ELECTORAL INTEGRITY AND THE ELECTORAL REFORM ACT, 2022:- LAYING THE FOUNDATION FOR A CREDIBLE 2023 GENERAL ELECTION IN NIGERIA

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INTRODUCTION

Nigeria has witnessed elections characterized by various forms of controversy, allegations of electoral fraud and malpractices, often resulting in electoral violence and violations of citizen's rights to vote and be voted for, and to participate freely and safely in democratic governance. Lack of accountability for electoral crimes perpetrated by indicted individuals, institutions, or security agents as well as election officials and political parties' agents, encourages impunity in the electoral process.

This growing culture of electoral impunity questions the INTEGRITY of the entire electoral process in Nigeria. It further questions the LEGITIMACY of huge resource investments in managing our electoral process, having been ranked recently as one of the most expensive in the world. LEGITIMACY questions routinely trail most political office holders. Their claims to political power have traditionally been settled Not by the people (Voters) but by

the Courts of law and tribunals as the recognised NON-VIOLENT election dispute resolutions mechanisms.

It is against this background that Nigeria embarked upon various electoral reforms between 2010 and February 2022. The four key reasons why the episodic electoral changes (reforms) aimed at strengthening our democratic process are: -

i. The imperative of curbing the growing culture of impunity.
ii. The need to enhance transparency and accountability in our electoral process.
iii. Promoting electoral integrity.
iv. Enhancing access to electoral justice.

HHHFA: - Integrity, Transparency, Accountability and Justice

The Hubert H. Humphrey Fellowship Alumni Association, Nigeria Not only believes in, but promotes the following: -

i. Integrity, Transparency and Accountability in Governance at all levels and in both public and private sectors of our economy;
ii. Combating Corrupting and Abuse of Power - Sections 15(5) of the constitution;
iii. Participation, of not only its members, but also all eligible Nigerians, in democratic governance and in decision-making processes affecting their lives as relevant, if not, equal stakeholders – Sections 14(2) (c) and (d) read together (on participation and sovereignty) of the Constitution.

iv. The security and welfare of all people as the primary purpose of government – section 14 (2)(b) of the constitution.
v. Non-Violent means of dispute settlement, using courts of law and other recognized Alternative Dispute Resolution (ADR) methods (such as Mediation and Arbitration).

The above sense of commitments on the part of a prestigious body like HHHFA with Professionally acclaimed members both in private and public sectors, tie into the rationale behind Nigeria's electoral reform initiatives since 2010, that brought about some episodic changes in our electoral process.

WHAT IS THE NATURE AND SCOPE OF NIGERIA'S ELECTORAL REFORM INITIATIVES, 2010 T0 2022: - WHO ARE THE TARGET GROUPS? ANY POSSIBLE LEGAL IMPLICATIONS, MOVING FORWARD? TAKE AWAYS.

The nature and scope of Electoral Reform initiatives in Nigeria can be seen from 3 stages affecting various target groups:- Pre-election, Election and Post-election stages.

Table 1 below depicts the key reform initiatives on Pre-Election matters and affected target groups.

The justification for key reform on Pre-Election matters lies in the fact that poor internal party democracy and accountability remain the critical challenges of improving the governance mechanism of political parties in Nigeria and making it a functional instrument for the development of Nigeria's nascent democracy. As it is today, it has failed to be issue-driven, ideologically focused as well as respectful to party constitutions and guidelines,

particularly in the conduct of party primaries / ward congresses, and distribution of power among its ranks.

The foregoing has serious implications for national development in terms of prospect for evolving a systematic, efficient and purposeful leadership recruitment or selection process, capable of crystalising the ideals of good governance, while promoting the ideals of integrity, honesty, commitment to, and respect for the rule of law, to an effective reward system and a disciplined approach to the management of the common wealth.

According to the Supreme Court of Nigeria, a Pre-Election matter is "a cause of action which predates and does not constitute any complaint against the actual conduct of an election. That issues of nomination and sponsorship of party's candidates for an election precede the elections and are therefore Pre-Election matters".

Table 1 below explains the recent electoral reforms initiatives on pre-election matters.

Table 1: - Key Electoral Reform Initiatives on Pre-Election Matters

1.Party primaries with timelines to submit list of candidates to INEC and Exception to the prohibition of substitution of candidates/Exclusion of political appointees from voting and being voted at primaries	**2.Locus standing to challenge nomination of candidates and the legal implications**	**3.Exclusive Jurisdiction on pre-election disputes over conduct of party primaries**	**4.Limitation on Campaign Financing and Prohibitions during political broadcast and campaign by parties, as well as liability regime upon conviction ranging from fine, imprisonment and forfeiture under sections 89-97 EA 2022:-**
• Section 29(1) Electoral Act, 2022, requires that	• Sections 29(5) Electoral Act,	• The EA 2022 having repealed the	• Section 85: - offences in relation to

political parties must conduct primaries and submit their list of candidates resulting from validly conducted primaries, at least 180 days (6 months) before the general elections. • This is a welcome development as it gives INEC 6 months , as opposed to 60 days under the earlier law, to procure all election materials and services, demonstrate readiness and quality assurances to conduct elections. • Section 33 of the 2022 EA disallows political parties to change or substitute candidates whose names have been submitted to INEC. • Except in the case of death or withdrawal by the candidate or under Section 34	2022 restricts locus standing to institute pre-election cases to Aspirants within the same political party. Thus only a member of the political party who took part in the primaries that has locus to challenge the nomination of the candidate suspected to have submitted false information and/or document to the INEC. **NB**. The implication of sections 29(5) is that such an allegation against the candidate by an aspirant from the same party is considered an internal party wrangling and a	2010 EA also delisted the earlier concurrent jurisdiction conferred on State, Federal and FCT High Courts, by granting exclusive Jurisdiction to only the Federal High Court to hear and determine pre-election disputes arising from party primaries, for redress (Section 84(13-14)). **NB.** The implication of the above exclusive Jurisdiction is that Judges of the Federal High Court across the Federation that are already overwhelmed by case loads will probably be further overstretched by pre-election disputes. **NB**: - In about 3 weeks from the date of Assent of	finances of a political party; • Section 86: - Submission of party annual statement to INEC detailing assets, liabilities and source of funding and sanctions for violations. • Section 87: - INEC's power to limit contribution to a party with sanctions of exceeding limit. • Section 88:- Limitation of election expense by candidate for presidential, NASS, Governorship, State assemblies and LGAs, ranging from 5 billion to 50 million naira. • Section 88(8): - prohibits individual or other entity donation to a candidate beyond 50 million naira with sanctions for exceeding limits. • Section 89: - allows INEC to determine the

where it is meant to replace a deceased candidate who died during an election. • Section 84(12)EA 2022: - disqualifies political appointees from voting or be voted for as delegates to the convention/congress of any political party for the purpose of the nomination of candidates for any election. **NB**:- what is the rationale behind this provision? • Does it undermine the power of political parties to regulate themselves, conduct their own primaries and determine eligibility criteria for participation in primaries? • Does it discriminate against political appointees of ruling parties? • Already declared unconstitutional	member of another political party or public have no right to challenge such a candidate that submitted false information/documents to INEC **NB.** Another implication is that an aspirant who succeeded in proving that candidate submitted by their political party who subsequently won the general election and declared by the Federal High Court to have perjured, will not be returned as a winner but rather, a candidate of the opposition party that came 2nd in the election will be returned as the winner. Hence such a successful aspirant against his party candidate will have empty Judgement, and he can best be described as a spoiler (section 29(6)).	the EA 2022, the Federal High Court, Umuahia was asked to determine the constitutionality of section 84(12) on political appointees in the case of Nduka Edede v. AGF (Suit No. FHC/UM/CS/26/2022, where the Judge on 18th March 2022, declared it unconstitutional, null and void for disenfranchising, limiting and disqualifying or ousting the constitutional right or eligibility of any political appointee, political or public officer holder to vote or be voted for at any convention or congress of any political party for the purpose of nomination of candidates for elections.)	cap for election expenses to be incurred by a political party. The violation of which attracts sanctions. • Section 90: - on disclosure of sources of funding by party to INEC. • Sections 91-97: - Prohibits certain conducts during rallies and campaigns such as the use of violence or thuggery, abusive, slanderous, religious or tribal campaign, broadcast 24 hours preceding or on polling day, disadvantageous media coverage, etc.

by a Federal High Court.			

Table 2 : - Election And Post-Election Phases Reform Initiatives

1	• Section 3 EA 2022 provides for release of funds for General Elections to INEC at least ONE YEAR before the election. • This clause aims at putting INEC on a financially secure and comfortable advantage to procure its goods and services timeously for a more efficient and effective election administration than the logistics nightmare INEC faced in 2019 due to late release of funds
2	• Section 51(2) EA 2022 is to the effect that the total number of Accredited Voters will be the determining factor in cases of over-voting, and the presiding officer shall cancel the result of the election in that polling unit.
3	• Section 47 gives legal backing to the use of Smart Card Reader((SCR) or any other technological device that INEC may deploy for Accreditation of voters and voting on election day. Where such a device malfunctions, INEC is empowered to cancel the election in that polling unit and rescheduled within 24 hours another election.
4	• Section 50 declares that voting at an election shall be open secret ballot and gives legal backing for INEC to possibly use electronic means of transmission of results. • Hopefully this should bolster transparency to the process, make nonsense of ballot snatching and elicit voter confidence to turn out enmasse on election day.
5	• Section 54 empowers INEC to make necessary arrangements for Persons with Disabilities and special needs to cast their voters on election day. • This clause is consistent with section 42 of the constitution that prohibits discrimination on any ground of Disability.
6	• Sections 114 – 129 provide for Stiffer Penalties: - imprisonment or fines or both for various forms of Electoral offences / malpractices / fraud that political parties,

	candidates, supporters, INEC officials and law enforcement officials do, and could commit.
7	• Post-Election reform initiatives by the EA 2022 includes: - clearly set out post-election procedure, collation, declaration and posting of results; determination of election petitions, prosecution and trial of election petitions/cases.
8	• More importantly is the legal recognition of Election Tribunals / Appellate courts as the Necessary Non-violent means of election disputes resolution (sections 130 - 145) • Efforts have been made by the Judiciary to Fast-Track Election Disputes Settlement in order to avoid unnecessary delay in the dispensation of electoral Justice, through the Elections Tribunals and Appellate Courts Practices Directions.

TAKE-AWAYS

1. The Electoral Act 2022 ushered in about twenty innovative provisions (on pre-election, election, and post-election matters) that will aid in the conduct of free, fair and credible elections, ALL OTHER FACTORS HELD CONSTANT, BECAUSE IT IS NOT A PANACEA FOR ALL THE CHALLENGES THAT BESET THE ELECTORAL PROCESS IN NIGERIA.
2. Election Security is the business of all political parties, candidates and their supporters, though primarily the duty of law enforcement / security agents to protect the ballot boxes, INEC officials and voters against any form of intimidation, disruption or violence.
3. Electoral Integrity is the responsibility of all to promote and protect by e.g., ensuring that: -
    - Campaign financing and Media Regulations are complied with in order to address the Phenomena of Money Politics and Vote Buying / Selling, Voter Suppression and Spread of

Hate Speeches / Fake News: - that seek to undermine electoral integrity and peaceful conduct of elections in Nigeria.

4. Even though the Electoral Act 2022 is a remarkable improvement on the repealed Electoral Act, 2010 (as amended), the right attitude at this stage, is to view it as a WORK IN PROGRESS tool aimed at Strengthening our Democratic Process.