

Voting rights and Constitutionality of the Amended Nigerian Electoral Act 2022

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ABSTRACT

Voting rights are general adult franchise granted to the populace in a political election to enable voting and being elected. It is an active suffrage system that has made any form of discriminatory voting practices illegal in Nigeria. You are entitled to these rights simply by virtue of being a citizen of Nigeria and fulfilling other legal requirements. These rights were enshrined in the Nigerian constitution, as well as the Electoral Act as amended and other laws. In terms of these rights, the new Electoral Act as amended introduced new provisions. This paper investigates voting rights, different types of innovations in the amended Electoral Act, as well as its constitutionality and implications.

Keywords: Voting rights, Constitutionality and amended Laws.

INTRODUCTION

Voting rights in Nigeria reflect the country's complexity. The Clifford constitution, enacted in 1923 at the start of colonial rule, reflected the diversity of people groups and distinct cultures. The northern, eastern, and western regions of Nigeria are dominated by Hausa, Fulani, Igbo, and Yoruba people, who have often held opposing views on franchise qualifications. Gender difference, nationality, residence, age, tax, and income requirements are among the criteria for voting rights in early Nigeria. Under Nigeria's federal constitution from 1960, which was overthrown by military coups in 1966 but continued in effect until 1999, voting requirements were standardized. Before 1960, an electoral commission was established, and it oversaw all of the elections held prior to independence. The Federal Electoral Commission (FEC), established in 1960, oversaw the first post-independence

federal and regional elections in 1964 and 1965. In 1978, the Federal Electoral Commission (FEDECO) was established. The National Electoral Commission of Nigeria (NECON) was established in 1993. It was dissolved in 1998, and the Independent National Electoral Commission was established. The Independence National Electoral Commission's (INEC) goal is to promote majority rule in which people have supreme power. Women in the southern and eastern regions gained voting rights in 1954, while women in the northern regions gained voting rights in 1979¹. The bill that sought to permit diaspora voters in Nigeria to cast ballots during elections was rejected by the National Assembly on March 2, 2022². This paper investigates voting rights and voter responsibility during elections, INEC and its institutional frameworks, and innovations in the Amended Electoral Act 2022.

Types of voting rights

1. Rights to vote in an election

2. Right to be voted for in an election

Right to vote in Nigerian Election

The right to vote is one of the founding principles of democracy. The principle of holding periodic and genuine elections by universal suffrage is an element of

democracy. The right to vote is not explicitly recognized as a fundamental human right guaranteed in **Chapter four of the Federal Republic of Nigeria's 1999**

¹ <https://qwenu.com/2019/02/19/a-brief-history-of-inec-20-years-after/>

² <https://punchng.com/dont-flout-law-on-elections-funding-fg-warns/?amp>

Constitution. There is an international guarantee of voting rights and free elections. According to **Article 21 of the Universal Declaration of Human Rights**, "the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections by universal and equal suffrage and shall be held by secret ballot or be equivalent free voting procedures." The right to vote and be elected is universal and equal, and elections must be held by secret ballot, ensuring the free expression of the electors' will³. The right to vote is the first existing right that ensures the protection of other rights, such as the right to life⁴, right to dignity of human person⁵ and the right to be free from discrimination⁶. The constitution implicitly recognizes these political rights

and associations.⁷ As a result, the provisions of Nigerian law accord the right to vote as a fundamental political right to all eligible citizens. The court stated in the old United States case⁸ that the right to vote is fundamental when it stated: "No right is more valuable in a free country than the right to vote for those who make the laws under which a good citizen must live. Other rights, even the most fundamental, become illusory if the right to vote is weakened". The Nigerian case of **Amechi V. INEC**⁹, the court quotes D. Workin, thus "True democracy is not just statistical democracy, in which anything a majority or plurality wants is legitimate for that reason, but communal democracy, in which majority decisions are legitimate only when they are made by a majority of equals."¹⁰.

Qualifications of the eligible voter in an election¹¹.

1. A citizen of Nigeria
2. The citizen has attained the age of eighteen (18) years.
3. The citizen must be free from any incapacity to vote under any law in Nigeria.
4. The citizen must have a valid voter's card.

- denied from the qualified citizen¹².
2. Right to vote and be voted for
3. Right to recall an elected representative
4. Right to participate in campaigns and rallies of the political parties
5. Right to choose the candidate to vote for
6. Right to information about the details of the elections such as the time, date, procedure etc

However, a qualified voter in Nigeria has the following rights:

1. Right to Register: right to register is stipulated by the constitution and cannot be

Responsibilities of a voter during an election.

1. To turn up at the polling unit between 8:00 to 2:00 pm on election day.
2. Duty to register and collect voters' card.
3. Duty to obey all the laws and regulations governing the

- electoral process to ensure peace and orderliness for a free and fair election to take place.
4. Duty to take part in encouraging others to exercise their rights to vote during

³ Article 25 of the International Covenant on Civil and Political Rights

⁴ Section 33 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

⁵ Section 34 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

⁶ Section 42 of the 1999 Constitution of the Federal Republic of Nigeria as amended.

⁷ Sections 7,40, and 77 of the 1999 constitution of the Federal Republic of Nigeria as amended.

⁸ **Westberry V. Sanders** (376 US 17).

⁹ (2007) 9 NWLR (Pt. 1040).

¹⁰ 33 part 1 NSCO, LR pg 457-458 and Workin R. D "Bill of Rights for Britain," 1990, PP.33-36.

¹¹ Section 12 of the Electoral Act as amended and Rule 2 of the INEC Regulations and Guidelines for the Conduct of Elections,2019.

¹² Section 77 of the Constitution of the Federal Republic of Nigeria as amended.

elections to help reduce apathy.

Responsibilities of the government in actualization of citizen's votes includes the following:

1. Duty to ensure efficient registration of voters.
2. Duty to instill the sense of duty to vote in citizens.
3. Duty to provide adequate security on the election day to
4. Such other duties that can avoid rigging and other electoral malpractices. make voting possible to reflect the popular will of the people.

Right to be voted for in Nigeria.

A qualified voter who has certified the provisions of the law has this right. A person must put himself forward as a candidate for an elective office through the sponsorship of a political party in order to be voted for. All qualified voters

have the right to vote; however, not all voters can be voted for in an election if the person is disqualified from contesting the election or has not met the legal requirements, which vary depending on the type of elective office at stake.

Legal frameworks for Administration of Elections in Nigeria.

The supreme court of Nigeria in **Miscellaneous Offences Tribunal V. Okorafor**¹³ state that "Nigeria's constitution is founded on Rule of Law, the primary meaning of which is that everything must be done according to law". It means that the conduct of all the elections in Nigeria should be done according to the dictate of the provisions of the law. These laws govern the nomination of candidates for an elective post and conduct of all the elections. These laws include:

1. The Constitution of the Federal Republic Nigeria¹⁴
2. Electoral Act¹⁵
3. International Treaties and Conventions, such as:

- Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)
- Universal Declaration of Human Rights (UDHR)
- Convention on the Political Rights of Women (CPRW)
- African Charter on Democracy, Elections and Governance (ACDEG)
- International Covenant on Civil and Political Rights (ICCPR)

4. Guidelines on elections and its various roles in election proceeding.
5. Case law

The Constitution of the Federal Republic Nigeria

The constitution is the supreme law of the country, section 1(3) of the constitution (as amended) 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."

Sections 7(4), 40 and 77(2) implicitly provide for Political Rights and Association.

Section 7(4) provides that:

Section 77(2) Provides that:

"The Government of a State shall ensure that every person who is entitled to vote or be voted for at an election to House of Assembly shall have the right to vote or be voted for at an election to a local government council".

Section 40 provides that:

"Every person shall be entitled to assembly freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any association for the protection of his interests".

¹³ (2001)18 NWLR (PT 745) 310 at 327.

¹⁴ As Amended

¹⁵ As Amended 2022

Every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, shall be entitled to be registered as a voter for that election.” The constitution states clearly ways one can occupy the elective offices at the local, state, or federal level. The constitution prescribes the qualification of persons vying for some offices recognized or created by the constitution must meet before they can participate in elections in those offices¹⁶. The constitution also

prescribes ways in which someone can be disqualified from elective political office¹⁷. Item 22 of the exclusive legislative list provides for the election of the President, Vice President, Governor, and Deputy Governor, as well as any other office to which a person may be elected under the Constitution, excluding election to a local government council or any other office in such council. Items 11 and 12 of the concurrent list address voter registration and the procedure for holding elections to a local government council

Electoral Act¹⁸

The National Assembly enacted the Electoral Act in accordance with its constitutional authority to pass laws for the peace, order, and good government of the Federation or any part thereof with item 22 under the Exclusive Legislative List. The Electoral Act 2022 is the result of the repealed Electoral Acts. The provisions of the Act, which primarily aim to improve the conduct of free and fair elections, are comprehensive enough to effect the desired reform of the entire electoral system. The new Electoral Act, 2022 is to regulate the conduct of Federal, State, and Area Council elections, to make provisions for the restriction of the qualification for elective office to relevant provisions of the Nigerian Constitution of 1999 (as amended), to allow for the use of card readers and other technology devices in elections and political party primaries, to set deadlines for the submission of candidate lists, to establish criteria for candidate substitution, limit of campaign

expenses, and address the omission of names of candidates or logo of political parties. The Electoral Act, 2022 has about 153 sections and each section deals with specific subject-matter. The Act is divided into various parts, which has substantive subject-matter therein. For instance, part 1 deals with Establishment and functions of INEC, i.e. Sections 1-7, part 2 deals with staff of the commission i.e. INEC i.e. Section 8, while part 3 is headed National Register of Voters and Voters Registration which encapsulates Sections 9 - 23. Part IV is on the Procedure at Election, which covers Sections 24 - 74 while Part V deals with Political parties i.e. Sections 75-97. Section 98-113 is covered in Part VI. Sections 120-129 are covered in Part VII of the Electoral Act, 2022 under the heading Electoral Offenses, while Sections 130-140 are covered in Part VIII under the heading Determination of Election Petition. Sections 141-153 are covered by Part IX, which is titled miscellaneous provisions.

Innovations enacted in the Electoral Act, 2022

1. Section 29(5) which provides as follows: “Any aspirant who participated in the primaries of the political party who has reasonable grounds to believe that any information given by his political party’s candidate in the affidavit or any document submitted but that candidate in relation to his

constitutional requirement to contest the election is false, may file a suit at the Federal High Court, against the candidate seeking the information contained in the affidavit is false”. Meritocracy should always be used to evaluate aspirants and appointees for positions in the Federal, State, and

¹⁶ Sections 106, 107, 65, 66, 131, 142(2) and 187(2) of the constitution of Federal Republic of Nigeria as amended.

¹⁷ Sections 177, 182, 131 and 137 of the constitution of the Federal Republic of Nigeria as amended.

¹⁸ Electoral Act, 2022.

- Local Government Civil or Public Service¹⁹.
2. Section 84(12) of the Electoral Act, 2022, the Section provides as follows; “no political appointee at any level shall be a voting delegate or be voted for at the convention or congress of any political party for the purpose of the nomination of candidates for any election”. This means that anyone in the Federal, State, and Local Government, Civil, or Public Service must resign at least 30 days before the election date²⁰.
 3. The Independent National Electoral Commission has financial independence (INEC)²¹: The new Act creates the Independent National Electoral Commission Fund, which will be used to pay payments from the Federal Government, investments made from the fund, and other aids and grants to the Independent National Electoral Commission (“the Commission”). Furthermore, the Act requires that any election funds owed to the Commission for general elections be released no later than one year before the next general election. This clause gives the Commission greater financial independence because it allows it to receive funds directly for the conduct of elections rather than after being vetted by the Ministry of Finance as was the case under the previous Act²².
 4. Early Party Primaries Encouraged: The new Act requires political parties to submit a list of their sponsored candidates who have emerged from valid primaries held by the party no later than 180 days before the date set for a general election²³. This is in contrast to the

- previous Act, which required this submission to be made at least 60 days before the date of general elections²⁴. The extension of the deadline for submitting party candidate names from 60 to 180 days requires political parties to hold their primaries early enough to meet the deadline for submitting their list of candidates at least 180 days before the election.
5. Under the new Act, if the number of votes cast at an election in any polling unit exceeds the number of accredited voters in that polling unit, the Presiding officer shall cancel the result of the election in that polling unit²⁵. Based on the provisions of the new Act, ‘over voting’ would mean where votes cast at a polling unit exceeds the number of **accredited voters**²⁶ and not the number of **registered voters** as provided in the former Act²⁷.
 6. Legal support for electronic voting and results transmission: Smart card readers, electronic voter accreditation, and any other voter accreditation technology that INEC implements are all legally permitted²⁸. When an INEC-deployed card reader malfunctions and a new card reader or other technological device is not deployed, the election is canceled and a new poll is organized within 24 hours. Electronic transmission of election results in accordance with the procedure determined by the commission²⁹.
 7. Extended time to publish election notices: Nigeria's electoral commission has been given more time to announce the election date and location where nomination

¹⁹ **PDP VS. DEGI EMERIENYO** (2021) 9 NWLR (PT, 1781) page 274

²⁰ **DADA VS, ADEYEYE** (2005) 6 (Pt. 920) Page 1.

²¹ Section 3 of the Electoral Act 2022.

²² Section 5 of the Electoral Act, 2010.

²³ Section 29(1) of the Electoral Act, 2022.

²⁴ Section 31(1) of the Electoral Act, 2010.

²⁵ Section 51(2) of the Electoral Act, 2022.

²⁶ Section 138 Of the Electoral Act, 2022.

²⁷ Section 53(2) of the Electoral Act, 2010.

²⁸ Section 47 and 50(2) Electoral Act, 2022.

²⁹ Section 50(2), Electoral Act, 2022.

papers must be submitted³⁰. The Commission is required to issue a notice in each Federal State and the Federal Capital Territory no later than 360 days before the date set for holding an election under this Act.

8. Political appointees are not eligible to vote or run for office: **Section 84 of the Electoral Act 2022** provides for political parties to nominate candidates. One of its provisions prohibits Political Appointees from acting as Voting Delegates. No political appointee at any level shall be a voting delegate or be voted for at any political party's convention or congress³¹.
9. Provision is made for a centralized electronic voter database: The Electoral Commission will keep the Register of Voters at its National Headquarters and other locations. The Register must be kept in electronic format in addition to manual, printed, paper-based, or hardcopy format. This provision is commendable because it will promote transparency and efficiency in the Commission's record-keeping³².
10. Over voting is being redefined: If the number of votes cast at an election in any polling unit exceeds the number of accredited voters, the Presiding Officer shall cancel the election result in that polling unit³³. This is an improvement over the repealed electoral law, which stated that the number of registered voters, rather than accredited voters, would be used to determine over-voting at election tribunals, and that only the commission could declare the election at the polling unit null and void.

11. An early campaign start and a longer campaign period: Each political party's period of public campaigning begins 150 days before Election Day and ends 24

³⁰ Section 28 and 30 Electoral Act, 2022.

³¹ SECTION 12 of the Electoral Act.22

³² SECTION 9(2) of the Electoral Act.

³³ SECTION 51(2) of the Electoral Act.

hours before Election Day³⁴. This provides political parties and candidates with ample opportunity to market themselves to the general public.

12. Candidate death before or during the election³⁵: If a candidate dies before the election begins, the election will be postponed and a new date will be set. In the event of a presidential, gubernatorial, or

Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).

It is often referred to as an international bill of rights for women. The Convention lays the groundwork for achieving gender equality by ensuring women's equal access to and opportunities in political and public

Universal Declaration of Human Rights (UDHR)

According to the UDHR, everyone has the right to participate in his/her country's government, either directly or through

Convention on the Political Rights of Women (CPRW)

Women shall be entitled to vote in all elections on equal terms with men, without discrimination, and shall be eligible for election to all publicly elected bodies established by national law, on equal terms

African Charter on Democracy, Elections and Governance (ACDEG)

This charter emphasized the importance of good governance, popular participation, the rule of law, and human rights; the role of election observation missions must be

International Covenant on Civil and Political Rights (ICCPR)

It is the foundation of democratic governance and genuine elections under international law. It expressly grants the

Guidelines on elections and its various roles in election proceeding⁴².

In exercise of the powers conferred by the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act 2022, the Independent National Electoral Commission (INEC), herein referred to as "the Commission," issues the following regulations and guidelines for the conduct of Elections

federal capital territory area council election, the running mate must stay in the race and nominate a new running mate. If a candidate dies after the polls have begun but before the announcement of the final result and declaration of a winner, the election will be suspended for no more than 21 days.

life, including the right to vote and run for office³⁶. Countries that have ratified or acceded to the Convention are legally required to implement its provisions³⁷.

freely chosen representatives, as well as the right to equal access to public service in his/her country³⁸.

with men, without discrimination. Women shall be entitled to hold public office and perform all public functions established by national law on equal terms with men, without discrimination³⁹.

expanded, particularly because they play an important role in ensuring election regularity, transparency, and credibility⁴⁰.

right to participate in the administration of public affairs as well as equal suffrage⁴¹.

(General Elections, Off-Cycle Elections, Bye-elections, Re-run Elections, and Supplementary Elections). These Regulations and Guidelines are issued in accordance with Section 148 of the Electoral Act of 2022. They supersede all other regulations and/or guidelines issued by the Commission on election conduct

³⁴ SECTION 94 of the Electoral Act, 2022.

³⁵ SECTION 34 of the Electoral Act, 2022.

³⁶ Article 2, 7 and 9 of CEDAW

³⁷ Section 42 of the 1999 Constitution as amended.

³⁸ Article 21 of UDHR.

³⁹ Article I,II, and III of CPRW

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<https://www.achpr.org/legalinstruments/detail?id=29>

⁴¹ Article 25 of ICCPR

⁴² Regulations and Guidelines for the Conduct of Elections, 2022

and shall remain in force until replaced by new Regulations and Guidelines or updated through revisions or

supplementary regulations and guidelines supported by Commission Decision Extracts or an official gazette.

Case law

Case law forms part of the sources of electoral law through the doctrine of judicial precedent and stare decisis. Judicial precedent or stare decisis is the foundation on which the court and a legal practitioner can decide what the law on a particular subject matter is. It is founded on interpretation of statutes, constitutional provisions, general application of principles of law, be they customary or common law; opinions of academic writers, et cetera. The doctrine of precedent helps to establish certainty in the law and make the society well guided⁴³. The application of any principles of law laid down, enunciated, stated and restated in earlier or previous cases depends largely on the peculiar facts and circumstances in

later cases. The courts do not apply the same set of principles in cases having different factual situations unless such cases are on all fours or are substantially similar with one another and it is the facts of a case that frame issues to be decided, and which principles of law would be applicable to later cases⁴⁴. Supreme Court stated in the case of **Abubakar v. I.N.E.C.** that the doctrine of substantial compliance is that its consideration will only arise where the petitioners have succeeded in establishing substantial non-compliance with the principles of the Electoral Act, or, in the alternative, substantial effect on the election result of any infraction of the said Act, no matter how minuscule the transgression may be⁴⁵.

CONCLUSION

The legal frameworks for election administration in Nigeria are a commendable effort to keep the Nigerian electoral process on par with that of other democratic countries around the world, especially as we approach the 2023 general elections. It will go a long way toward restoring transparency and accountability to Nigeria's electoral process if properly

applied or implemented. The issue of diaspora voters in Nigeria casting ballots during elections should be addressed so that every citizen, regardless of location, has the opportunity to vote in an election. This legal protection for women's political participation in Nigeria should be physically visible.

⁴³ Wambai.v. Donatus (2014) 14 NWLR (Pt. 1427) 223 Pp. 247, paras. C-D; 258, para. B; 262, paras. B-D

⁴⁴ A.P.C. v. Obaseki (2022) 2 NWLR (Pt. 1814)273 P. 321, paras. D-F

⁴⁵ Abubakar v. I.N.E.C. (2020) 12 NWLR (Pt. 1737) 37 P. 177, paras. D-E & Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205