

# THE POLITICS OF THE ELECTORAL ACT AMENDMENT AND THE 2019 GENERAL ELECTIONS IN NIGERIA

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**Abstract:** Amending the 2010 Electoral Act before Nigeria's 2019 general elections generated huge controversies. The determination of the legislature to get the Electoral Act amended and the refusal of the executive to grant assent to the Electoral Bill raises the question: In whose interest was the proposed amendment? The present article examines the political issues that surrounded the amendment of the Electoral Act vis-à-vis the 2019 elections in Nigeria. The article argues that the electoral amendment bill may not after all be in the interest of a credible election as each political party tried to manipulate the bill and the process of amendment to its advantage. The article is qualitative and theoretical and adopts the thematic analysis to draw contextual inferences. It also adopts the cartel party theory.

**Keywords:** *democracy, elections, Electoral Laws, Electoral Act 2010 (as amended), Presidential Assent, Cartel Party Theory*

## Introduction

The conduct of regular and periodic elections remains one of the distinguishing features of democracy. The critical nexus between elections and democracy must have accounted for the erroneous equation of democracy with elections (Mackie 2009). This is so because elections alone do not account for the practice of democracy. Other features include the guarantee of citizens' fundamental human rights; a free press; independent judiciary and the existence and adherence to the rule of law. Despite this notion, holding periodic, free and fair elections is an indication that democracy is on course (Lindberg 2006). For elections to serve their purposes in a democratic society, they must be credible (Lindberg 2006; Schedler 2002). One of the ways to ensure that elections are credible is that they must be held within the legislative frameworks that contain the underlying set of laws and rules, principles and ideas as well as agreements that form the basis of the

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conduct of elections. Thus, in democratic societies, elections should be held with strict adherence to the legal framework of rules and regulations that exist as electoral laws. Such laws are made to guarantee the transparency and integrity of the entire electoral process. Nonetheless, the laws can be revised in order to accommodate legislations as regards new ideas and inventions that can further enhance the integrity of the electoral process (Carothers 2002; Levitsky and Way 2010; Lindberg 2006; Lindberg 2004).

In Nigeria, the laws guiding the conduct of elections are contained in: the Electoral Act 2010 (as amended); excerpts of the 1999 Constitution (as amended) of the Federal Republic of Nigeria; and Independent National Electoral Commission (INEC) guidelines for the conduct of elections (Policy and Legal Advocacy Centre [PLAC] 2019a). The 2010 Electoral Act was passed by the legislature on 29 July 2010 and signed into law by then President Jonathan Goodluck on 20 August 2010. The 2010 Electoral Act is the principal legitimate framework governing the conduct of elections in Nigeria. Since its enactment, the 2010 Electoral Act has been amended in three instances. The first amendment was done in 2010 and gave INEC ample time to give notices and take records of candidates nominated by political parties. The second amendment was carried out in 2011. It reduced the number of days for which the electoral body shall cease to register voters in preparation for any general election from 60 to 30 days. The third amendment came in 2015 and covers a wide range of issues including stipulating the tenure of office of the secretary of INEC, increasing the period for transfer of registered voters and appointment of polling officers (PLAC 2019b).

Evidently, there have been a considerable number of amendments to the 2010 Electoral Act. The attempt at its amendment before the 2019 general elections generated huge controversies and tensions particularly between the legislature and the executive. The determination of the legislature to get the 2010 Electoral Act amended at all cost and the refusal of the executive to grant assent to the amendment Bill raises the question: in whose interest was the proposed amendment to the 2010 Electoral Act?

Against this background, we examined the political dimensions of the amendment of the 2010 Electoral Act (as amended) for the 2019 general elections in Nigeria. Data for the article was generated from relevant media articles particularly from local online newspapers. These were utilised based on their reportage of critical empirical events and issues pertaining to the amendment of the Electoral Act. Other sources of data include relevant

journal articles and textbooks as well as publications of governmental and non-governmental organisations. We explore a theoretical nexus between legal framework for elections and elections credibility and follow this up with a section on assessing the quality of elections and an exposition of the theoretical framework. After this, we discuss the political intrigues that surrounded the amendment of the Electoral Act vis-à-vis the 2019 general elections in Nigeria. We conclude that the attempt at amending the 2010 Electoral Act merely aggravated the existing hostile relation that had existed between the executive and the legislature right from the inauguration of the eighth assembly in June 2015 and that the amendment of the Electoral Act was a tussle in which the smartest group tried to outwit the other.

### **Legal Framework for Elections and Elections Credibility: The Nexus**

The legal framework that contains the rules and regulations for the conduct of elections should be of utmost priority to all electoral stakeholders. This is because the extent to which an election is credible is a function of how the laws, rules and regulations that govern them are implemented and adhered to in an entire electoral process. Thus, credible and genuine elections that are pre-requisites for democratic sustenance and consolidation can only take place when the legislations governing their conduct are followed to the letter (Merloe 2008). Legal framework for elections encompasses all laws, legitimate and pseudo legitimate documents that relate to the entire gamut of an electoral process (International Institute for Democracy and Electoral Assistance [International IDEA] 2002). The framework spells out the way and manner in which an election should be conducted. For instance, it states the number of political parties, the type of electoral system, the duties and jurisdiction of the Election Management Board (EMB) and the nature of the voting process. The legal framework for elections comprises of applicable constitutional requirements, electoral laws passed by the legislature as well as regulations stipulated by the government or the EMB (Merloe 2008).

Credible elections are elections held on the basis of the principles of inclusiveness, transparency, accountability, and competitiveness (Ibid.). Inclusiveness entails the provision of equal chances for all qualified members of the society to take an active part in the process of choosing their leaders or representatives. The notion of transparency connotes the openness of an electoral process to scrutiny and belief by all electoral stakeholders involved in the election process that the process is coordinated fairly. Accountability has to do with the citizens' ability to seek redress when their rights vis-à-

vis elections are infringed upon. This also includes accountability on the part of the body that conducts elections and those involved in executing government plans and policies that relates to elections. Accountability in this regard covers the prompt trial of those that indulge in activities that are repugnant to election procedures and which infringe upon the electoral rights of citizens. Competitiveness entails creating a level playing ground for all in an electoral process. It ensures that citizens have equal chances of voting and be voted for in an election (Ibid).

That electoral laws are significant to credible elections underscores the critical nexus between legal frameworks for elections and elections' credibility (Merloe 2008). Elections socialise political activity by transforming what might be sporadic citizen-initiated acts into a routine public function. This helps to preserve government stability by curtailing dangerous forms of mass political activity. Hence, election helps in maintaining stability and harmonious co-existence in society through the mobilisation of political consciousness, which confirms that sovereignty resides with the people (Mesfin 2008). Nonetheless, countries coming out of an intensely violent conflict perceive holding an election as the main means of institutionalising peace in their society. Warring groups view elections as an efficient mechanism for demobilisation and surrendering their arms and ammunition. While this may be so, the groups must have trust in the legal frameworks set out for electoral contests, such that all groups contest and participate in the process of establishing a government for all based on transparent, credible and fair electoral contests. This, however, cannot be achievable when groups do not understand the basic components of the electoral laws that govern electoral competitions (Merloe 2008).

Based on the above, designing the legal frameworks for elections requires that certain conditions and principles need to be fulfilled. For instance, electoral laws, for easy comprehension and clarity should be stated in simple language and steer clear of stating contradictory proviso between legislations for national or federal elections and laws guiding the conduct of sub-national, constituent or district elections. Also, the jurisdictions of federal Election Management Boards should be clearly and unambiguously designated from those of the state EMBs. This is to avoid conflict of coincidence of the exercise of power between or among the EMBs (Elklit and Reynolds 2005; Pator 1999; Mozaffar 2002). The importance of EMBs to elections credibility has also been stressed by Hoglund (2009) when she opined that the institutional design for elections is a significant determinant of how credible an election can be, particularly in terms of an election generating electoral violence.

She asserted that the nature of election administration can go a long way in determining whether an election will be violent or peaceful. This is so because the choice of an EMB may trigger or prevent violence in an election since issues relating to impartiality, autonomy, efficacy and professionalism as well as openness are important for the elections credibility (Lyons 2005).

Lyons (2005) posited that virtues such as efficiency, professionalism, transparency, impartiality and independence are all significant pre-requisites that determine a legitimate, transparent and acceptable electoral process. In a situation where these virtues are not present the risk of political instability and electoral violence becomes high and as a result the elections credibility is greatly undermined (Sisk 2008). Similarly, election management bodies organised on the partial-partisan models of election management and administration can induce electoral violence (Lopez-Pintor 2005). It was further stressed that one of the most significant ways in which elections can be regarded as credible is through the establishment of a credible election administration institution (Lopez-Pintor 2005). EMBs that are independent of interference from other government institutions and political interests, impartial in their decision-making and professional in their composition are considered a vital instrument for conducting credible elections particularly in newly democracies (Wall et al. 2006). On the contrary, EMBs with excessive partisan influence in the conduct and administration of elections can lead to a lack of professionalism and of impartiality that lead citizens to question the fairness and credibility of the election process (Kerevel 2009).

The nature of rules that guide electoral competition possesses high potentials for inducing electoral violence particularly in new democracies. Høglund (2009) and Sisk (2009) argue that in these societies electoral rules can prepare grounds conducive for election related-violence. The rules and regulations guiding any electoral process have been classified into two by Mozzafar and Schedler (2002) viz. rules of electoral competition and rules of electoral governance. Issues such as electoral formulas, district magnitude and boundaries, or assembly size are contained in the rules of electoral competition. These rules are mostly referred to as electoral systems rules. Electoral governance rules include areas like party, candidate and voter eligibility and registration, vote counting, election monitoring and conflict resolution mechanisms, and campaign financing (Mozzafar and Schedler 2002). These rules are, however, seen as viable tools for offering a modest conflict resolution mechanism (Reynolds and Sisk 1998). Electoral rules are crucial requirement for consolidating democracy and are major determinants of the type of democracy that develop in democratic polity.

According to Htun and Powell (2013), electoral rules determine whether the decision-making process is inclusive and if people can hold their government accountable. However, Schedler (2006) has observed that in electoral authoritarian regimes, particularly of post-conflict and democratising states of Africa, electoral rules are made and manipulated in such a way as to favour a particular sect of the society, thus making the electoral process undemocratic and increasing the likelihood of the occurrence of electoral violence and thus undermining the credibility of elections. Such violence-inducing electoral rules, according to Seifu (2012: 35), have been given different nomenclatures by various scholars: Schedler (2006: 12) termed them “Nested Games,” Wigell (2008: 242) named them “Norm Violations” and to Collier (2009: 45) they connote “Winning Strategies,” but ultimately are capable of generating conflict (Seifu 2012).

Furthermore, laws governing the conduct of elections ought to be released long before the conduct of an election is due. This is to ensure that all electoral stakeholders get themselves acquainted with the extant electoral laws before the conduct of elections such that nobody or party claim ignorance of any of the stipulations of the electoral laws. When new legislations are made shortly before an election, the resultant effect is that the legality of such laws is undermined. Similarly, electoral stakeholders in an election may not be aware of the legislations before the election (International IDEA 2002).

To guarantee credible elections, electoral laws are not to be passed by the executive but rather by a national parliament. What is required of the executive in the process of law making for elections is the ratification of such laws by the chief executive as in the presidential system. Over the years scholars have put forward certain criteria and conditions for determining the credibility of elections (Beetham 2004; Elklit and Reynolds 2005; Mozaffar and Schedler 2002). For instance, Elklit and Reynolds (2005) put forward a methodology for assessing the quality, credibility and administrative efficiency of national elections. Having noticed the lacuna of the lack of a systematic methodology for assessing election quality that can be used in democracies, whether developing or developed, they observed that the greatest fiasco in assessing the quality of elections has been to simply describe an election as good or bad or “substantially free and fair” (Elklit and Reynolds 2005: 149). According to them, such assessment of elections can be a derivative of decisions and views of election monitors and observers who take decisions on the conduct of elections based on the lack of a systematic and robust methodology for assessing the elections. They contended that assessing the quality of elections goes beyond a two-way mode of describing an election as good or bad (Elklit and Reynolds 2005: 149).

## Assessing the Quality of Elections

One of the most important steps towards assessing or measuring the quality of elections is to clearly stipulate and draw a boundary between issues that are closely related to elections' credibility and those that are tangentially related to it (Elklit and Reynolds 2005: 150). They put forward the following assessment indicators: (i) Legal framework: issues here pertain to whether elections are conducted based on a robust legal framework of elections laws and rules; (ii) Electoral management: issues here include the perceived degree of impartiality, legitimacy/acceptance of the EMB by political parties and the electorate; (iii) Constituency and polling district demarcation: elements of this indicator include whether the delimitation and size of the constituencies are generally accepted and whether there are just and effective systems for boundary limitation and seat allocation; (iv) Voter education: it is important here to know whether those who need voter education actually get it; (v) Voter registration: are those eligible to vote duly registered and is the register devoid of irregularities?

Other indicators are: (vi) Access to and design of ballot paper, party and candidate nomination and registration: this indicator presupposes that all organisations and individuals that meet the requirement to be registered are duly registered allowed to contest elections; (vii) Campaign regulation: this presupposes that all parties should have equal access to state owned resources the media and other useful facilities; (viii) Polling: critical issues here include the voter turnout, occurrence of election-related violence and orderly conduct of polls in polling units; (ix) Counting and tabulating the vote: it is important to know whether the votes counting process is done with transparency, integrity and accuracy so as to reflect figures recorded in the polling units; (x) Resolving election related complaints, verification of final result and certification: issues here include the existence of an election dispute mechanism to promptly resolve concerns raised by parties and individuals after the elections; (xi) Post-election procedures: this presupposes the existence of adequately documented election data and a conducive environment for electoral review (Elklit and Reynolds 2005: 152–154).

Commenting on the conditions for free and fair elections as put forward by the above scholars, Olaniyi (2015) argued that a close look at the conditions will reveal that the conditions are interwoven and that, most importantly, the conditions are not in any way exhaustive because perceptions of a free and fair election vary among political analysts. A closer look at the indicators reveals that almost all the criteria are within the scope of legal

frameworks of elections. A point of argument regarding the credibility of an election borders on the question of whether all conditions should be present before an election can be deemed credible. It was stated that whether they are present holistically in an election or not, the most important thing is to see the conditions as pre-requisites or the standards for determining the credibility of an election or electoral process (Olaniyi 2015).

The importance and centrality of the Election Management Boards to implement electoral laws for achieving credible elections is indeed enormous and cannot be overemphasised. Attaining credible elections via the adequate implementation and adherence to electoral legislation requires that there should be the existence of an independent judiciary that is free from external influence, particularly from the executive, legislature, political parties and the political elites (Mesfin 2008). This is because only an independent judiciary can restrain governments, political parties and individuals from violating extant electoral laws and regulations during elections. Even when such laws are violated, the judiciary is the only institution that can prescribe retribution for violation of such laws (Ndulo 2008). The existence of independent judiciary and specialist judges forms the basis of a fair and legally binding court system and, as well, is a significant requirement for a credible electoral process. The independence does not translate to the belief that judges can pass judgements based on their caprices but that they are at liberty to pass legitimate judgements irrespective of the parties involved in the case before the courts.

The African experience as regards the institutionalisation of an independent judiciary for effective electoral laws has been that of a fruitless effort at achieving independent judiciaries. Joireman (2001) noted that what could partly account for this is that African states adopted the structural realities and conditions transferred to them by their colonial masters. Therefore, the efficacy and independence of African judiciaries were greatly undermined and their efficiency seriously inhibited. This accounts for the apparent dwindling citizens' confidence in the judicial arm of government and the seeming reason why African judiciaries are mere rubber stamps for dictatorial regimes (Prempeh 2001; Kroeger 2018). A manifestation of this unfortunate scenario, according to Mesfin (2008), is that African judges work in an unfavourable environment that is defined by unwarranted influence, control and pressure from the parties in government. Consequently, judicial decisions are made based on favouritism and patronage and are almost always in favour of the ruling party. Adamant judges who refuse to dance to the tune of the ruling government are transferred from their place of appointment to other places and in worst cases are removed or forced to



resign (Ndulo 2008). This situation is often responsible for the shoddy passing of judgements on electoral matters by the electoral petitions tribunal and the judiciary as the case may be in Nigeria.

Critical to the achievement of credible elections is the existence of an independent, competent, relatively autonomous and impartial election management body saddled with the responsibility of conducting elections. The specialist skills required in the conduct of elections such as the delineation of constituencies and the compilation of voter register require that an independent body be established. The establishment, roles and responsibilities of the election management bodies are usually clearly spelt out in the Constitution and Electoral laws guiding the conduct of elections. Such legal documents state the extent of the jurisdiction of the body. This is to ensure that the EMB does not turn to a law-making body. The powers, roles and responsibilities of the Election Management Board should nonetheless be spelt out in a wider scope so as to enable it to make up for the shortcomings in established electoral legislations and unanticipated eventualities. In this regard, the EMB needs to stay alert in order to offer pragmatic remedies to the unanticipated eventualities by explaining and enhancing electoral legislations and regulations (International IDEA 2002; Lopez-Pintor 2005; Lyons 2005; Mozzafar and Schedler 2002).

The independence of EMBs is not enough. They also need to be perceived as absolutely fair and competent by all stakeholders involved in an electoral process. The kind of perception the citizens have of an Election Management Board largely depends on the capability of the EMB derived from the electoral legislations to handle election-related grievance and resolve them without prejudice (Goodwin-Gill 1994 cited in Mesfin 2008). Under this condition, citizens rest assured that the EMB is actually independent of the control of the executive and does not work for the achievement of personal or sectional aims or interest. How an EMB administers the conduct of elections is critical to the outcome of the elections and its aftermath. When the electorate perceive an EMB as impartial in an election process, the electorate can voice out their grievance by embarking on violent demonstrations and riots. Such riots could degenerate into large-scale violent confrontations. This was the case in 2011 when most parts of the north were engulfed in widespread post-election violence that claimed about 800 lives (Human Rights Watch 2011). Generally, experiences in new democracies of Africa indicate, according to Pastor (1999), that elections are usually administered and conducted by EMBs that are not independent in all ramifications. He stressed that the EMBs are impeded by control and pressure particularly from the party in government that has a vested interest in who wins or loses electoral contests.

## **Theoretical Framework: The Cartel Party Theory**

Political parties have long remained a significant component of multi-party democracy. Political parties offer the platform on which candidates seeking elective offices contest for power. By selecting and putting forward candidates to contest political offices, political parties offer the citizens an array of policy programmes to choose from. Through credible elections the electorate chooses from the alternatives the candidates they see as capable of catering for their welfare and formulating policies and programmes for the development of society (Rashkova 2020). By so doing, political parties perform a myriad of functions: train and recruit political office holders; convey the wishes and opinions of the people to the government; serve as a viable medium for increased political participation; coordinate politics in liberal democracies and articulate conflicting interests of diverse elements (Stokes 1999). Because of the important roles they perform in a democratic polity, political parties remain one of the most important democratic institutions. By gaining access to political offices through democratic elections, political parties serve as important linkages between the people and their government. In essence, they are the agency through which the demands, wishes and aspirations of their members, supporters and the masses are taken care of by the government (Aldrich 1995; Stokes 1999).

According to Young (2011), political parties in a democratic polity are driven by “vote-seeking,” “office-seeking” and “policy-seeking” behavioural objectives. The vote-seeking objective entails quest of party leaders for increased votes so as to take control of the government or to retain their party in government. The office-seeking objective connotes that a political party seeks to elongate its capture or control of elected offices and governmental appointments which its members occupy. The policy-seeking objective means that a political party will, at all cost, endeavour to monopolise influence on public policies and programmes (Young 2011; Smith 2020).

The quest to achieve these objectives sets political parties on inter-party collusion and conspiracy against one another (Katz and Mair 1995). This scenario, according to Katz and Mair, has led to the development of cartel parties. The cartel party theory emerged in the 1980s from the observation of a set of statistical information to study forms of party structure and organisations with the onward application of the discoverable forms to socio-political changes across nations (Katz and Mair 2009). The theory was popularised by Richard S. Katz and Peter Mair in their article “Changing Models of Party Organization and Party Democracy: The Emergence of the

Cartel Party,” published in 1995. Though cartel parties emerged basically in developed democracies of Europe and America, its adaptation to the new and developing democracies of Africa, Asia and Latin America is beginning to manifest in the dwindling linkage of parties with the society in question and the emergence of stronger ties of political parties with the state (van Biezen and Kopecky 2014).

On the one hand, the dwindling linkage of political parties with the society manifests in fading party identification, the tendency for elections to be volatile, and the reduction in membership of political parties (Dalton and Wattenberg 2000). On the other hand, stronger party ties with the state are found in the reliance of parties on the state for funding, the control and management of parties by the state, and the capture of the state apparatus by political parties (van Biezen and Kopecky 2014). The cartel party theory assumes that political parties in government collude in making laws in such a manner that guarantees their existence in power with the aim of keeping the opposition and competition out of the political space (Katz and Mair 1995). This is one of the potent measures political parties adopt in order to perpetuate themselves in government and reduce opposition and competition to the barest minimum. These measures, in the view of the scholars involved, include manipulating and influencing the process of electoral legislation that govern electoral contests. With the dwindling support from the electorate and the fading level of membership, political parties found solace in the state for resources so as to be in existence and keep themselves in power. Such resources can take the form of influencing and manipulating electoral laws and regulations, depending on the state for funding and unfettered access to the mass media (Katz and Mair 1995).

The argument of the cartel party theory can be explained with an analogy that likens the behaviour of political parties in a multi-party electoral democracy to the traditional economic idea of a business cartel (Harrington 2006). In economics, business cartels operate in collusion to control the production of goods and services and determine according to their caprice the level of the availability of such goods and services in the market. This they do in order to keep the prices of such goods high and render their competitors ineffective. By so doing, consumers of the products are left with almost no choice, thereby forcing them to pay more than they can afford. With their dominance of the market, the cartel gets favoured treatment from the state (Harrington 2006). Based on the behaviour of the business cartel, Katz and Mair (1995) posit that the activities and behaviour of contemporary political parties can be likened to those of business cartels in the macro-economic

sphere. They argued that in reacting to the decreasing financial and moral support from their members and the electorate, which may hinder their continual existence, political parties in government deliberately constrict the political space by manipulating electoral legislations to their advantage in order to prevent competitors from gaining grounds and serving as viable forces in electoral contests.

The cartel party theory is not devoid of ambiguities and the vagueness of the theory has been a point of criticism. Ashton (2009) has argued that the theory rather than look at political parties in terms of their distinctive organisational structure, perceive cartel political parties more in terms of how political parties behave. This criticism notwithstanding, the cartel party theory remains a formidable theory for explaining the nature of intense party politics that characterises electoral competitions and inter-party relationships in electoral democracies. The assumptions of the cartel party theory are applicable to the political situation in Africa. In Nigeria, it is on record that parties and organisations have come together in mergers to wrest power from existing political parties in government. The emergence of the Peoples Democratic Party (PDP) through the coalition of the G18 and G34 groups suffices in this regard. While holding on to power for 16 uninterrupted years, the PDP prevented other political parties from gaining access to political power through the use of state resources and the manipulation of the nation's electoral processes. Also, the emergence of the All Progressives Congress (APC) through the coalition of four political parties was able to secure power in 2015. Since then the APC has been able to hold on to power. The politics and intrigues that surrounded the amendment of the Electoral Act for the 2019 general elections reveal that each party was out on a survival struggle in order to regain access to political power and to stay in government.

### **The Politics of the Electoral Act Amendment and the 2019 General Elections**

The 2019 general elections were the sixth to be conducted in the series of elections since Nigeria's return to multi-party democracy in 1999. The elections were slated to take place on 16 February for the Presidential and legislative elections and on 2 March for the Governorship and the State Houses of Assembly elections (Independent National Electoral Commission [INEC] 2019). On the eve of the commencement of the elections INEC announced that the elections had been postponed to 23 February and 9 March 2019 citing logistics inadequacies. The political space for the elections was

widened more than before, as 91 political parties were registered to contest the elections and 84,271,832 registered voters, the highest in the nation's history, were expected to come out and cast their votes on the days of the elections. Regardless of these, the 2019 general elections were basically a contest between the APC and the PDP.

Preparations were kept in top gear months to the elections. The Independent National Electoral Commission indulged in continuous voter registration so as not to deprive anybody who had attained the voting age the opportunity to vote. There were series of sensitisation programmes to intimate voters on the nitty-gritty of the voting process. INEC also engaged in the rigorous screening of local and international election observers in order to monitor, observe and produce an unbiased comprehensive report on the entire electoral process after the elections have been concluded. However, one of the sharp points of the preparations for the 2019 general elections was the attempt at amending the 2010 Electoral Act (as amended) for the 2019 elections. While the Act has been amended on three occasions, the attempt at amending it for the elections generated unprecedented politicking, intrigues and controversies, particularly between the APC led executive and the then PDP-led National Assembly. Therefore, the amendment of the Act was a fierce tussle between two cartel parties of the All Progressives Congress in government and the Peoples Democratic Party in opposition.

Though the 2018 amendment Bill to the 2010 Electoral Act (as amended) has about 45 new provisions to be inserted in the Act (PLAC 2018), 2 provisions in the amendment Bill that generated controversies, heated debate and drew the attention of political analysts and electoral stakeholders were the provisions for amendment of Sections 25 and 65 of the 2010 Electoral Act (as amended). The extant provision of Section 25 of the Act makes provision for the sequence of election and stipulates that:

Elections into the offices of the President and Vice- President, the Governor and Deputy Governor of a State, and to the Membership of the Senate, the House of Representatives and the House of Assembly of each State of the Federation shall be held in the following order - (a) Senate and House of Representatives; (b) Presidential election; and (c) State House of Assembly and Governorship elections. (Electoral Act 2010 [as amended] Part IV: Section 25 Sub-section 1)

The existing provision on the issue of election sequence made it clear that the Senate and House of Representatives elections should precede the Presidential election and that the elections for the State House of Assembly and Governorship should be the set of elections to be conducted last. Contrary to this extant provision the new amendment proposed that the order of elections be re-arranged so as to take the following sequence as indicated by the 2018 electoral amendment Bill: “National Assembly Elections, State Houses of Assembly and Governorship Elections, Presidential election” (PLAC 2018:4). Whereas the initial provision stipulated that the State House of Assembly and Governorship elections should come last, the proposed Bill for amendment stated that it should follow the Senate and the House of Representatives elections. The existing provision of Section 65 of the 2010 Electoral Act (as amended) made provision for the process of results collation and announcement. It stipulated that:

After the recording of the result of the election, the Presiding Officer shall announce the result and deliver same and election materials under security to such persons as may be prescribed by the Commission. (Electoral Act 2010 [as amended] Part IV: Section 65)

The amendment to this provision proposed that the Independent National Electoral Commission should be authorised to embark on digital storage and archiving of election results at the National Headquarters of the electoral body. This amendment proposal expected INEC to create a distinct database for keeping and preserving an up-to-date National Electronic Register of Election Results (NERER). This database was expected to consist of election results based on polling units in every election held (PLAC 2018) and transmitted through the proposed INEC server. Prior to the 2019 elections, INEC announced that it has decided to safely transmit election results from all polling units to a central database via an INEC server. Such electronic transmission could only permit viewing access at the Ward and Local Government levels. This, according to the electoral body, shall eliminate the manual collation of results and will go a long way to reduce doctoring of election results. The electoral body stated later on that such electronic transmission of results shall be experimented in some off-cycle election states, particularly Anambra state (Adebayo 2017).

The twin amendment proposal on election sequence and electronic transmission of election results were the fulcrum of the entire electoral amendment Bill. The manifestation of the assumption of the cartel party

theory was noticeable in the process of amending the Electoral Act. This was particularly noticeable and obvious when the Bill was turned down on four different occasions, confirming the reluctance of APC's President Buhari in signing the proposed amendment Bill into law. This can be regarded as one of the effective measures adopted by the ruling party, APC to ensure that the main opposition party, the PDP was weakened in the electoral contest so as to make sure that the APC retained power after the conduct of the general elections.

On the one hand, the persistence of the National Assembly in forwarding the amendment Bill to the President on four distinct instances signified the intentions of the National Assembly to get the Bill signed into law at all cost. On the other hand, the refusal of the President to grant assent to the Bill signified that the executive was not interested in amending the Electoral Act 2010 (as amended) for the 2019 elections. This situation generated a tense executive-legislature scuffle before the elections. Many people believed that the President's refusal to sign the Bill into law was derived from the fear of losing the then forthcoming elections (Sobechi and Azimazi 2018).

What further compounded the issue of the amendment of the Electoral Act was the hostile relation that existed between the executive and the legislature. It should be recalled that the then Senate President, Bukola Saraki, by-passed his then party, the APC to become the President of the upper house, a development the APC viewed as contravening the party's aspirations. Even as a member of the APC then and despite APC having the majority in the Senate, the Bukola Saraki-led Senate right from inauguration was at logger heads with the APC-led executive on matters relating to governance and Presidential appointments. Sobechi and Azimazi (2018) noted that while the APC enjoyed the majority in the Senate and the House of Representatives, the party in government was not courageous enough to initiate an amendment to the existing electoral law that would foster free, fair and credible elections.

Stemming from this, the APC members loyal to the party and the President considered the amendment Bill as a political trap set by the opposition in the National Assembly in which, once the President signs into law, the chances of the party at the 2019 polls will be drastically reduced. This fear was soon confirmed when Bukola Saraki, who rode on the APC platform to ascend to the stool of Senate presidency, defected from the APC to the PDP. This act confirmed that Bukola Saraki was working against the party and brought to light that there was more to the electoral amendment Bill. Thus,

many political commentators and analysts were of the view that the Bill may not have been in the best interest of the nation's electoral process. Thus, the President's refusal to sign the Bill into law can, according to the cartel party theory, be regarded as a calculated attempt to keep the opposition party away from the electoral contest having noticed that most of the laws in the Bill were not in favour of his party, the APC.

The time frame for amending the legal framework for elections is crucial for the electoral laws to be strengthened and solidified in order to achieve credible elections. In the Nigerian context, the situation has always been that of last minute attempts at amending election laws. One of the reasons given by the President for withholding his assent to the Electoral Bill was that the time frame was too short for the legal framework for elections to be altered. One may not be wrong to say that such last-minute amendment of election laws are calculated attempts by the politicians to get a soft landing in electoral contests. This may account for the reason why the nation's electoral process is still highly characterised by all sorts of electoral malfeasance.

The attempt at amending the sequence of elections was the first time that a particular provision was taken into consideration. The rationale for altering the sequence of the 2019 elections still remains hazy. One could hardly see the significance of the election order in ascertaining electoral victory. Some reasons may suffice anyway. The thought on the part of those agitating for the alteration of the election order may have been that when the National Assembly elections are held first and the lawmakers, who are the main proponent of the Electoral Bill, secure victory, then the domino effect of the victory in the legislative elections will be brought down to the governorship elections in which the party that emerged victorious in the National Assembly elections will most likely win the governorship elections. By the time a party dominates both the National Assembly elections and the governorship elections then the Presidential elections will almost be a walkover for such a party. Thus, the idea may have been that the presidential election result would most likely reflect those of the National Assembly and governorship elections. This may have accounted for the rejection of the amendment of the provision of the Electoral Act that placed the Presidential election as the last election.

Sequel to the refusal of the President to sign the Bill were a series of legal battle signifying that the truce achieved over the ordering of elections did not come on a platter of gold. On 25 April 2018 a Federal High Court sitting in Abuja ruled that the power to alter the election sequence resides with the



INEC. It further stated that for the legislature to be able to set an election template it would require amendment of the constitution (Okakwu 2018). Not satisfied with the ruling of the Federal High Court, the matter went to the Court of Appeal. The Appeal Court ruled in favour of the National Assembly that it indeed possesses the power to alter the sequence of elections. Despite this ruling, the National Assembly still could not get the President's endorsement for the Electoral Bill to become law. This was followed by the threat from the National Assembly to override the decision of the executive to withhold assent to the Electoral Bill. The law-making arm was not able to make its threat come to reality, probably because it was not able to secure two-thirds in the legislature which was dominated by the APC.

With the refusal of the President to assent to the Electoral Bill and the inability of the National Assembly to muster two-thirds of lawmakers to override the President's veto, and the eventual backing-out of the National Assembly on the issue of election sequence, it would appear that the executive-legislature imbroglio, which might have necessitated the hostilities over the amendment Act, had been put to rest. This was not the case as another issue emerged, having to do with the transmission of election results. This time, the members of the PDP in the National Assembly were not alone in the politicking and crusade for forcing the Independent National Electoral Commission to transmit the election results electronically through the purported and controversial INEC server even when INEC had stated categorically that it would not transmit the 2019 election results electronically because it had no server to do so and because there was no law backing its use (Soni 2019). The PDP leadership and the Presidential candidate of the party, Alhaji Atiku Abubakar, were the leading propagandists of the INEC server controversy.

The controversy and politicking, which surrounded the issue of electronic transmission of results and the INEC server, were also strong talking points before the elections and after the election results were announced. Before the Presidential election the PDP had revealed that it would embark on setting up its parallel vote-counting system, which it called the Parallel Voting Tabulation System (PVTs) that would be operated by 40 million members of the party. One can only be sceptical about how the party intended to fund such a huge project, which may require employing and paying perceived 40 million individual members of the party as ad hoc workers. However, according to the proposition of the cartel party theory, which states that political parties due to dwindling membership and the consequent reduction in financial contributions have largely depended on state funds for existence, one can deduce how the party intended to fund

the project. The PDP, which before 2015 had been a very buoyant political party probably owing to its grip on power and the consequent access to state funds from 1999 to 2015, has been alleged to be “broke,” according to one of the party bigwigs (Nwankwo 2017). This means that the party can now only exist at the expense of moneybags, who take up the challenge of paying the party’s bills. Such moneybags have been alleged to be governors of buoyant states who can afford to expend huge amounts of the state funds on the party (Nwankwo 2017).

According to the party, the PVT system will determine whether it accepts or not the results of the Presidential election as will be released by the country’s electoral body. The party claimed that its intention of using the PVTs was a strategy to checkmate rigging and malpractices in the Presidential election. The party went further to state that it would reject the outcome of the Presidential election if the results released by the INEC would not tally with what they have collated (*The Nation* 2019). In a counterclaim, the APC alerted that the intention of the PDP to set-up a parallel electoral commission that was aimed at discrediting the Presidential polls which the PDP knew it could not win. The party further commented that such an act was targeted at scuffling the polls and the entire electoral process with the ultimate sinister objective of instigating a constitutional crisis (Fabiya 2019).

Shortly before the elections, the Independent National Electoral Commission claimed that it had informed all political stakeholders, the PDP inclusive, in a meeting with them that with the non-endorsement of the Electoral Bill, INEC would not use the electronic transmission system in order to transmit results as doing so would not only be illegal but also attract legal sanctions (Azimazi, Oludare and Adamu 2019). The Presidential election results released by INEC indicated that the APC candidate, Muhammadu Buhari won with 15,191,847 votes while Atiku Abubakar of the PDP came second with 11,262,978 votes (INEC 2019). Despite being aware of INEC’s resolve not to transmit the Presidential election results electronically, the PDP and its candidate Atiku Abubakar claimed that INEC’s computer server had indicated that Atiku Abubakar of the PDP had won the Presidential election by defeating APC’s Muhammadu Buhari with 1.6 million votes (Yahaya 2019). On this basis, the PDP and its candidates vehemently rejected the results of the 2019 Presidential election.

The import of this is that the PDP, having a predetermined intention of rejecting the outcome of the Presidential elections, wouldn’t have accepted the results even when they were conducted under a transparent process. One

may only conclude that the PDP knew it was going to lose the election or at least be prepared for an option B in case it would lose the election, hence its propaganda against the electoral body that it used its own server in order to transmit and store the election results. Under the assumption that the INEC used its server to transmit the election results, it is only INEC that can announce and release such results as it is the only body required by law to do so. Thus, the PDP couldn't have been aware that it was shooting itself in the leg in the sense that the process of its gaining access to the INEC server (if it exists) will be questioned. It may, therefore, be averred that the PDP did not utilise its purported parallel vote collation process for the betterment of the electoral process but for its personal interest.

Hell-bent on claiming their self-acclaimed victory, the PDP and its Presidential candidate, Atiku Abubakar, approached the Presidential Election Petitions Tribunal and filed a 5-ground petition, one of which was the claim that the INEC server had indicated that Atiku Abubakar had won the election, having polled 18,356,732 as against his opponents 16,741,430 votes (Yahaya 2019). With this result, the PDP claimed that its candidate had won the election by defeating Muhammadu Buhari with 1,615,302 votes. On 30 September 2019 the Presidential Election Petitions Tribunal dismissed the PDP petition, claiming that the PDP and Atiku Abubakar could not prove any of the five grounds of the petition (Yahaya 2019). Not satisfied with the judgement, the petitioners approached the Supreme Court. On 30 October 2019 the Supreme Court also dismissed the appeal on the ground that the PDP and Atiku Abubakar had failed to prove any of the five grounds of the petition in the appeal (Ameh and Adesomoju 2019).

## **Conclusion**

Electoral politics in Nigeria has always been tense and intriguing. The politicking, controversies and intrigues that characterised the preparation for the 2019 general elections, specifically as it relates to the amendment of the Electoral Act 2010 (as amended), were unprecedented. The politics and intrigues that surrounded the attempt at amending the act merely aggravated the existing hostile relation that had existed between the executive and the legislature right from the inauguration of the eighth assembly in June 2015. The Electoral Bill was perceived by the APC members in the National Assembly loyal to the party and by President Muhammadu Buhari as a weapon in the hands of the opposition party members in the legislature. The refusal of the President to assent to the Electoral Bill on four different occasions

raised concerns on the part of the political analysts and stakeholders about the government's intention of conducting free and fair elections in 2019, as it was believed that the Bill contained amendment provisions that would strengthen the nation's electoral process so as to be able to achieve credible elections not only in 2019 but also in future elections. However, these fears would have been confirmed by the eventual signing of the Bill by President Buhari on 24 February 2022, three years after the 2019 elections.

The resolve of the leadership of the legislature consisting mainly of members of the PDP to get the Electoral Bill amended also raised the suspicion that the leadership of the National Assembly was up for a game as it introduced some provisions that were viewed as potentially beneficial to a particular group. These provisions consisted mainly of those on the election sequence and the electronic transmission of the Presidential election results. Thus, the amendment of the Electoral Act was seen by many as a game in which the smartest group would outwit the other. Unfolding events prior to the 2019 general elections confirmed the fears of the people as regards the intentions of each of the parties. This showed that both parties were all out to engage in acts and practices within the legal jurisdiction in order to secure victory at the polls, hence the tussle that defined the amendment of the Electoral Act.

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