2020, Economic and Financial Crimes Commission (Establishment) Act 2004, Money Laundering (Prevention and Prohibition) Act 2022, Penal Code Act 2004 or under a State Independent Electoral Commission Law.

There are also subsidiary legislation which constitute the legal framework for curbing electoral malpractices in Nigeria. One is The Federal High Court (Pre-Election) Practice Directions 2022. Others are The Independent Electoral Commission Regulations and Guidelines for the Conduct of Elections 2022 and The National Judicial Council Policy Directions on Political and Election-Related Cases 2022. Nigeria is a member of United Nations as well as African Union and is bound to abide by their constitutive instruments and subservient Charter or Protocol. The African Union adopted African Charter on Democracy, Elections and Governance 2007. The objective is to promote electoral democracy and integrity. The United Nations had earlier adopted Universal Declaration of Human Rights in 1948. Judicial decisions on electoral matters by Courts and particularly those of the Court of Appeal and Supreme Court also constitute the legal framework for curbing electoral malpractices. Case law on electoral malpractices is on the same pedestal with legislative enactments and subsidiary legislations on the subject matter. Some of the laws are discussed herein.

6.1 Universal Declaration of Human Rights 1948

The Universal Declaration of Human Rights was made to be a non-justiciable international legal instrument intended as a compass for the promotion and protection of human rights among member – states of the United Nations. The non-justiciability of the instrument led to the making of Geneva International Convention on Civil and Political Rights and International Convention on Social, Economic and Cultural Rights.²⁷ These international instruments were made to have the force of law and captured the various subject matters which were recognized by Universal Declaration of Human Rights. However, Article 21 of the Declaration relating to the holding of free, fair and transparent elections is not reflected in any of the Conventions. It appears that matters pertaining to

²⁶ Okoye (n 2)11.

²⁷ *ibid.*

the raising of national leaderships have been left as exclusive preserve of individual state signatories to the Conventions.

6.2 African Charter on Democracy, Elections and Governance 2007

The lacuna that was consciously created under the Universal Declaration of Human Rights, International Convention on Civil and Political Rights and International Convention on Social, Economic and Cultural Rights was filled by the African Charter on Democracy, Elections and Governance. The Charter made copious provisions relating to the raising of representative government through the conduct of free, fair, transparent and credible elections.²⁸ Under the Nigerian jurisprudence, international legal instrument when ratified by the nation must be domesticated into the Nigerian legal system.²⁹ The Charter has not received the force of law having not been enacted by way of domestication. The Charter therefore does not operate as a law and there is a need for the National Assembly to domesticate the charter so that Nigeria can take the benefits accruable under the Charter.

6.3 Constitution of the Federal Republic of Nigeria 1999

Formal Constitutions were introduced in Nigeria from 1914 when Sir Lugard (later Lord Lugard) proclaimed the first colonial Constitution. Various imperial Constitutions operated thenceforth till 1960 when the Independent Constitution occupied the Nigerian constitutional space. The Republican Constitution of 1963 which consumed the hegemony of the British Monarch as the Head of State of Nigeria held sway till 1966 when the Military trespassed into the political arena.³⁰ The 1979 Constitution was proclaimed after thorough Constitutional preparations. A Constitutional Drafting Committee headed by Chief F.R.A William prepared the Draft document and same was reviewed by a Constituent Assembly chaired by Justice Udo Udoma. The Constitution guided the Second Republic until 1983 when another Military coup decimated the democratic administration.³¹ Though the 1989 Constitution made debut, it had no opportunity to be tested of its provisions.³²

²⁸ African Union: African Charter on Democracy, Elections and Governance (2007) art 5, 17-22.

²⁹ U Umuzurike, *Introduction to International Law* (Spectrum Books 1999)17.

³⁰ I Udofa, *Nigerian Constitutional Law: A Comparative Approach* (Esquire Publishers, 2018) 83.

³¹ *ibid.*

³² *ibid.*

The Constitution of the Federal Republic of Nigeria, 1999 being the fundamental law of the land sets parameters and regulates the conducts of election in the polity.

Some of the salient parameters include:

- (i) Section 78 which enshrines that the registration of voters and the conduct of the elections shall be subject to the direction and supervision of the Independent National Electoral Commission. This provision is also applicable to a House of Assembly as provided under Section 118 of the Constitution.³³
- (ii) Section 131 which provides for qualifications to the Office of the President as follows:
 - (a) he is a citizen of Nigeria by birth;
 - (b) he has attained the age of forty years;
 - (c) he is a member of political party and is sponsored by that political party, and
 - (d) he has been educated up to at least school certificate level or its equivalent.

The above provisions also apply to Governor of a State except that a Candidate to the Office of Governor must attain the age of 35 years as provided under Section 177 of the Constitution.³⁴

- (iii) Section 134(2) which enshrines that a candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election-
 - (a) he has the highest number of votes cast at the election; and
 - (b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.³⁵
- (iv) Section 153 which establishes INEC and insulates it from political interference.³⁶
- (v) Section 285(6) which provides that election petitions shall be heard and determined within 180 days from the date the action was filed.³⁷

The Constitution has made significant provisions which are capable of ordering the electoral process aright. The challenge of the Nigerian nation in this regard lies in sincere and honest enforcement of the constitutional enshrinements. Section 134 of the grundnorm was recently applied and interpreted by the Court of Appeal sitting as

³³ (CFRN 1999) Cap C23 Laws of the Federation of Nigeria 2004.

³⁴ *ibid.*

³⁵ *ibid.*

³⁶ *ibid.*

³⁷ *ibid.*

Presidential Election Petition Court (PEPC). The Noble Court interpreted the Section wherein it held that the Federal Capital Territory (FCT) Abuja does not occupy a special status under Nigerian jurisprudence. It held further that it is not mandatory for a presidential candidate to muster 25 percent of the votes cast in the FCT before he could be declared winner of the election.³⁸ With respect, it is difficult to reason with their lordships that the FCT as presently structured in the Nigerian federation is like a State and does not have a special status. Nigerian States are governed by Governors³⁹ while the FCT is administered by the President⁴⁰ through a Minister.⁴¹ Also, the legislative power of a State is vested in the House of Assembly⁴² while the National Assembly legislates for the FCT.⁴³ From the aforesaid, it is undoubtedly clear that the FCT occupies a special status in the Nigerian federation. In interpreting Section 134(2) of the Constitution, the learned justices erred in law when they held that it is not mandatory for presidential candidate to record 25 percent of the votes cast in the FCT. The use of the expression “he has not less than one-quarter of the votes cast at the election in at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja” presupposes the interpretation of the morpheme ‘and’ in the provision. The morpheme is a conjunction which pits together ‘two thirds of the States and FCT, Abuja’.

Mathematically ‘and’ is synonymous with ‘plus’ or ‘in addition to’. The appropriate canon of interpretation therefore is the application of the literal principle in order to bring out the semantic import of the word ‘and’. The adoption of the ‘intendment’ canon of constitutional interpretation by the PEPC was an escapist approach to interpret a clear and unambiguous provision. It is without contention that scoring 25 percent of votes cast in not less than 24 States and FCT underlies legal declaration of a winner. Unfortunately, the Supreme Court aligned with the position of the PEPC and was tongue-largely by legal practitioner and scholars for murdering justice.⁴⁴

³⁸ CA/PEPC/5/2023 *Obi v Tinubu*.

³⁹ CFRN s 176 (1).

⁴⁰ *ibid*, s 299 (a).

⁴¹ *ibid*, s 302.

⁴² *ibid*, s 4(6).

⁴³ *ibid*, s 4(2), 299 (a).

⁴⁴ News Agency of Nigeria, ‘PEPC Judgment – Peter Obi Heads to Supreme Court’ (7 September, 2023), available at <www.Premiumtimes.com> accessed 23 September 2023.

6.4 Electoral Act 2022

The various colonial Constitutions from 1922 carried electoral provisions which regulated the conduct of elections under their operational milieu. The 1960, 1963 and 1979 Constitutions empowered the federal legislature to make laws for the good governance of the Country and this included the enactment of Electoral Act. Elections into the legislature and executive were regulated by the Electoral Acts which were made under the Constitutions. The 1992 National Assembly and State Houses of Assembly elections were regulated by Military Decrees in lieu of Electoral Act⁴⁵.

One of the elements of transition to Civil Rule Programme of Abdulsalami Abubakar led military government was the promulgation of Electoral Decree.⁴⁶ The Decree by the Nigerian jurisprudence is an existing law and therefore an act of the National Assembly.⁴⁷ The Electoral Decree which regulated the conduct of 1999 general elections was amended in 2001, 2006 and later in 2010. The present Electoral Act is an amended version of Electoral Act 2010.⁴⁸ The Electoral Act was passed in January 2022 by the National Assembly. The Act which was assented into law on February 25, 2022 by President Muhammadu Buhari repealed the Electoral Act No. 6 of 2010 as amended. The Act, *inter alia*, regulates political party primaries, the conduct of Federal, State and Area Councils of the Federal Capital Territory elections.⁴⁹

The Electoral Act makes innovations which are intended to deepen electoral consolidation, transparency and attain electoral democracy. Some of the novel provisions of the act include the following:

- (i) In "Section 3(3), election funds due to INEC for the conduct of general elections must be released not later than a year before the elections.⁵⁰
- (ii) Section 28 requires INEC to issue a notice of election, not later than 360 days before the day of an election, stating the date and place at which nomination papers are to be delivered.

⁴⁵ A Auwal 'Political Parties and Electoral Misconduct in Nigeria' in H Muhamed (eds), *The Patterns and Dynamics of Party Politics in Nigeria's Fourth Republics*, Kano (Hallmark Publishing, Nigeria 2008) 130.

⁴⁶ Electoral Decree No. 36 1999.

⁴⁷ CFRN s 315(4)(b).

⁴⁸ Electoral Act 2022.

⁴⁹ E Solomon, 'Nigeria's Electoral Act 2022: of Electoral Politics, Litigations and Matters Arising' (2022) 3(2) *Carnelian Journal of Law and Politics* 166.

⁵⁰ *ibid*.

- (iii) Section 29(1) requires a Political Party to conduct valid primaries and submit list of candidates, not later than 180 days before the date of an election.
- (iv) Section 29(5) permits any aspirant who participated in a primary election of a political party and has reasonable grounds to believe that the Affidavit submitted by a candidate of his political party contains false information in respect of requirements of the Constitution to contest the election, to institute a suit at the Federal High Court for a declaration that the information contained in the Affidavit is false.
- (v) Section 33 prohibits a Political Party from substituting a candidate whose name has been submitted to INEC except in cases of withdrawal or death of the candidate. Where any of the two events occurs, the Political Party is required to conduct a fresh primary election not later than 14 days of the occurrence of the event to produce and submit a fresh flag bearer for the election.
- (vi) Under Section 84(3), a political party is authorized to conduct a fresh primary election within 14 days of the death of its candidate to substitute the candidate who died after the commencement of polls and before the announcement of the final result and declaration of a winner.
- (vii) Section 47(2)&(3) empowers INEC to employ the use of smart card reader and other technological devices in the conduct of elections.
- (viii) Section 50(2) authorises INEC to determine the procedure for voting and transmission of results during elections.⁵¹

The Electoral Act is an enactment which details rules for the conduct of elections and all persons, political parties and INEC are expected to comply with the provision.⁵² It has been stated that the minimum standard of compliance is substantial compliance and a party complaining of non-compliance with the Electoral Act must show how that failure affected him in the negative.⁵³ Courts have been applying the provisions in cases presented before them. Recently, the Court of Appeal which sat as Presidential Election Petition Court had cause to apply Section 50(2) of the Act. The Court held that INEC was at liberty to choose the manner of transmitting election results. The Court therefore held that INEC was not under any legal obligation to transmit presidential election results electronically to its collation system. With respect, the learned Justices

⁵¹ *ibid.*

⁵² *Wike v Peterside* (2016) All FWLR 1573 (SC).

⁵³ *ibid.*

were in grave error of law when they failed to recognize the INEC regulation which empowers the Commission to transmit results electronically.⁵⁴ It is therefore incomprehensible that the Court of Appeal applied the provision as if the said INEC Regulation is not embedded in their breast. Although the Act requires some amendments to engender electoral democracy and integrity, it suffers inefficient and insincere application of its provisions.

6.5 Federal High Court (Pre-Election) Practice Directions 2022

The repealed Electoral Act 2010 did not slate a particular judicial arm for ventilation of pre-election grievances arising from the conduct of primary elections. Prospective pre-election litigants instituted such cases at the Federal High Court, High Court of the Federal Capital Territory or State High Court. In 2017, the National Assembly further amended the 1999 Constitution wherein it vested jurisdiction to hear and determine pre-election disputes on the Federal High Court.⁵⁵ The amendment also provided the constituent element of pre-election disputes which could ground a pre-election action.⁵⁶ The Chief Judge of the Federal High Court in the exercise of the powers vested in him issued Federal High Court (Pre-election) Practice Directions 2022 to regulate the procedure for instituting pre-election matters in the Court.⁵⁷ The Practice Directions which came into effect on June 28, 2022 was signed by the Honourable Chief Judge of the Federal High Court, Hon. Justice John Terhamba Tsoho. The objectives of the Practice Directions include the following:

- (a) to provide for fair, impartial and expeditious determination of pre-election cases,
- (b) to ensure that in all election matters, the parties focus on matters which are genuinely in issue,
- (c) to minimize the time spent in dealing with interlocutory matters.
- (d) to ensure that the possibility of settlement is explored before the parties proceed to hearing, and
- (e) to minimize undue adjournments and delays in the conduct of actions.⁵⁸

The Practice Directions stipulate the nature of litigants who could institute or defend pre-election matters in the Federal High Court. A Party challenging the conduct or outcome of a Primary Election is

⁵⁴ INEC Regulations and Guidelines for the Conduct of Elections 2022, r 38(1).

⁵⁵ CFRN 1999 s 285 (9,10).

⁵⁶ *ibid*, s 285 (14).

⁵⁷ *ibid* s 254.

⁵⁸ Federal High Court (Pre-Election) Practice Directions 2022, r 1(1).

required to join the person who emerged winner of the said election or whose name was forwarded by his Political Party to the Independent National Electoral Commission as a Respondent in the suit ⁵⁹ Under the Directions, every pre-election matter is commenced by an Originating Summons as specified in Forms 3, 4 and 5 of Appendix 6 to the Federal High Court (Civil Procedure) Rules 2019, with such variations as circumstances may require. The Originating Summons must be accompanied *inter alia* by an Affidavit of non-multiplicity of action on the subject matter.

All pre-election suits where the cause of action arose in a Judicial Division and the relief seeks a Declaration or to compel or restrain a person within that Judicial Division, with no consequence outside it must be filed and heard in that Judicial Division. However, if the reliefs sought, potential consequential orders or declarations extend beyond the Judicial Division, the suit can only be filed at the Federal High Court Headquarters, Abuja and assigned by the Chief Judge.⁶⁰

The Practice Directions further make provisions for service of processes on Parties. The relevant provisions are enshrined as follows:

- (a) A Party cannot serve a notice of an application on another Party on the date scheduled for hearing.
- (b) To ensure speedy dispensation of justice, electronic mail and other electronic means can be employed by the Court in order to inform counsel of urgent Court and case events. Such notification must be given at least forty-eight hours before the scheduled Court date.
- (c) Parties are expected to furnish the Court Registrar with functional telephone numbers and e-mail addresses of themselves and their Counsel.
- (d) An application for substituted service can be made by a Party in accordance with the provisions of the Federal High Court (Civil Procedure) Rules.⁶¹

Where a matter is scheduled for hearing and either of the Parties is absent the court can *suo motu* or upon oral application by the Counsel for the Party present, order that the address of the Party absent be deemed adopted if it is satisfied that the Parties had notice of the proceedings. The Court and parties are required to prevent unnecessary delays and accordingly grants a maximum of two adjournments to a party. Nonetheless, an application for adjournment cannot be

⁵⁹ *ibid*, r 3.

⁶⁰ *ibid*, r 4.

⁶¹ *ibid*, r 5.

entertained on a day fixed for Judgement. Where a party seeks to change his Counsel during the pendency of a matter, a maximum of only two adjournments can be granted for him to do so. In hearing a pre-election matter, the Court is empowered to schedule the time and date of hearing as is convenient for the parties. To achieve expeditious dispensation of justice Ruling on Preliminary Objections and other interlocutory issues touching on the jurisdiction of the Court can only be delivered at the stage of final judgement.

The Directions apply notwithstanding the provisions of the Federal High Court (Civil Procedure) Rules, 2019. The Directions empower the Chief Judge of the Federal High Court to direct that matters be transferred to the appropriate Division or any other Division of the Court as may be reasonably practicable considering the given circumstances. Finally, the Directions apply to every pre-election matter filed pursuant to the provisions of the Constitution and the Electoral Act.⁶² By the provisions of the Practice Directions, the Federal High Court (Civil Procedure) Rules operates alongside with the Practice Directions where the Directions do not cover an issue raised in a pre-election proceeding.⁶³ The law is that Rules of Court must be followed and obeyed by both litigants and the Court.⁶⁴ Since the Federal High Court (Civil Procedure) Rules and Federal High Court (Pre-Election) Practice Directions are subsidiary legislation, the Rules of the Federal High Court (Pre-Election) Practice Directions are mandatory on pre-election litigants and the Court. The Federal High Court Civil Procedure Rules treats non-compliance with the Rules as mere irregularity which may be waived by the Court.⁶⁵ By the doctrine of *stare decisis* in our jurisprudence, the Federal High Court is bound by decisions of the Court of Appeal and Supreme Court. Therefore, treating non-compliance with the Rules as a mere irregularity cannot stand when the authority in *NNPC v. Alabi* which is a Supreme Court decision is invoked by a litigant.⁶⁶

6.6 Independent National Electoral Commission Regulations and Guidelines for the Conduct of Elections 2022

The Constitution empowers Independent National Electoral Commission to make Rules and Procedures for the conduct of its affairs.⁶⁷ The Electoral Act further authorises the Commission to regulate the conduct

⁶² *ibid*, r 2.

⁶³ *ibid*.

⁶⁴ *Nigerian National Petroleum Corporation v Alabi* [2002]6 NWLR (pt 1849) 95 (S.C).

⁶⁵ Federal High Court (Pre-Election) Practice Directions 2022 ord 3 r 8.

⁶⁶ *ibid*.

⁶⁷ CFRN s 160(1).

of elections.⁶⁸ The Commission revised its Regulations and Guidelines 2019 to have its 2022 edition for the conduct of elections.⁶⁹ By the combined effects of Sections 160 (1) of the Constitution and 149 of the Electoral Act 2022, the INEC Regulations and Guidelines for the Conduct of Elections 2022 is a subsidiary legislation. The Commission pursuant to the powers vested in it issued the Regulation and Guidelines as its additional compass. The Regulations cover general, off-cycle, bye, re-run and supplementary elections. The Regulations supersede all other regulations and guidelines on the conduct of elections issued by the Commission. They remain in force until replaced by new Regulations and Guidelines or updated by way of revisions or supplementary Regulations and Guidelines supported by Decision Extracts of the Commission or an official gazette.⁷⁰

The Regulations is compartmentalized into three parts. Part I which has 12 clauses provides for elections and arrangement for their conduct. Part II which comprises 21 clauses provides for voting procedure at elections. Part III which contains 63 clauses provides for collation of Election Results and making of Returns. The novel and significant provisions in the legislation is Regulation 38(1) which empowers Presiding Officers in elections to electronically transmit or transfer the result of the Polling Unit direct to the collation system. Sub-regulation (2) of the Regulation empowers the Commission to use an electronic device, Bimodal Verification and Accreditation System to upload a scanned copy of Form EC8A to the INEC Result Viewing Portal (IReV). For purposes of clarity, Form EC8A is INEC Result Sheet.

Stating the status of INEC Regulations, the Supreme Court held that INEC Regulations and Guidelines for the conduct of Elections 2014 is a subservient Legislation to Electoral Act 2010 as amended and cannot be elevated above the Act⁷¹. The 2014 INEC Regulations and Guidelines was revised in 2018 and further revised in 2022. It presupposes that reference to 2014 INEC Regulations and Guidelines is a reference to the 2022 Regulations and Guidelines. Thus, the 2022 INEC Regulations and Guidelines cannot make a provision that is not grounded in Electoral Act as such provision would be a nullity *ab initio*.

⁶⁸ Electoral Act 2022 s 149.

⁶⁹ INEC Regulations and Guidelines for the Conduct of Elections 2022.

⁷⁰ *ibid* (Preamble).

⁷¹ *Wike* (n 52).

6.7 National Judicial Council Policy Directions on Political and Election-Related Cases 2022

The Federal High Court has a single jurisdiction in Nigeria as the various judicial divisions are for administrative convenience⁷². It is clear that the jurisdictions of High Court of a State and High Court of the Federal Capital Territory are restricted to the territorial ambit of the State and of the Federal Capital Territory. Litigants of political and election related cases relied on the single jurisdiction of the Federal High Court covering the whole of Nigeria and embarked on forum-shopping in filing their cases. It was a common feature for a case on the same subject matter to be filed in more than one judicial division of the Court by the same parties. More worrisome was that the same political and election related cases particularly pre-election dispute were filed both at Federal High Court and High Court of the Federal Capital Territory by the same parties on the same subject matter. The scenario worsened when cases on the same subject matter and the same parties were filed both at a High Court of a State and High Court of the Federal Capital Territory. This posture resulted in the delivery of conflicting Judgements and Rulings by Courts of concurrent jurisdiction. There was therefore a need to cure the mischief that resulted from multiplicity of action on the same subject matter by the same parties before Court of concurrent jurisdiction.

The National Judicial Council of Nigeria (NJC) is vested with power to deal with all matters relating to broad issues of policy and administration.⁷³ The Council at its 98th meeting held on the 11th day of May 2022 made some policy directions to cure the mischief shown above. The Policy Directions enshrines the objectives and guiding principles of the Directions to include the prevention of multiplicity of litigations at different Courts of coordinate jurisdiction across the nation, resulting in conflicting orders on the same issues and facts.⁷⁴ The Policy Directions also sought to arrest forum shopping by irresponsible legal practitioners, thereby frustrating free flow of judicial administration and endanger democratic practice.⁷⁵

The Policy Directions state that all suits to which they apply must be filed and entertained at the High Court of the Federal Capital Territory where the relief sought, potential consequential orders(s) or declaration(s) which may restrain or compel persons are beyond the

⁷² Federal High Court Act Cap F12 LFN 2004 s 1(1).

⁷³ CFRN, Third Schedule, item 21 (1).

⁷⁴ National Judicial Council Policy Direction on Political and Election Related Cases, r 1.

⁷⁵ *ibid.*

territorial jurisdiction of a State.⁷⁶ However, if such a suit is within the exclusive jurisdiction of the Federal High Court, it is to be filed at the headquarters of the Court at Abuja and assigned by the Chief Judge.⁷⁷ Any such suits where the cause of action arose in a State and the relief seeks a declaration or to compel or restrain a person, within the territory of a State with no consequence outside the State can be filed and determined in that State.⁷⁸ The Policy Directions further mandated all Heads of Court to assign cases or constitute panels with intent to frustrate incidences of conflicting decisions. When a matter has been decided, the Directions restrained Court of coordinate jurisdiction from assigning or entertaining suits on the same subject and parties. A party who is dissatisfied with the Judgment can appeal to the appropriate higher Court.⁷⁹ The Policy Directions which took effect from May 11 2022 charged Heads of Courts to exercise their rule-making and administrative powers to give effect to them. The Policy Directions was signed by the Chief Justice of Nigeria and Chairman, National Judicial Council of Nigeria, Hon. Dr. Justice I.T Muhammad.

The Policy Directions are commendable as they were thought will achieve their aims. It appears the mischief that propelled the issuance of the Directions is still rife. The Labour Party leadership crises led to conflicting judgements from Federal High Court, Benin⁸⁰ which is covered by Court of Appeal, Benin Judicial Division and from Court of Appeal, Owerri Judicial Division.⁸¹ Why was an action initiated by the same parties on the same subject matter at the Federal High Court, Owerri and appealed to Court of Appeal, Owerri also filed at Federal High Court Benin? The Court of Appeal, Owerri affirmed the decision of the Federal High Court Owerri that Mr. Lamidi Apapa is the National Chairman of Labour Party while the Federal High Court, Benin vested the Chairmanship of the Party on Mr. Julius Abure. It is therefore expedient for the NJC to review the Directions in the light of this circumstance.

7. Caselaw on Electoral Malpractices

A corpus of Judicial Pronouncement has been made by the Court on pre-election and election cases. The principles of law developed in such cases

⁷⁶ *ibid*, r 2

⁷⁷ *ibid*.

⁷⁸ *ibid*.

⁷⁹ *ibid*.

⁸⁰ D Odufowokan, 'Court Affirms Abure as LP Chairman, Restrains Apapa's Faction' *The Nation* (Lagos, 27 May 2023) 6.

⁸¹ O Temitope, 'Appeal Court Affirms Apapa as Labour Party Chairman' *Daily Trust* (Lagos, 24 August 2023) 4.

have been used to determine subsequent matters which are in *pari materia* with such earlier decided cases except the Court finds it imperative to take a detour. An appraisal of some major principles of election law developed from 1979 to date will suffice for a sound comprehension of caselaw on electoral jurisprudence.

- (a) Election petition matters are *sue generis*.⁸²
- (b) An election petition must state clearly the facts and the ground or grounds on which the petition is based.⁸³
- (c) An election petition must specify the parties interested in the election petition and must join all necessary parties in the case.⁸⁴
- (d) An election petition must state the person returned as the winner of the election.⁸⁵
- (e) Where issues are joined that results of the election produced by the petitioner were forged, the burden of proving the alleged falsehood is squarely on the respondent.⁸⁶
- (f) Evidence of witness in prove of any allegation in an election petition not sourced and tied to any polling unit are worthless evidence.⁸⁷
- (g) When a party decides to rely on documents to prove his case there must be a link between the document and the specific areas of the petition.⁸⁸
- (h) Consequences of failing to call the maker of a document tendered as exhibit in an election petition.⁸⁹
- (i) Judgment/ruling by an election tribunal delivered by a panel whose member was not part of the hearing is void.⁹⁰

⁸² *Ehuwa v O.S.I.W.* (2006) 11-12 SC, 102 (SC), *Hassan v Aliyu* (2010) 7-12, 21 (SC); *Emmanuel v Umana (No. 1)* (2016) 2 SC, 90 (SC).

⁸³ *PDP v Saror 8 Ors* (2011) 3 SC, 38 (SC), *Oshiomole v Airhiavbere* [2013]7 NWLR (Pt 1353) 376 (SC).

⁸⁴ *Buhari . Yusuf* [2003]14 NWLR (Pt. 840) 1 (SC), *Omoboriowo v Ajasin* (1984)1 SCNLR 108(SC), *Ubom v Anaka* (1999) LCN 551 (CA).

⁸⁵ *Action Congress v Jang* [2009]4 NWLR (Pt 1132) 475(CA), *Abubakar v Yar'Adua* [2008]4 NWLR (Pt 1078) 465 (SC), *Aliyu v All Progressives Congress* [2023]6 NWLR 151 (SC).

⁸⁶ *Amechi v INEC* [2008]5 NWLR (Pt. 1080) 227(SC), *Audu v Wada* [2008] All FWLR (Pt. 405) 1651 (SC), *A.P.C. v PDP* [2015] 15 NWLR (Pt. 1481) 1 (SC).

⁸⁷ *Buhari . Obasanjo* [2005]13 NWLR (Pt. 941) 131(SC), *Awolowo v Shagari* (1979) 6-9 SC 51 (SC), *Ucha v Elechi* [2012]13 NWLR (Pt. 1317) 359(SC).

⁸⁸ *ANPP v INEC* [2010]13 NWLR (Pt. 1212) 549 (SC), *Ucha v Elechi* [2012]13 NWLR (Pt. 1317) 359 (SC), *Osagie v Peoples Democratic Party* [2023]5 NWLR (Pt. 1877) 355 (SC).

⁸⁹ *Aregbesola v Oyinlola* [2011]9 NWLR (Pt. 1253) 458 (SC), *Omisore v Aregbesola* [2015] NWLR (Pt. 1482) 322 (SC).

⁹⁰ *ibid.*

8. Challenges of the Legal Measures for Curbing Electoral Malpractices

Every human activity, phenomena, enactment or institution whether corporate or an individual that engages in interaction within the social hemisphere is bound to be confronted with hitches that seek to inhibit a flowing course of the establishment, a person or legal construct. The regulatory framework calculated at diminishing the operational efficacy of electoral malpractices is caught up with a myriad of problems which have tended to reduce the efficient and effective application of the legal framework. The challenges span from non justiciability of Universal Declaration of Human Rights, non-domestication of African Charter on Democracy, Election and Governance, executive rascalism, political influence and corruption to selfish interest of state leaders. These hindrances are discussed seriatim.

8.1 Executive Rascality

It is the obligation of the ruling machinery and in fact every citizen of the country to respect and obey the law whether it is statute law, subsidiary legislation or Judicial pronouncements. This obligation particularly on the executive branch of government is encapsulated in the Oaths of Office and Allegiance to the Constitution. Upon assumption of office, the President deposes to an Oath to observe, protect and defend the Constitution of the Federal Republic of Nigeria⁹¹. Contrary to this solemn deposition, state leaders exhibit very high propensity for disrespect to Rule of Law by not observing some constitutional and statutory provisions. The rascal attitude has been very glaring in the refusal of the Executive to obey Court Judgements and Rulings. The habit has also been stretched to the appointment of persons with questionable character as Resident Electoral Commissioners. Thus, the Constitution and Electoral Act have fallen prey to the whims and capricious machinations of the executive arm of government.

8.2 Political Influence

It was stated earlier in this paper that electoral malpractices are a recurrent decimal on the electoral engineering process of Nigeria in all elections from 1923. There have been manifest cases of electoral fraud, falsification of results, thuggery, willful destruction of property during elections, creation of illegal polling units, unlawful return of candidates in elections, snatching of election materials and many other electoral wrong doings. It has become a norm that perpetrators of electoral misconduct get away with it without being prosecuted and convicted. The

⁹¹ CFRN 1999, Seventh Schedule.

State apparatus is usually quick to observe the commission of electoral infractions without a commensurate action to confront the monster. This laxity has been attributed to a seeming relationship between perpetrators of electoral malpractices and political elites. No doubt, prosecution of electoral offenders has been at the lowest ebb in spite of the quantum of destruction of public property and the height of mayhem unleashed on the polity during elections. The copious provisions of offences under the Electoral Act appear to be for academic research purposes as they do not enjoy the aura of enforcement. The relevant provisions of the Criminal Code, Money Laundering (Prevention and Prohibition) and Penal Code Acts have not been invoked by Nigeria Police Force, Economic and Financial Crimes Commission or Independent Corrupt Practices and other Related Offences Commission. Political Influence has been extensively utilized by the ruling party to perpetuate itself in power. To that extent, the ruling party employs all manner of subterfuges and machinations to win election at all cost.

9. Corruption

Electoral process is driven by institutions established under the Constitution and of other statutory enactments. There have been allegations of corruption made against members of the Executive and Legislative branches in their pursuit to either capture or retain the essence of power. The Nigerian State has acknowledged the operational influence and negative impact of corruption on the nation. This informed the will of the polity to establish EFCC and ICPC with intent to frontally confront the vice. Electoral corruption manifest in the use of money to compromise all relevant state actors in the electoral environment to secure victory at the poll. There have been instances where electoral officials and security operatives have been compromised by political parties and contestant to obtain electoral favour. The Nigerian society felt that such unethical practice would receive the wrath of the Court as the last hope of the oppressed.

However, corruption appears to have crept into the judiciary and fortunately, the National Judicial Council has been exercising disciplinary control over judicial officers. It has been thought that corruption was prevalent among Benchers in the lower echelon of judicial hierarchy. Recent happenstances point to the prevalence of corruption in the superior Court of record. On May 8 2023, Senator Adamu Bulkachuwa on the floor of plenary session of the Senate in his valedictory speech said that he encroached on the independence and freedom of his wife to help many of his colleagues in the Chamber. He stated that his wife Justice

Zainah Adamu Bulkachuwa who was President of the Court of Appeal was of great assistance to many Senators who obtained judicial victory in their electoral litigations.⁹² The doctrine of *stare decisis* evolves mostly from the lips of the Court of Appeal and Supreme Court of Nigeria. Electoral litigations arising from Legislative Houses election terminate at the Court of Appeal. This presupposes that principles of law developed in cases before the Court constitute caselaw in respect of legislatives Houses election. As it were, the Court of Appeal being the final appellate Court in that regard has built a dangerous caselaw tainted with strands of injustice. It is therefore clear that justice has been sacrificed at the altar of corruption orchestrated by spousal influence.

10. Selfish Interest of State Leaders

Governance being driven by human beings conceptualizes the exhibition of patriotism in the discharge of varying responsibilities. Issuing Executive Orders, Regulations and the formulation of enactments require the injection of national interest into the envisaged activity. Since the attainment of meaningful livelihood in Nigeria is predicated on holding political office or benefiting from government largesse through political patronage by way of contracts, political leaders tie their economic fortunes and sustenance to continued occupation of government office in perpetuity. These objectives can only be achieved by political office holders throwing public interest to the wind so that their personal desire of wealth amassment could be attained. The Electoral Act as a legislation made by legislators and majorly intended to regulate the conduct of elections is of utmost importance to them. It is the legislators and their likes who have the financial wherewithal to contest elections and therefore infuse into the Act provisions which further their interest. The Nigerian National Assembly was hesitant to provide for the adoption of technology in the Electoral Act for conduct of elections. It took public outcry before the National Assembly could introduce the use of card reader machine or any other electronic device in the Electoral Act 2022. Even at that, the Assembly preferred manual collation and transmission of election result to electronic transmission which is international best practice in democracies worth the salt.

The Independent National Electoral Commission filled the gap when it provided in its Regulations and Guidelines for the Conduct of Elections 2022 that election result would be transmitted electronically to

⁹² B Ajibade 'Bulkachuwa's Statement Confirms Corruption in Judiciary' *The Punch* (Lagos, 16 June 2023) 1.

its collation system.⁹³ The fear of the legislators may well be that adopting electronic transmission of election result in the Electoral Act would rob them of the power of manipulations to remain in office so long as they can manoeuver. The cry of Nigerians for electronic voting has also failed to appeal to the ears of legislators. Their argument has been that broadband internet penetration in Nigeria is not strong enough to support electronic polling. The successful utilization of electronic voting by Nigerian Bar Association for about a decade has not persuaded the National Assembly that electronic voting is attainable. State leaders in the executive arm also device all subterfuges in their political arsenal to further their electoral victory. In addition, prospective political recruits into leadership evolve all ways and means to gain access to power and the cycle for promoting personal interest yields further.

9. Conclusion

Elections in Nigeria have been characterised by species of electoral irregularities perpetrated by some members of the electorate and criminally minded persons so as to attain political power at all cost. Attempts have been made to confront the monster with intent to reduce its grip on the nation and engender electoral transparency and democracy. The legislative politburo of the nation has utilized the instrumentality of legislation to sanitise and fine tune the electoral process. This manifests in the various amendments of electoral Act, the latest being Electoral Act 2022. The initiative navigated through the adoption of option A4, secret balloting, technology as well as certain administrative and fiscal regulations aimed at engendering electoral democracy and integrity. The perpetration of electoral malfeasance has led to the production of government with questionable legitimacy and the assassination of faith of the citizenry in the electoral engineering process of the polity. A concomitant implication of electoral fraud has also resulted in zero tenure practice of many African leaders who manipulate the state apparatus and instruments of coercion to retain power in perpetuity. The output of Government bereft of the steam of legitimacy is widespread misgovernance and the attendant practice of kleptocracy by state leaders. The wind of military coups blowing across West Africa is directly proportional to poor governance by the bourgeois elites in leadership.⁹⁴

⁹³ INEC Regulations and Guidelines for the Conduct of Elections 2022 r 38.

⁹⁴ I Oyedeyi, 'Only Good Governance can Rescue Democracy in West Africa' *Nigerian Tribune* (Lagos, 20 September 2023)

Since political leadership of the country determines the well-being and development trajectory of both the citizenry and the polity, people pay adequate attention to the political recruitment process. Given the level of enlightenment the Nigerian populace has attained, governance has attracted a critical evaluation and statesmen must come to that reality. This understanding has led to the making of certain regulations and guidelines to aid aggrieved persons over electoral conduct to ventilate their grouse before appropriate dispute resolution machinery. While the nation is grappling with the effect of electoral fraud, there has been advocacy for a radical departure from manual to electronic balloting. Experiences in developed electoral democracies have shown that zero electoral malpractices cannot be attained as misconduct is an intrinsic element of society.⁹⁵

In the search for the attainment of electoral integrity and transparency, this paper advocates that applications for the post of the Chairman, Members and Resident Electoral Commissioners of INEC be made through an open advertisement, screening and competitive interview of candidates by the National Institute for Legislative and Democratic Studies. The institute should forward names of recommended applicants to the President who would in turn seek the approval of the Senate. It is also recommended that INEC should ensure real-time publication and electronic transmission of election results, the establishment of Electoral Offences Commission for the prosecution of electoral offenders, the extinction of human contact during elections by the adoption of electronic voting, provision for live telecast of election proceedings as well as the amendment of the Constitution and Electoral Act 2022 to reflect the recommendations made herein.

⁹⁵ *M Laxmikanth, Indian Polity (McGraw Hill, New Delhi 2017) 42.*