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Appraisal of the Electoral Act 2022: A Curse or Blessing to the 2023 General Elections in Nigeria

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Abstract:
It is trite law that the ultimate goal of a truly democratic nation is to conduct credible, free and fair elections. It is indeed one of the major challenges of the democratization process in a given nation. However, Nigeria is not known to have conducted elections devoid of rigging, vote buying, a re-run of elections, irregularities, malpractices, declaration of the election as inconclusive, etc. Thus, the issues bordering on reform of the electoral system, including the legal framework of the electoral process that will ensure substantial free and fair elections that meet the minimum standard of acceptable democratic elections, cannot but remain an essential goal of democracy in Nigeria. Under such circumstances, the Nigerian Government enacted Electoral Act 2022, introducing new changes such as using card readers and other technological devices, reducing campaign expenses by the political parties, a timeline for submitting lists of candidates, and criteria for substitution of candidates, amongst others. To this end, this paper, while adopting analytical research methodology, examines the Electoral Act 2022 and its innovations as a curse or blessing towards 2023 general elections in Nigeria. The paper revealed that the Act has regulated some unforeseen circumstances noticed in the previous elections, which necessitate post-election litigations across the country and suggests a way forward towards 2023 general election and beyond to meet the minimum standard of acceptable democratic elections.

Keywords: Appraisal, electoral, curse, blessing, violence, election

1. Introduction

It is trite law that the ultimate goal of a truly democratic nation is to conduct credible, free and fair elections. It is indeed one of the major challenges of the democratization process in a given nation. There is no doubt that Nigerian is governed by democratically elected leaders at all levels. Nigeria is yet to institutionalise democracy after several decades of existence as a political entity. On the list of the many sustainability challenges facing Nigeria as a political entity today, corruption comfortably enjoys a top position which virtually becomes a way of life in Nigeria. While Nigeria, as a sovereign nation, has witnessed some amendments in our electoral process as a result of some unprecedented circumstances which helps our electoral jurisprudential analysis as a nation. Nigeria is not known to have conducted elections devoid of rigging, fraud, votes buying, the re-run of the electoral process or the formation of coalitions, irregularities, malpractices, declaration of the election as inconclusive, incessant political defection in Nigeria, lack of internal democracy a common problem with many political parties in Nigeria, distractive litigations. etc. Hence, the issues bordering on reform of the electoral system, including that legal framework of the electoral process that will ensure substantial free and fair elections that meet the minimum standard of acceptable democratic elections, cannot but remain an essential goal of democracy in Nigeria.

It is against this background, and in order to curb the menace of the electoral process, the Nigeria Government enacted Electoral Act 2022, introducing new changes such as the use of card readers and other technological devices, the limit of campaign expenses by the political parties, timeline for the submission of lists of candidates, exclusion of political appointees from contesting an election while in the office, criteria for substitution of candidates among other. Thus, the objectives of this paper are to conceptually analyze Electoral Act and processes, the causes of Pre, during and post-Election violence in Nigeria, the significant changes introduced in the Electoral Act 2022 and its effect towards 2023 general election and beyond.

2. Conceptual Analysis/Processes of Election

Election, in its most usual acceptation, signifies the choice which several persons collectively make of a person to fill an office or place. It is the act or process of choosing someone for public office by voting. Election serves as the most legitimate democratic means of changing governments and policies and legitimizing the rights of rulers to rule. Thus, free and fair elections are central to any programme of democratic transition and consolidation.

Elections have retrained the most visible manifestation of democratic practice. In fact, the call for free and fair electoral competition, based on ascertainable rules of the game, as encapsulated in the leger instruments of electoral law, is a major preoccupation of the airy democratic political system. Elections are important not only for installing democratic governments but as a necessary requisite for broader democratic consolidation. Ideally, elections gave the masses opportunities to have a say in who governs them and how they are governed through the stages of the electoral process. As identified by Amadu Kurfi, the crucial stages of the electoral process are as follows:

- Promulgation of the principal electoral law,
- Delimitation of electoral districts and constituencies,
- Establishment and equipment of polling units,
- A compilation of a register of voters,
- Recruitment, training and deployment of electoral officials
- Provision of logistical support, including procurement and distribution of election materials,
- Fixing of the election date,
- Registration of nominations,
- Casting of the vote,
- Counting of votes and declaration of results,
- Transmission of election results,
- Election petitions

These stages have to be carried out strictly in accordance with the provisions of electoral laws. Failure to comply with these provisions in a substantial manner may lead to the nullification of an election by courts of competent jurisdiction.

In other words, meaningful electoral contests require a system of laws set in advance to define the nature, processes and patterns of electoral processes. Hence, the Constitution of the Federal Republic of Nigeria, 1999, as amended, the various Electoral Acts, and the Independent National Electoral Commission (INEC) Rules and Regulations constitute the legal framework that regulates our electoral process. Provisions of these deal with the right to associate, vote, form Political Parties, registration of voters, Election Day procedures, dispute resolution, etc. Violations of the provisions of these laws often attract penalties, which on conviction, maybe a fine, a term of imprisonment, or both.

3. Significant Changes in Electoral Act 2022

It is said that experience is the best teacher. Nigeria has learnt lessons from the previous enactment and subsequent post-election events that necessitate introducing new changes in the Electoral Act 2022. One such significant changes is the financial autonomy of the Independent National Electoral Commission (INEC). The new Act establishes the Independent National Electoral Commission Fund , with power to receive budget directly from the Federal Government, investments made from the fund and other aids and grants which shall be paid/released not later than one year before the next general election to enable ('the Commission') to perform its functions and responsibilities. Unlike what is obtainable under the previous Act wherein the budget of the commission must be approved by the Ministry of Finance.

Again, the new Act provides that the Commission shall compile, maintain and update continuously to keep the Register of Voters at its National Headquarters and other locations, which shall include the names of all registered voters, provided that the Register shall be kept in electronic format in its central database, in addition to being kept in manual or hardcopy format. This provision would guide against overvoting and illegal voting by non-registered voters. It also helps the Commission for an effective record-keeping of the number of registered voters in each constituency across the country. The new Act provides that the Commission shall, not later than 360 days before the day appointed for holding of an election under this Act, published in each constituency in respect of which an election is to be held across the States of the Federation and the Federal Capital Territory a notice stating the date of the election and appointing the place at which nomination papers are to be delivered.

Distinctive from the previous Act, wherein political parties are to submit the names of party candidates 60 days before the date appointed for a general election, under the new Act, political parties are mandated to submit the list of their sponsored candidates who have emerged from valid primaries conducted by the party not later than 180 days before the date appointed for a general election. This provision gives an aspirant who participated in the primary election and was not satisfied with the outcome of the primary election opportunity to challenge the same in court. It also enables political parties to settle pre-election disputes and a fine of ten million nairas awaits any political party that violates the provision therein.

As mentioned earlier that one of the reasons for the changes in the new Electoral Act 2022 was a result of past occurrence/experience, i.e., the death of a candidate, which necessitates post-election litigations. The new Act provides that where a candidate who has been validly nominated from the primary election dies before the commencement of polls, the election shall be postponed and shall commence within 14 days of the candidate's death. If a candidate dies after polls but before the announcement of the final result, the election will be suspended for not more than 21 days. If the election is for a legislative house, the election shall start afresh and the political party whose candidate died May, if it intends to continue to participate in the election, conduct a fresh primary within 14 days of the death of its candidate and submit the

name of a new candidate to the Commission to replace the dead candidate. Where, however, the candidate is for gubernatorial, presidential and FCT area council elections, the running mate shall continue with the election (as the new candidate) and nominate a new running mate.

This provision was directly targeted to prevent the occurrence of Kogi State incident wherein Prince AbubakarAudu, the All Progressives Congress (APC) candidate in the gubernatorial election held on Saturday, 21st day of November, 2015, died before being sworn in. The cases of P.D.P. v. I.N.E.C. and Amaechi v. I.N.E.C. are apposite here, where the court was invited to interpret and give effect to the combined meaning of section 37(1) of Decree No.3 of 1999 and section 181(1) of the 1999 Constitution. Section 37(1) of the Decree provides as follows:

- If a person duly elected as Governor dies before taking and subscribing to the Oath of allegiance and Oath of office,
- The person elected with him as Deputy shall be sworn in as Governor and he shall nominate a new Deputy-Governor from the same senatorial District as that of the deceased Governor who shall, with the approval of the House of Assembly of the state, be appointed as Deputy Governor.

Section 181(1) of the 1999 constitution, on the other hand, stated that if a person duly elected as Governor dies before taking and subscribing to the Oath of Allegiance and Oath of office or is unable for any reason whatsoever to be sworn in as Governor, the person elected with him as Deputy Governor shall be sworn in as Governor and he shall nominate a new Deputy-Governor who shall be appointed by the Governor with the approval of a simple majority of the House of Assembly of the state."

Under the new Act, the use of electronic devices such as smart card readers, electronic voting machines and other technological devices is allowed in the accreditation process for voters and in the general conduct of elections. Furthermore, the new Act provides for the electronic transmission of election results subject to the provision of section 63 in accordance with the procedure determined by the Commission.

Similarly, the new Act defined 'over-voting' to mean where votes cast at a polling unit exceed the number of accredited voters and not the number of registered voters as provided in the former Act. Hence, where 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 of that polling unit. The INEC may, however, conduct another election where the result of the polling unit will affect the final result of the election.

Another pivotal inclusion in the new Act is the provision of section 84 (12), which exclude Political Appointees from Acting as Voting Delegates or Aspirants unless he/she relinquishes his/her position before they can be eligible to participate in the electoral process either as a candidate or as a delegate. The purport of this provision is to prevent political appointees from using their position to influence/jeopardize the outcome of an election. However, this provision has attracted criticism because of its inconsistency with the provision of the constitution.

4. Election Violence in Nigeria

As violence relating to elections is endemic in African Countries, Nigeria is no exception. Violence in anticipation or before the election, during the election and even after the election (also after the declaration of the result) is no news in the Nigerian election narratives. Indicators of violence at the preparatory level of the election could stem from a candidate's awe perception of another candidate, different religion, intense interaction of the actors, or where elections were canceled or postponed. It could also be informed by the feelings of the populace towards the government. The period before the election is often seen as an opportunity for the masses to air their grievances to which either the incumbent, who is also a candidate or a prospective candidate, pays attention to and either acts or alleys their fears. It could also be in the negative. Before the election, all efforts or acts are devised to affect the electoral process. It ranges from physical harm, threat or intimidation of loss of lives or property. Often, it could be geared towards delaying an election where it is feared that another candidate's change looks promising. It could be to disrupt or derail the poll and subsequently influence the outcome of the election. However, it turns out that it is significant in a democratic setting. Needful to state that while a cold war is felt between the actual candidates themselves, the physical violence is not usually carried out by the Candidates but by their followers. Whether the followers are making the bid or acting on the instruction of the Candidate is best left to imagination and theories. According to Swain, pre-election violence is to 'shape voter preferences and turnout through intimidation and instilling fear of retribution, or when trying to strengthen their position in negotiations to get a seat at the bargaining table.'

Reference to pre-election violence can be taken from the 2007 general election. It needs to be stated that the election campaigns were active and heated and this succeeded in the failed attempt of President Obasanjo to return for the third time. The change in power made pre-election violence imminent and a reality. While the freedom of expression and assembly seem respected, states where a change in power was expected experienced a rather heated and unfavorable bureaucratic interference by the governments in power. About a hundred candidates were disqualified, along with a presidential candidate, Atiku Abubakar, based on several indictments of a panel of enquiry. INEC's action was questioned by the Supreme Court. The outcome of these disqualifications prevented Candidates from having their campaigns. Even some of those not disqualified have their campaigns cancelled or suspended. Some opposition candidates and their supporters were reportedly arrested, detained and then released without any charges being pressed against them before the election. In Gombe State, all campaign-related activities were banned a week before the elections, preventing Congress candidates (Atiku Abubakar) from organizing rallies and campaigns. During this period, some media houses were also closed down for many reasons, including violation of the 24-hours campaign moratorium.

State campaigns, especially in some parts of Gombe and Ogun state, experienced violent incidents such as destroying campaign materials, attacks in INEC and party offices, intimidation and violent clashes between supporters.

The typical assumption of election violence is that minorities, especially young minds, engage in this violence hence blamed and named. According to EU report, in many states, political parties were recruiting and sponsoring thugs, young unemployed, uneducated area boys using drugs to manipulate the election process and intimidate voters. As the elections drew nearer, violent activities elevated in some areas more than in others. It was reported that around 200 people, including police, were killed in election-related violence. This figure is higher in comparison with the 2003 elections, which deepens the difficulties of the Federal Republic of Nigeria in meeting international and democratic standards.

As Nigeria anticipates the 2023 general election, acts of pre-election violence have been perpetrated by presumed individuals who feel that a particular party is not worthy of being projected as the better party to lead the country to a lofty height. On 18 January 2023, a video went viral showing a man being beaten up by some men because he wore a Peter Obi Campaign T-shirt. His car tires were shot flat and it was insisted that there should not be any political campaign in Southeast Nigeria. The fears of pre-election violence for 2023 are getting heightened. Hence, it will not be surprising to hear that already scheduled rallies and campaigns are being rescheduled due to a threat of violence. So it is also reported that about 27 Nigerians were killed in 57 politically-motivated violent incidents between January and December 2022

The worst of election violence is the one witnessed during the election day(s) itself. Theft and destruction of ballot boxes, voters' cards and smart card readers, shootings, killings and scaring of voters away from polling units with total disregard for the sanctity of democracy permeate the narratives of the day. More than 1,149 people, including the employees and security officers of the Independent National Electoral Commission, were killed in three elections held in 2011, 2015 and 2019, while cubicles and other election materials were destroyed. The atmosphere on election days always seems like warfare with the way the political elite prepare for the day using political thugs as their war instrument. Lots of human rights abuses are the order of the day as hoodlums force registrants and election officials to lie down after they have been beaten while they destroy election materials or try to replace them. These are efforts to undermine and frustrate the country's political and democratic process.

The fear of violence, at times, makes voters sit back in their homes instead of going out to exercise their constitutional rights to vote. These thugs have their ways, notwithstanding the presence of security men. In Nigeria, there is no election day that has not witnessed violence. At times because of the fear that some INEC officials may themselves liaise with an opposing party, a party arranges for an armed-gang to prevent such infractions. However, this pre-conceived expectation of being double-crossed runs through the mind of all the parties, thereby leading to fracas.

The election that returned President Buhari into office was claimed to be jointly marred by soldiers and police officers as well. Accordingly, 'the election period included persistent attacks by fractions of the insurgent group Boko Haram in the northeast: increased communal violence between nomadic herdsmen and farmers spreading southward from north-central states; a dramatic uptick in banditry, kidnapping, and killings in the northwestern states of Kaduna, Kastina and Zamfara. Security forces have failed to respond effectively to threats to people's lives and security.' This is a piece of evidence that even after the election, violence still trails the government. Why is this indication of a lack of support or confidence in the regimes or political party to which the emerging candidate belongs, general dissatisfaction with the economic reality of the country, a way to extort and frustrate the government, etc.? Sarcastically, one of the deadliest post-election violence erupted after President Buhari lost to President Gooluck Jonathan and there was communal violence in northern Nigeria after the April 2011 election where about 800 people were reportedly killed and 65,000 people displaced in a three-day rioting in twelve northern states after the election.

There was uproar from the supporters of the opposition candidate, President Buhari (Muslim candidate for Congress for Progressive Change), after the re-election of the incumbent. The protest degenerated into violence and sectarian killings. The election divided the country along ethnic and religious planes. In response to this violence, the police and soldiers were also implicated in using force and human rights abuses. Worthy of not to be forgotten easily is the effort of Godsday Orubebe, a former minister of Niger Delta Affairs who tried to disrupt and derail the 2015 collation of the presidential election and accused the then INEC chairman of bia. This was an act of desperation and for the purpose of delaying and disrupting the election process. It is days to the election now and tension is mounting and the populace is not sure of the outcome and the attendant violence that may erupt.

5. Curse and Blessing of the Act/Prospects and Challenges

The new Electoral Act provided an improved and robust framework which, if adhered to by all the stakeholders in the electioneering process, will allow for greater credibility in the electoral process. The new Act has the potential to improve the administration of elections in Nigeria because it addresses some lapses which can be identified in the old Act. First and foremost, it introduced novel and innovative provisions on the use of technology in elections, which will go a long way in reducing manipulation of the election process and rigging elections in Nigeria. The new Act provides for legal backing of electronic voting and transmission of results. There is the provision of a central electronic voters' database in addition to being kept in manual, printed, paper-based or hard copy format. This will promote transparency in INECs' record keeping.

The Act also introduced provisions to promote the internal democracy of political parties as it relates to the process of nomination of their candidates. It provides for early conduct of primaries and submission of candidates list not later than 180 days before the date earmarked for a general election. This change in time frame makes it mandatory for parties to conduct their primaries early enough. There is a provision for early commencement of campaign which translates to a longer period of campaign. Under the new law, campaigns are to start 150 days before polling day and end 24 hours before the election. This will afford political parties more time to sell their parties to the electorates.

There is also the extension of the time frame for publication of election notice, which should not be less than 360 days before the day appointed for holding of an election under the Act.

It clarifies ambiguities such as what happens in the instance of the death of a candidate while the election is ongoing but before the announcement and declaration of results. This is to forestall a reoccurrence of a scenario that played out in the gubernatorial elections that took place in Kogi state in 2015 when the incumbent governor and the gubernatorial candidate of APC died before the result was announced. This generated a lot of controversy when INEC declared the position vacant and ordered a re-election. The candidate vying for the position of Deputy Governor did not take kindly to this decision and challenged this position in court. The case did not go in his favour and new candidates were eventually sworn in as governor and deputy governor. With the new Act, this kind of confusing occurrence will be minimized or be totally eradicated because there is now a clear-cut provision in case a candidate dies while elections are still ongoing.

Another blessing of the new Act is promoting the inclusion of persons with disabilities (PWD) in the electoral process. This is in response to the clamor for including people living with one form of disability in all areas of life in the country. The electoral process not being an exception. The new Act in Section 54 provides that: The Commission shall take reasonable steps to ensure that persons with disabilities, special needs and vulnerable persons are assisted at the polling place by providing suitable means of communication such as braille, large embossed print, electronic devices, sign language interpretation or off-site voting in appropriate cases. This provision is in line with the belief that no one should be discriminated against by virtue of disability or circumstances of birth. Moreover, all the state resources or facilities belong to all Nigerians irrespective of the political party they belong to. Above all, it is to ensure that eligible voters are not disenfranchised based on disability.

The new Act has a section that redefines overvoting. This Section states that where the number of votes cast at an election in any polling unit exceeds the number of accredited votes, the presiding officer shall cancel the result of the election in that polling unit. This is an improvement on the repealed Act, which provides that the number of registered voters as opposed to accredited voters shall be the factor in determining over-voting at elections tribunals and only the commission can declare the election at the polling unit as null and void.

The new Act guarantees INEC's financial autonomy. It provides for directly releasing funds to INEC instead of the old practice of getting funds through the Ministry of Finance. It also provides for early funding of elections by providing for the early release of election funds to INEC, "at least one year before the elections." and increases timeframes for various activities in the election cycle. It also expands the powers of INEC, thereby enhancing the performance of its constitutional role as Nigeria's electoral management body.

For those whose religion or culture does not permit the mingling of men and women, there is a provision in the new Act for separating men and women into different queues.

Section 91- 96 of the new Act prohibits the recurrent issue of denial of political parties' access to state-owned venues and event centers for the holding of rallies and other political events. It also forbids denial of access to publicly owned media platforms for political campaigns leading to the 2023 elections because, as the name suggests, they are public facilities that should be made accessible to all Nigerians, whether they belong to the ruling party or the opposition party. In addition to these, the new Act provides for equal airtime parity for candidates at prime-time news slots. The new law also guides against political intolerance and hate speeches, which had always been the bane of our political campaigns in Nigeria.

6. Challenges/Curse

As promising as the new Electoral Act is, there are some challenges that it is likely to pose for the forthcoming elections. One of the provisions which can create problems for the forthcoming electoral process is the provision in the new Act that only aspirants who took part in a primary election can institute action against candidates who submit false information to INEC. This is in contrast to the repealed Act, which allows any member of the public to challenge false information.

Another challenge is that even though the technology is good, it also comes with its own challenges. For instance, where the card reader deployed by INEC fails to function and a fresh card reader or technological device is not deployed, the election shall be canceled and another election be scheduled within 24 hours. The introduction of BVAS, the electronic register of voters, the electronic transmission of results and other electronic processes into the electoral system has opened a new vista for the evaluation of evidence for the purpose of admissibility and value of evidence adduced and facts generated from electoral devices deployed during elections.

In addition to the above-stated challenge, the exclusion of political appointees from acting as voting delegate seems like a derogation of the right of individuals to exercise their voting franchise at a party convention.

Another challenging aspect of the new Act is the Section that mandates Policemen to always provide adequate protection for political rallies, to be supported by the Nigerian Civil Defence Corps. The Police are given the power to resolve any conflict of time and venue between and amongst parties where such arises in a consultative manner and not by imposition.

However, this provision is immediately contradicted when the Act declares that Political parties and their candidates do not need a police permit to organize political rallies, notwithstanding any provision of the Police Act. In the Public Order Act or any other law, the role of the Police and Civil Defence Corps is limited to the provision of adequate security only and not for members of the public to seek permission from them to organize political rallies or any other rally for that matter. This provision is consistent with the decisions of Superior courts in Nigeria that citizens do not need the permission of the police to organize rallies.

There is also the fear that the judiciary may not be able to strictly interpret the provisions of the 2022 Act and the regulations and guidelines of INEC, thereby failing to uphold the rule of law for the growth and sustenance of Nigerian democracy. A case in point is the recently decided case of the incumbent governor of Osun State, where the Osun State

Governorship Election Tribunal sacked Governor Ademola Adeleke for overvoting at over 700 polling units in the Governorship election. This decision has brought to the fore the challenge of computer-generated evidence in election petition proceedings.

7. Conclusion

The Electoral Act 2022 is indeed a futuristic piece of legislation that the nation is, no doubt, hoping that it will surpass the test of time. It is intended to return Nigeria's democracy to what is available in saner climes. The source of allocation of the Commission's fund, now to be from the federal government directly, will overrule misappropriation and ensure transparency. It has also put to rest the confusions that arise whenever there is a death in candidacy for the polls before and after. The only snag to S.29 (1), which mandates political parties to submit the list of their sponsored candidates who have emerged from valid primaries conducted by the party not later than 180 days before the date appointed for a general election, could emanate from delay/outcomes in the judicial process where declarations may be made few weeks to the elections may set a political party back or out rightly disallowing it from contesting just like the case with the nullification of APC governorship candidate in Taraba State on 1 February while the gubernatorial election is fixed for 11 March.

It also provided effective record keeping of voter registers, unlike before, where it was simply left in the hands of political parties, thereby suffering manipulations. Just as Nigeria has been identified with violence and internet fraud, it is hopeful that the introduction of electronic devices for the smooth and transparent conduct of the election would not be intercepted by hackers (who may manipulate the result, thereby watering away the introduction of the provision on 'over voting' in the Act) or stolen away during the election by thugs. Hence, the need for Nigerian securities to be charged with securing the devices, but again, these men may also be accomplices. The INEC staff and security officers should not be left off the hook as they are capable of infractions themselves, hence the need to sanitise these two systems to deploy those who are deemed honest.

As much as the use of technology for election will guarantee transparency in the process, the fact that Nigeria is not part of the developed nations with technological advancement may, to some extent, be a spoiler on the day of the election, where some of these devices develop a fault. It is suggested that computer scientists, technologists and developers be recruited as part of election officers to ease any hitch that may ensue.

There are areas and persons who are already notorious for violence during the election. The areas and persons should be well-monitored even before the election to minimise any danger they may pose. Stakeholders and media should also be encouraged to engage in dialogues that will promote non-violent elections in this area.

Finally, in the spirit of the February and March 2023 election, the masses are already frustrated with the unavailability of the newly introduced naira notes and petrol. It is high time the government becomes sensitive as anything contrary may mar the election in an unpalatable way.

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xlviii. The Independent National Electoral Commission (INEC), registered political parties and voters and the government in power.

xlix. Section 47 and 50 (2) of the Act

l. Section 94

li. Sections 28 and 30 of the Act

lii. Governor Bello

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lv. Section 51 (2)

lvi. Section 3(3) of the Electoral Act 2022.

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lviii. See Section 84 and Section 12, which provide that no political appointee at any level shall be a voting delegate or be voted for at the convention or conference of any political party.

lix. Section 91

lx. Section 91(4)

lxi. This decision of the Election Petition Tribunal has generated a lot of controversies and is currently being challenged on Appeal.