

# **ELECTORAL OFFENCES AND PUNISHMENTS**

**By: Dr. Muiz Banire, PH.D, B.L, SAN, OON.**

---

## **INTRODUCTION**

Electoral offences and punishments are majorly creation of the statute regulating the conduct of elections in Nigeria. The extant law in Nigeria is the Electoral Act, 2022. This is the Act that provides for electoral duties and security of lives during the conduct of election in Nigeria. In the said Act, except in some few provisions wherein the police as an institution is specifically mentioned as an enforcement agency, generally, it is the security agents that are meant to enforce the provisions of the Act. It is pertinent to quickly refresh readers' memory on the powers of the Police under the Police Act, 2020 and the Administration of Criminal Justice Act, 2015 which complements the powers derivable under the Electoral Act in the enforcement of laws in Nigeria. In this regard, the following provisions are germane to appreciate this discourse.

## **POWERS, ROLES AND FUNCTIONS OF THE POLICE UNDER THE POLICE ACT**

Police affairs and administration in Nigeria are primarily regulated by the Police Act, 2020. The functions of the Nigerian Police Force are provided under the section 4 of the Police Act, 2020. The section reads as follows:

“The Police Shall:

- a. prevent and detect crimes, and protect the rights and freedom of every person in Nigeria as provided in the Constitution, the African Charter on Human and People's Rights and any other law;

- b. Maintain public safety, law and order;
- c. Protect the lives and property of all persons in Nigeria;
- d. Enforce all laws and regulations without prejudice to the enabling Acts of other security agencies;
- e. Discharge such duties within and outside Nigeria as may be required under this Act or any other law;
- f. Collaborate with other agencies to take any necessary action and provide the required assistance or support to persons in distress, including victims of roads accidents, fire disasters, earthquakes and floods;
- g. Facilitate the free passage and movement on highways, roads and streets open to the public;
- h. Adopt community partnership in the discharge of its responsibilities under this Act or under any other law; and
- i. to vet and approve the registration of private Detective Schools and private investigative outfits.

***DUTY OF THE POLICE FORCE TO ENFORCE CERTAIN PROVISIONS OF THE CONSTITUTION:***

Amongst the wide range of powers bestowed on the Police under the law, the Police Act, 2020 gives the police the power to promote the sanctity of the constitution by enforcing its provisions. Section 5 of the Police Act provides as follows:

- “(1) The Police Force is responsible for promoting and protecting the fundamental rights of persons in police custody as guaranteed by the Constitution.
- (2) For the purpose of subsection (1) of this section, the Police Force shall collaborate with and maintain close working relationships with any Government agency or relevant private

initiatives in the establishment of schemes or mechanisms offering legal services to accused persons, detainees or accused persons in police custody in need of legal services to ensure that they have full access to justice as laid down under the relevant provisions of Chapter IV of the Constitution.

(3) In addition to the provisions of subsections (1) and (2) of this section, the Police Force is also charged with the responsibility for promoting and protecting the fundamental rights of all persons as guaranteed under the African Charter on Human and People's Rights (Ratification and Enforcement) Act and other international legal instrument on Human Rights to which Nigeria is a signatory.”

### **POWERS OF POLICE OFFICERS**

The powers of police officers are contained in the Part VII of the Police Act.

#### ***Power to Arrest and Investigate:***

It is elementary fact that the general powers of the Police include arresting offenders, investigating offences and prosecuting offenders. In this regard, section 31 of the Police Act 2020 provides thus:

“Where an alleged offence is reported to the Police, or a person is brought to the police station on the allegation of committing an offence, the Police shall investigate the allegation in accordance with due process and report its finding to the Attorney-General of the Federation or of a State, as the case may be, for legal advice.”

NB: The procedure to be used in the execution of the duties of arrest, investigation and prosecution is provided for in Sections 32 to 47 of the Act.

***Power to Conduct Search:***

Another crucial power of the Nigerian Police is the power to conduct search. Like other security outfits (such as the Economic and Financial Crimes Commission, National Drug Law Enforcement Agency and Nigerian Custom Services amongst others), the Nigerian Police is empowered to conduct search where necessary. The provisions of Section 48 of the Police Act, 2020 states as follows:

“A Police Officer may seize and retain anything for which search has been conducted”

***Section 49 further provides thus:***

“A police officer may exercise the power to stop and search in any: Place the public or any section of the public has access, on payment or otherwise, as of right or by virtue of expression or implied permission; or Other place to which the public has ready access at the time when he proposes to exercise the power but which is not a private residence”

***Power to Detain Search and Seizure:***

Naturally, upon the conduct of search, the security agency that conducted the search or the Police may recover incriminating items or prohibited articles which may be subject of investigation. The law empowers the Police to seize such items or articles. In the event that the Police searches a person and have reasonable grounds to believe that a crime might have been committed, the Police may as well detain the searched person. Section 49 (2) - (5) of the Police Act 2020 provides thus:

“(2) A police may detain and search any person or vehicle where: Reasonable grounds for suspicion exist that the person being suspected is having in his possession;

or conveying in any manner anything which he has reasons to believe to have been stolen or otherwise unlawfully obtained; Reasonable grounds for suspicion exist that such person or vehicle carrying an unlawful article;  
Reasonable ground for suspicion that incidents involving serious violence may take place within a locality;  
Information has been received as to a description of an article being carried or of a suspected offender and  
A person is carrying a certain type of article at an unusual time or in a place where a number of burglaries or thefts are known to have taken place recently.”

“(3) if, in the course of search, a police officer discovers an article which he has reasonable grounds for suspecting to be stolen or prohibited article, he may seize it.

*An article prohibited under this part includes an offensive weapon; or an article used in the course or connection with the commission of a crime or intended to be used for commission of a crime. Crime includes burglary; theft; and offences relating to an offence of receiving stolen property, or harbouring thieves or any offence involving fraud or dishonesty. (See Section 49 (4) and (5))*

***Procedures for exercising the power of search are elaborately provided for under other relevant sections in part VII.***

Further, on the procedure of search, the following provisions are worthy of note:

Section 50 (4) of the Police Act, 2020 provides that a police officer exercising the power of search must be in his uniform and wear visibly a valid Police Identity Card.

- Section 51 (1) provides that effort shall be taken to minimise embarrassment that a person whose property is being searched may experience.
- Section 51 (2) provides that the cooperation of the person to be searched be sought.
- Section 51 (3) provides that force may be used to search as last resort in the case of undue resistance.
- Section 51 (4) provides for search within reasonable time (which is a question of fact).
- Section 51 (5) provides that where thorough search is required, which may necessitate taking of cloth or headgear, it shall be done by a person of the same sex.

#### ***Power to Conduct Intimate Search***

Section 53 (1) of the Police Act provides that where an Assistant Superintendent of Police has reasonable grounds to believe that a suspect in lawful custody has on him anything which could be used to cause physical injury to himself or others, and might use it while he is in police detention or in the custody of a court, or that evidence of the commission of the offence can only be gotten from the suspect, such officer may conduct an intimate search on a suspect.

By the provisions of section 59 (1) of the Police Act, the Police is empowered to enter into a premises and search the premises. Section 60 of the Police Act recognizes the duty of the Police to take statement of a suspect provided that such suspect wishes to make statement, as the suspect is at liberty to decline making a statement.

In the same vein, section 60 (2) of the Act emphasizes the right of a suspect to be represented by a legal practitioner. It is mandatory that the statement of an accused person be taken in the presence of his legal

practitioner and where there is no such legal representation, legal aid may be rendered to the suspect. Section 60 provides as follows:

“The statement may be taken in the presence of a legal practitioner of his own choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organisation or a Justice of the Peace or any other person of his choice, provided that the legal practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his duty as a legal practitioner.”

Section 60 (3) speaks to right of the suspect to an interpreter.

### ***Power to Serve Summons***

Section 65 of the Police Act, 2020 recognises that upon the issuance of summons by the issuing authority, the police shall serve such summon within the time specified in the law. The section 65 of the Act is provided below for better appreciation:

“Any summons lawfully issued by a court may be served by any police officer at any time during the hours of daylight, which is between 6am to 6pm.”

### **POWERS TO PROSECUTE**

It is not uncommon for Police to prosecute matters in some Nigerian courts. Section 66 of the Police Act empowers the police, in addition to the Police’s powers to arrest, investigate, conduct search, to also prosecute offenders in accordance with the laws of the Federal Republic of Nigeria. Section 66 provides as follows:

“subject to the provisions of section 174 and 211 of the Constitution and section 106 of the Administration of the Criminal

Justice Act which relates to the powers of the Attorney General of the Federation and of a State to institute, take over and continue or discontinue criminal proceedings against any person before any court of law in Nigeria , a police officer who is a legal practitioner, may prosecute in person before any court whether or not the information or complaint is laid in his name.”

***The caveat here however is that such a police officer must be a qualified legal practitioner.***

***Power to take Fingerprint:***

Section 68 (1) of the Act provides:

“A police officer shall take and record for the purpose of identification the measurements, photographs and fingerprint impression of all persons who may be in lawful custody.”

***Maintaining Public Safety***

The exact scope of the power to maintain public safety is not specified in the Act. However, it is safe to state that this power shall be observed by the Police within the bounds of the law. Section 83 (1) of the Act provides thus:

“The Police Force is responsible for maintaining and securing public safety and public order”

By Section 83 (2) of the Act, the police have the following responsibilities of maintaining and securing public safety:

- a. uphold the provisions of the constitution;
- b. uphold and protect fundamental rights of all persons in Nigeria, and
- c. be fair to all persons in Nigeria notwithstanding their economic status or religious, ethnic or political beliefs and affiliations.

By section 83 (3) of the Act, the Commissioner of Police of a state is responsible for maintaining security, public safety and public order. The law provides thus:

“Where a person or organisation notifies the police of his or its intention to hold a public meeting, rally or procession on a public highway, or such meetings in a place where the public has access to, the police officer responsible for the area where the meeting, rally or procession will take place, shall mobilize personnel to provide security cover for the meeting rally or procession.”

Thus, beyond the specific powers provided in the Electoral Act, 2022 for the police officers, the police can exercise any of the above powers under the Police Act in the execution of its responsibilities under the Electoral Act, 2022.

#### **ARREST AND RELATED MATTERS UNDER ADMINISTRATION OF CRIMINAL JUSTICE ACT, 2015 (ACJA)**

*This is another Act of the National Assembly that empowers the Police in several other regards.*

*Police can touch or confine the body of a person in the process of effecting an arrest:*

Arrest is a friendly exercise. The arresting authority can however confine the body of the suspect being arrested unless such suspect willingly submits to the arresting authority. This power is stipulated under section 4 of ACJA which provide as follows:

“In making an arrest, the police officer or other persons making the arrest shall actually touch or confine the body of the suspect, unless there is a submission to the custody by word or action.”

***Arrest is a friendly exercise unless there is sufficient reason to do otherwise:***

Ordinarily, the Police would not handcuff or use force on a suspect unless there are sufficient reasons to do so. Such situations are provided for in section 5 of the ACJA which provides thus:

“A suspect or defendant may not be handcuffed, bound or be subjected to restraint except:

- (a) there is reasonable apprehension of violence or an attempt to escape;
- (b) the restraint is considered necessary for the safety of the suspect or defendant; or
- (c) by order of a court.”

***The Police shall inform the suspect of the reason of his Arrest and other rights available to the suspect:***

It is constitutional for the Police to, upon arrest of a suspect draw the suspect’s attention to his rights. This position is further reinforced by the section 6 of ACJA which states thus:

“(1) Except when the suspect is in the actual course of the commission of an offence or is pursued immediately after the commission of an offence or has escaped from lawful custody, the police officer or other persons making the arrest shall inform the suspect immediately of the reason for the arrest.

(2) The police officer or the person making the arrest or the police officer in charge of a police station shall inform the suspect of his rights to:

- (a) remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice;

- (b) consult a legal practitioner of his choice before making, endorsing or writing any statement or answering any question put to him after arrest; and
- (c) free legal representation by the Legal Aid Council of Nigeria where applicable:

Provided the authority having custody of the suspect shall have the responsibility of notifying the next of kin or relative of the suspect of the arrest at no cost to the suspect.

Arrest of a person in lieu of an offender/suspect which was prevalent in Nigeria has now been expressly abolished by the provisions of ACJA. Section 7 provides that: ***“A person shall not be arrested in place of a suspect.”***

***The suspect shall be treated humanely, not be arrested on a civil wrong and be charged according to the law:***

The right to be treated humanely, which is also a constitutional right, is a globally recognised right. The law also does not permit arrest of person as a result of a civil transaction that has no criminal element. The section 8 of ACJA provides:

“(1) A suspect shall:

- (a) be accorded humane treatment, having regard to his right to the dignity of his person; and
- (b) not be subjected to any form of torture, cruel, inhuman or degrading treatment.

(2) A suspect shall not be arrested merely on a civil wrong or breach of contract.

(3) A suspect shall be brought before the court as prescribed by this Act or any other written law or otherwise released conditionally or unconditionally.

(4) The arraignment and trial of a suspect for a crime shall be in accordance with the provisions of this Act unless otherwise stated in this Act.

***Power to Charge an Arrested Suspect:***

By section 9 of ACJA, where a suspect is arrested by a police officer or a private person, the officer making the arrest or to whom the private person hands over the suspect:

- (a) may search the suspect, using such force as may be reasonably necessary for the purpose; and
- (b) shall place in safe custody all articles other than necessary wearing apparel found on the suspect.

***Duty of a Police officer to make inventory of items or property recovered from the suspect:***

The Police are empowered to make inventory of items or property recovered from the suspect at the point of arrest or search as the case may be. Section 10 of the ACJA provides that:

- “(1) A police officer making an arrest or to whom a private person hands over the suspect, shall immediately record information about the arrested suspect and an inventory of all items or property recovered from the suspect.
- (2) An inventory recorded under subsection (1) of this section shall be duly signed by the police officer and the arrested suspect, but the failure of the arrested suspect to sign the inventory shall not invalidate it.
- (3) The arrested suspect, his legal practitioner or such other person, as the arrested suspect may direct, shall be given a copy of the inventory.

### ***Conduct of examination on the suspect***

By section 11 of the ACJA, while in custody, a qualified medical expert may conduct examination on the suspect to gather evidence against the suspect. Section 11 of ACJA provides thus:

“where a suspect is in lawful custody on a charge of committing an offence of such a nature and alleged to have been committed in such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of the offence, a qualified medical practitioner or any certified professional with relevant skills, acting at the request of a police officer, may make such an examination of the suspect in custody as is reasonably necessary in order to ascertain the facts which may afford the evidence, and to use such force as is reasonably necessary for that purpose.”

### ***Search of Place Entered by Person Sought to be Arrested***

The ACJA empowers a police officer, while effecting arrest, to conduct search on the property entered into by the suspect. Such Police officer may also break into the premises where it is necessary in the exercise of his statutory duties of arrest.

Section 12 of the ACJA provides as follows:

“(1) Where a person or police officer acting under a warrant of arrest or otherwise having authority to arrest, has reason to believe that the suspect to be arrested has entered into or is within any house or place, the person residing in or being in charge of the house or place shall, on demand by the police officer or person acting for the police officer, allow him free access to the house or place and afford all reasonable facilities to search the house or place for the suspect sought to be arrested.

(2) Where access to a house or place cannot be obtained under subsection (1) of this section, the person or police officer may

enter the house or place and search it for the suspect to be arrested, and in order to effect an entrance into the house or place, may break open any outer or inner door or window of any house or place, whether that of the suspect to be arrested or of any other person or otherwise effect entry into such house or place, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance.

(3) Where the suspect to be arrested enters a house or place in the actual occupancy of another person being a woman who by custom or religious practice does not appear in public, the person making the arrest shall:

(a) before entering the house or place, give notice to the woman that she is at liberty to withdraw; and

(b) afford her every reasonable opportunity and facility for withdrawing, and may then enter the house or place, but the notice shall not be necessary where the person making the arrest is a woman.

From the above, it can be seen that the Act laid down special procedure when the house or place to be entered for the purpose of arrest is occupied by a woman who by her religion or cultural beliefs does not appear in the public, in which case, notice shall be first given for such woman to withdraw. This is however not applicable where the arresting officer is a woman.

### ***Power to break out of any house for purpose of liberation***

While exercising the power of arrest, the police officer may break his way out for the purpose of liberation. With respect to this point, section 13 of the ACJA is relevant, it provides as follow:

“A police officer or any other person authorised to make an arrest may break out of a house or place in order to liberate himself or

any other person who, having lawfully entered for the purpose of making an arrest, is detained in the house or place.”

***Suspect’s right to be promptly informed of his allegation, access to legal advice, communication for access to bail:***

This right undoubtedly stems of from the Constitution particularly chapter four of the Constitution. Section 14 of the ACJA provides thus:

“(1) A suspect who is arrested, whether with or without a warrant, shall be taken immediately with reasonable dispatch to a police station, or other place for the reception of suspect, and shall be promptly informed of the allegation against him in the language he understands.

(2) A person who has the custody of an arrested suspect shall give the suspect reasonable facilities for obtaining legal advice, access to communication for taking steps to furnish bail, and otherwise making arrangements for his defence or release.

(3) Notwithstanding the provision of subsection (2) of this Section, any such communication or legal advice shall be done in the presence of an officer who has custody of the arrested suspect.

***Recording of Arrests/Confessional Statement***

Upon arrest of a suspect, the police shall obtain the suspects statement immediately. The procedure of taking the suspect’s statement is spelt out by the ACJA in Section 15 it provides thus:

“(1) Where a suspect is arrested, whether with or without a warrant, and taken to a police station or any other agency effecting the arrest, the police officer making the arrest or the officer in charge shall cause to be taken immediately, in the prescribed form, the following record of the suspect arrested:

- (a) the alleged offence;
- (b) the date and circumstances of his arrest;

(c) his full name, occupation and residential address; and  
(d) for the purpose of identification: (i) his height; (ii) his photograph; (iii) his full fingerprint impressions; or (iv) such other means of his identification.

(2) The process of recording in subsection (1) of this section shall be concluded within a reasonable time of the arrest of the suspect, but not exceeding 48 hours.

(3) Any further action in respect of the suspect arrested pursuant to subsection (1) of this section shall be entered in the record of arrests.

(4) Where a suspect who is arrested with or without a warrant volunteer to make a confessional statement, the police officer shall ensure that the making and taking of the statement shall be in writing and may be recorded electronically on a retrievable video compact disc or such other audio-visual means.

(5) Notwithstanding the provision of subsection (4) of this Section, an oral confession of arrested suspect shall be admissible in evidence.

***The Police shall maintain a Central Criminal Records Registry***

The law mandates that the Police to maintain a central criminal records registry for the preservation of data. Section 16 of ACJA provides as follows:

“(1) There shall be established at the Nigeria Police Force a Central Criminal Records Registry.

(2) For the purposes of subsection (1) of this Section, there shall be established at every state police command a Criminal Records Registry which shall keep and transmit all such records to the Central Criminal Records Registry.

(3) The State or Federal Capital Territory (FCT) Police Command shall ensure that the decisions of the court in all criminal trials

are transmitted to the Central Criminal Records Registry within 30 days of the judgement.

***Recording a Statement of an arrested person:***

The law promotes the taking of statement by Police and the accuracy of same in further protection of human rights of the suspect. Section of 17 of ACJA provides thus:

“(1) Where a suspect is arrested on allegation of having committed an offence, his statement shall be taken, if he so wishes to make a statement.

(2) Such statement may be taken in the presence of a legal practitioner of his choice, or where he has no legal practitioner of his choice, in the presence of an officer of the Legal Aid Council of Nigeria or an official of a Civil Society Organization or a Justice of the Peace or any other person of his choice. Provided that the Legal Practitioner or any other person mentioned in this subsection shall not interfere while the suspect is making his statement, except for the purpose of discharging his role as a legal practitioner.

(3) Where a suspect does not understand or speak or write in the English language, an interpreter, shall record and read over the statement to the suspect to his understanding and the suspect shall then endorse the statement as having been made by him, and the interpreter shall attest to the making of the statement.

(4) The interpreter shall endorse his name, address, occupation, designation or other particulars on the statement.

(5) The suspect referred to in subsection (1) of this section shall also endorse the statement with his full particulars.

***Arrest by a Police Officer without warrant*** Section 18 of ACJA says that:

“(1) A police officer may, without an order of a court and without a warrant, arrest a suspect:

(a) whom he suspects on reasonable grounds of having committed an offence against a law in Nigeria or against the law of any other State, unless the law creating the offence provides that the suspect cannot be arrested without a warrant;

(b) who commits any offence in his presence;

(c) who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(d) in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to the thing;

(e) whom he suspects on reasonable grounds of being a deserter from any of the Armed Forces of Nigeria;

(f) whom he suspects on reasonable grounds of having been involved in an act committed at a place outside of Nigeria which, if committed in Nigeria, would have been punished as an offence, and for which he is, under a Law in force in Nigeria, liable to be apprehended and detained in Nigeria;

(g) having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of housebreaking, car theft, firearm or any offensive or dangerous weapon;

(h) whom he has reasonable cause to believe a warrant of arrest has been issued by a court of competent jurisdiction in Nigeria;

- (i) found in Nigeria taking precautions to conceal his presence in circumstances, which afford reason to believe that he is taking such precautions with a view to committing an offence;
  - (j) for whose arrest a warrant has been issued or whom he is directed to arrest by a Judge, Magistrate, Justice of the Peace or superior police officer;
  - (k) whom he reasonably suspects to be designing to commit an offence for which the police may arrest without a warrant, if it appears to him that the commission of the offence cannot be otherwise prevented; or
  - (l) required to appear by a public summons issued under this Act or any Act.
- (2) The authority given to a police officer to arrest a suspect who commits an offence in his presence shall be exercisable in respect of offences committed in the officer's presence notwithstanding that the Act creating the offence provides that the suspect cannot be arrested without a warrant.

### ***Handing over a Suspect to a Police Officer***

The law permits a private individual to effect an arrest where a police officer is not present at the scene where the offence is committed. The private individual must immediately hand the suspect over to the police officer or take the suspect to the nearest police station for proper investigation. Section 23 of the ACJA provides that:

“(1) A private person who arrests a suspect without a warrant shall immediately hand over the suspect so arrested to a police officer, or in the absence of a police officer, shall take the suspect to the nearest police station, and the police officer shall make a note of the name, address and other particulars of the private person making the arrest.

(2) Where there is reason to believe that the arrested suspect comes under the provisions of section 18 (1) of this Act, a police officer shall re-arrest him.

(3) Where there is reason to believe that the suspect has committed an offence, and he refuses on the demand of a police officer to give his name and address, or gives a name or address which the officer has reason to believe to be false, he shall be dealt with under the provisions of section 19 of this Act.

(4) Where a suspect so arrested by a private person is handed over to a police officer or to an official of an agency authorized by law to make arrests, the police officer or official shall take note of the name, residential address and other particulars of the private person making the arrest, and the date, time and other circumstances of the arrest, and where the arrested suspect is taken to the police station or to the agency, the charge room officer shall make the entries in the crime diary.

(5) The police officer or official to whom the arrested suspect is handed over by the private person shall obtain from the private person who made the arrest a formal witness statement setting out the facts and circumstances of the arrest

(6) Where there is sufficient reason to believe that the suspect handed over has committed an offence, he shall immediately be re-arrested but if there is no sufficient reason to believe that the suspect has committed an offence, he shall be released immediately.

(7) The provisions of section 15 of this Act do not apply to this section unless the suspect arrested and handed over has been re-arrested in accordance with sub section (2) of this section.

***Power of the Police to grant bail:***

Under the Nigerian legal system, the power to grant bail lies majorly in the courts and police. Bail is divided into three, namely; administrative or police bail, bail pending trial and bail pending appeal. This discussion relates to the police or administrative bail. The procedures regulating administrative bail is provided for in section 30 of the ACJA which provide that:

“(1) Where a suspect has been taken into police custody without a warrant for an offence, other than an offence punishable with death, an officer in charge of a police station shall inquire into the case and release the suspect arrested on bail subject to subsection (2) of this section, and if it will not be practicable to bring the suspect before a court having jurisdiction with respect to the offence alleged, within 24 hours after the arrest.

(2) The officer in charge of a police station shall release the suspect on bail on his entering into a recognizance with or without sureties for a reasonable amount of money to appear before the court or at the police station at the time and place named in the recognizance.

(3) Where a suspect is taken into custody and it appears to the police officer in charge of the station that the offence is of a capital nature, the arrested suspect shall be detained in custody, and the police officer shall refer the matter to the Attorney General of the Federation for legal advice and cause the suspect to be taken before a court having jurisdiction with respect to the offence within a reasonable time.

***Police may execute a warrant of arrest on any day (Execution of warrant and procedure)***

Police may effect an arrest with warrant any day and time.

Section 43 of ACJA provides as follows:

(1) A warrant of arrest may be executed on any day, including a Sunday or public holiday.

(2) A warrant of arrest may be executed by any police officer at any time and in any place in any State other than within the actual court room in which a court is sitting.

(3) The Police officer executing a warrant of arrest shall, before making the arrest, inform the suspect to be arrested that there is a warrant for his arrest unless there is reasonable cause for abstaining from giving the information on the ground that it is likely to occasion escape, resistance, or rescue.

(4) A suspect arrested on a warrant of arrest shall, subject to the provisions of the Constitution of the Federal Republic of Nigeria, sections 44 and 45 of this Act be brought before the court that issued the warrant of arrest.

#### ***Power to arrest on warrant but without the warrant***

Where an arrest is to be made by a warrant and the police officer executing the arrest is not, at the point of arrest, in possession of the issued warrant, the law permits such police officer to proceed with the arrest provided that the warrant shall be shown to the suspect as soon as possible on the suspect's demand.

Section 44 of ACJA provides the following:

“A warrant of arrest may be executed notwithstanding that it is not in the possession at the time of the person executing the warrant but the warrant shall, on the demand of the suspect, be shown to him as soon as practicable after his arrest.”

#### ***Power to re-arrest***

A suspect who escapes or is rescued from police detention may be immediately pursued and re arrested by the police. The law emphasized

that such arrest can be made at any place. Section 48 of ACJA states the following:

“Where a suspect in lawful custody escapes or is rescued, the person from whose custody he escapes or is rescued or any other person may pursue and re-arrest him in any place in Nigeria.”

***Police to prevent offences and injury to public property:***

Among the general powers of the police is protection of lives and properties and prevention of crimes and maintenance of law, order, and public peace. To buttress this, section 50 of ACJA provides as follows:

“(1) A police officer may intervene for the purpose of preventing, and shall to the best of his ability, prevent the commission of an offence.

(2) A police officer may of his authority interpose to prevent an injury attempted to be committed in his presence to any public property, whether movable or immovable, or the removal of or injury to any public landmark or buoy or other mark used for navigation.

This relates, for example, to the preservation of the INEC properties or assets.

Further, section 51 of ACJA further provides that:

“A police officer receiving information of a design to commit any offence shall communicate the information to the police officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of the offence.

Also, section 52 of ACJA provides thus:

“Notwithstanding the provisions of this Act or any other law relating to arrest, a police officer upon a reasonable suspicion of a design to commit an offence may arrest, without orders from a Magistrate and without a warrant, the suspect so designing, if it

appears to the officer that the commission of the offence cannot otherwise be prevented.”

Beyond all the above powers provided in the various Acts, the Electoral Act, 2022 further confer the Police with following powers in the prevention, detection of crimes and enforcement of the Electoral Act, particularly, electoral offenses.

### **OFFENCES & PUNISHMENTS UNDER THE ELECTORAL ACT**

The Electoral Act 2022 is the substantive legislation that regulates the conduct of election in Nigeria. The Act establishes electoral offences and punishments. Some of the sections relating to offences and punishment are provided hereunder.

Section 8 (5) of the Electoral Act:

“A person who, being a member of a political party, misrepresents himself by not disclosing his membership, affiliation, or connection to any political party in order to secure an appointment with the Commission in any capacity, commits an offence and is liable on conviction, to a fine of N5,000,000 or imprisonment for a term not more than two years or both.”

This forbids any person from disguising his identity or status in order to secure employment in any capacity with the commission.

#### ***Multiplicity of Registration***

It is an offence under the Electoral Act for a person to register in more than one registration center or register more than one time in the same registration centre. The objective of this prohibition is to avoid multiplicity of registration by voters. An offender that violates or engages in multiple registration, on conviction, is liable to a fine of not more than N100,000 or, in the alternative, not more than one year imprisonment. Section 12 (2) of the Act provides:

“A person shall not register in more than one registration center or register more than once in the same registration center.”

Section 12 (3) of the Act provides:

“A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not more than N100,000 or imprisonment for a term not more than one year or both.”

### ***Replacement of Voters’ Card 90 days before election***

The law prohibits the issuance of a replacement of Permanent Voters’ Card to any voter within a period less than 90 days before election. This is provided by the section 18 (3) of the Act. The punishment is provided for in section 18 (5) of the Act, it provides:

“Any person who contravenes subsection (3) commits an offence and is liable on conviction, to a fine not more than N200,000 or imprisonment for a term not more than two years or both.”

### ***Display or Publication of Voters’ Register***

The law requires that the voters’ register be displayed for scrutiny by the official or staff of the commission, failure of which amounts to an offence punishable under section 19(5) of the Act. Section 19 (5) of the Act provides:

“An official or staff of the Commission, who fails to display or publish the voters’ register as provided under subsection (1) commits an offence and is liable on conviction to a fine of N100,000 or imprisonment for a term of six months or both.”

### ***Buying, Selling and Unlawful possession of Voters’ Card***

The law prohibits unlawful possession of voters’ card irrespective of whether it was issued in the name of any voter or not. Transactional dealings with voters’ cards are equally criminal by virtue of the Act. A

person found in breach of the law in this regard stands the risk of liability to a fine up to the tune of N500,000 or imprisonment not exceeding two years or both. Section 22 of the Act provides:

“Any person who— (a) is in unlawful possession of any voter’s card whether issued in the name of any voter or not ; or (b) sells or attempts to sell or offers to sell any voter’s card whether issued in the name of any voter or not; or (c) buys or offers to buy any voters’ card whether on his own behalf or on behalf of any other person, commits an offence and is liable on conviction to a fine not more than N500,000 or imprisonment not more than two years or both.

### ***Requisition of Information***

A person who fails to give any information within a stipulated time required of him under the Act commits an offence and is liable to imprisonment. The law also prohibits fictitious registration, transmission of false information, facilitating the registration of a person who ought not to be registered among others.

Section 23 of the Act provides thus:

“(1) Any person who— (a) after demand or requisition made of him or her under this Act without just cause, fails to give any such information as he or she possesses or does not give the information within the time specified; (b) in the name of any other person, whether living, dead or fictitious, signs an application form for registration as a voter to have that other person registered as a voter ; (c) transmits or is involved in transmitting to any person as genuine a declaration relating to registration which is false in any material particular, knowing it to Be false ; (d) intentionally procures the inclusion in the Register of Voters of his or herself or any other person with the knowledge that he or she or that other person ought not to have been registered ; or (e) By his or herself

or any other person procures the registration of a fictitious person, commits an offence and is liable on conviction to a fine not more than N100,000 or imprisonment for a term not more than one year or Both.

### ***Hindering persons from registration***

A person who whether by duress or threats hinders a person from registering as a voter commits an offence and is liable to fine or imprisonment for a period not exceeding five years.

Section 23 (2) provides as follows:

“Any person who— (a) By duress, including threats of any kind causes or induces any person or persons generally to refrain from registering as a voter or voters; or (b) in any way hinders another person from registering as a voter; commits an offence and is liable on conviction, to a fine not more than N500,000 or imprisonment for a term not more than five years.”

### ***Presentation of a Candidate that falls short of the qualification requirement***

There are requirements set for the qualification to political offices under the Electoral Act. Any party that submits the name of a candidate who falls short of the qualification stipulated in the qualification section commits an offence and is liable on conviction to a fine of N10,000,000. Section 29 (8) of the Act provides thus:

“A political party which presents to the Commission the name of a candidate who does not meet the qualification stipulated in this section, commits an offence and is liable on conviction to a fine of N10,000,000.”

### ***Underage Voting and Impersonation***

The law frowns at underage voting and impersonation at a polling unit. Where the presiding officer has reasons to believe that a voter is an underage voter, the presiding officer may order the Police officer present at the polling unit to arrest the alleged underage voter. The presiding officer shall not prevent the alleged underage voter from voting by reason of his suspicion or allegation. However, where the underage voter or impersonator admits not to be who he held himself to be, he shall not be allowed to vote and would be handed over to the security agency. Section 57 of the Act provides thus:

“ (1) If at the time a person applies to vote and before he or she has left the polling unit, a Polling Agent, polling unit official or security agent informs the Presiding officer that he or she has reasonable cause to believe that the person is under the age of 18 years or has committed the offence of impersonation and gives an undertaking on a prescribed form to substantiate the charge in a court of law, the Presiding officer may order a police officer to arrest that person and the Presiding officer’s order shall be sufficient authority for the police officer to act.

“(2) A person in respect of whom a Polling Agent, polling official, or security agent gives an information in accordance with the provision of subsection (1) shall not by reason of the information, be prevented from voting, but the Presiding officer shall cause the words “protested against for impersonation” to be placed against his or her name in the marked copy of the register of voters or part of the register of voters.

“(3) Where a person in respect of whom a declaration is made under subsection (2), admits to the Presiding officer that he or she is not the person he or she held themselves out to be, he or she shall not be permitted to vote and shall be handed over to the

police or security agent. 57. (4) A person arrested under this section shall be deemed to be a person taken into custody by a police officer.

***Disorderly behavior at the Polling Unit***

The presiding officer in a polling unit has the power to order the removal a person who behaves in a disorderly manner or refuses to obey a lawful order within the vicinity of a polling unit. Section 58 (2) of the Act provides thus:

“The presiding officer may order a person to be removed from a polling unit, who behaves in a disorderly manner or fails to obey a lawful order.

***Submission of the prescribed form after counting and recording of votes to the police and polling agents***

The law requires that the presiding officer, upon the counting of votes, enter votes scored by each candidate in a prescribed form which shall be stamped by the presiding officer and countersigned by the candidates or their agents where available at the polling unit. Afterwards, the presiding officer is required to deliver copy of the completed forms to the agents and police officer. The counting and announcement of the result then follows. A violation of any of these procedures by presiding officer amounts to an offence and on conviction would be liable to pay fine or imprisonment for at least six months. Section 60 (3) of the Act provides thus:

“The presiding officer shall give to the polling agents and the police officer where available a copy each of the completed forms after it has been duly signed as provided under subsection (2).

Section 60 (6) of the Act provides thus:

“A presiding officer who wilfully contravenes any provision of this section commits an offence and is liable on conviction to a fine not

more than N500,000 or imprisonment for a term of at least six months.”

### ***Collation or announcement of false results***

Announcement or collation of false result by a returning officer or collation officer amounts to an offence and on conviction, such officer would be liable pay fine of N5,000,000 or be imprisoned for a minimum term of three years or both. Section 64 (9) of the Act provides thus:

“A returning officer or collation officer, as the case may be, commits an offence if he or she intentionally collates or announces a false result and is liable on conviction to a fine of N5,000,000 or imprisonment for a term of at least three years or both.”

### ***Use of Prescribed Forms for the Conduct of Election***

The Electoral Act provides that the forms to be used for the conduct of election are prescribed forms by the commission. Failure to use the prescribed forms for recording shall invalidate the election. A presiding officer who intentionally announces or signs election result in violation of the aforesaid commits an offence and on conviction is liable to a fine of N10,000,000 or imprisonment for at least a year or both.

Section 73 (3) of the Act provides thus:

“A Presiding officer who intentionally announces or signs any election result in violation of subsection (2) commits an offence and is liable on conviction to a fine of N10,000,000 or imprisonment for a term of at least one year or both.”

### ***Access to Electoral Materials***

Section 74 (1) of the Act provides that the Resident Electoral Commission in a State shall within 14 days, upon application by parties, issues a certified true copy of such document demanded for by a party in an election. This, in most cases, is to enable the person inspect them

for the purpose of instituting or maintaining election petition. Failure to comply with these provisions attract imprisonment or/and fine in accordance with the disctates of the Act.

Section 74 (2) of the Act provides thus:

“Any Resident Electoral Commissioner who wilfully fails to comply with the provisions in subsection (1) commits an offence and is liable on conviction to a maximum fine of N2,000,000 or imprisonment for a term of 12 months or both.”

### ***Giving False or Misleading Information***

Any association, members or principal members of the association who provides false or misleading information commit an offence and on conviction liable to imprisonment or/and fine. Section 75 of the Act provides thus:

“(5) An association, its executive members or principal officer who gives false or misleading information, commit an offence and is liable on conviction, in the case of – (a) the association to a fine of N5,000,000; and (b) each executive or principal officer of the association to a fine of N3,000,000 or imprisonment for a term of at least two years or both.”

This, in most cases, occur during application forv registration as a political party.

### ***Violation of the Constitution of the Federal Republic of Nigeria***

The Electoral Act also sanctions the violation of the constitutional provisions by any of the political parties or associations. Section 78 of the Act provides thus:

“Any political party or association, which contravenes the provisions of section 227 of the Constitution, commits an offence and is liable on conviction to a fine of – (a) N5,000,000 for the

first offence; (b) N7,000,000 for any subsequent offence; and (c) N500,000 for every day that the offence continues.”

This relates to the formation by political party of a quasi-military organisations.

### ***Aiding and abetting the contravention of the Constitution***

In the event that a person or group of persons aids or abets the contravention of the constitution, it amounts to a crime and on conviction, such person or group of persons stands the risk of paying fine of N5,000,000 or/and imprisonment. Section 78 (2) of the Act provides thus:

“Any person or group of persons who aids or abets a political party in contravening the provisions of section 227 of the Constitution commits an offence and is liable on conviction to a fine of N5,000,000 or imprisonment for a term of five years or both.

### ***Failure of the Party to provide required information***

Where a political party fails to carry out the directives of the commission or fails to provide required information, such political party is liable to fine of an amount not exceeding N1,000,000.

Section 83 (4) A of the Act provides thus:

“A political party which fails to provide the required information or clarification under subsection (2) or carry out any lawful directive given by the Commission in conformity with the provisions of this section is liable to a fine not more than N1,000,000.”

### ***Unlawful holding or Retaining Assets by a Political Party***

A political party that:

- a. holds or possesses fund outside Nigeria; and
- b. retains any fund or asset remitted to it from outside Nigeria;

Commits and offence and on conviction shall forfeit the fund or asset and may be liable to fine as well. Section 85 of the Act provides thus:

“Any political party that— (a) holds or possesses any fund outside Nigeria in contravention of section 225 (3) (a) of the Constitution, commits an offence and shall on conviction forfeit the funds or assets purchased with such funds to the Commission and in addition may be liable to a fine of at least N5,000,000; or (b) retains any fund or other asset remitted to it from outside Nigeria in contravention of section 225 (3) (a) of the Constitution commits an offence and shall on conviction forfeit the funds or assets to the Commission and in addition may be liable to a fine of at least N5,000,000.”

This is targeted at external funding of political parties to take over reign of power in the country. The receipt is illegal and as such, retention of same is hereby also made illegal.

### ***Limitation of the contribution to a Political Parties***

The Law limits the amount of money or other assets an individual may contribute to a party or candidate. Exceeding the prescribed limit set by a commission regarding amounts is an offence. Section 87 (1) of the Act provides thus:

“(1) The Commission shall have power to place limitation on the amount of money or other assets which an individual can contribute to a political party or candidate and to demand such information on the amount donated and source of the funds.

“(2) Any individual, candidate or political party who exceeds the limit placed by the Commission in subsection (1), commits an offence and is liable on conviction to— (a) in case of a political party, a fine not more than N10,000,000 and forfeiture of the amount donated; and (b) in case of an individual, a fine of five

times the amount donated in excess of the limit placed by the Commission.”

### ***Political Slogan with Abusive Language***

The law prohibits the usage of political campaign slogans tainted or laced with abusive languages aimed at injuring religious, ethnic, tribal or sectional feelings. Arguably, this prohibition promotes the right to freedom of thought, conscience and association as entrenched in the Nigerian Constitution. Religious places, Police stations, and public offices shall not be used for political gatherings of any type. In synopsis, acts of political parties or individuals that could spike or incite violence are prohibited by the Act. Section 92 (1) - (8) of the Act provides thus:

“(1) A political campaign or slogan shall not be tainted with abusive language directly or indirectly likely to injure religious, ethnic, tribal or sectional feelings.”

(2) Abusive, intemperate, slanderous or base language or insinuations or innuendoes designed or likely to provoke violent reaction or emotions shall not be employed or used in political campaigns.

(3) Places designated for religious worship, police stations, and public offices shall not be used— (a) for political campaigns, rallies and processions; or(b) to promote, propagate or attack political parties, candidates or their programs or ideologies.

(4) Masquerades shall not be employed or used by any political party, aspirant or candidate during political campaigns or for any other political purpose.

(5) A political party, aspirant or candidate of a political party shall not retain, organise, train or equip any person or group of persons for the purpose of enabling them to be employed for the use or display of physical force or coercion in promoting any political objective or interest, or in such manner as to arouse reasonable

apprehension that they are organised, trained or equipped for that purpose.

(6) A political party, aspirant or candidate shall not keep or use armed private security organisation, vanguard or any other group or individual by whatever name called for the purpose of providing security, assisting or aiding the political party or candidate in whatever manner during campaigns, rallies, processions or elections.

(7) A political party, aspirant or candidate that contravenes any of the provisions of this section commits an offence and is liable on conviction— (a) in the case of an aspirant or candidate, to a maximum fine of N1,000,000 or imprisonment for a term of 12 months; and (b) in the case of a political party, to a fine of N2,000,000 in the first instance, and N1,000,000 for any subsequent offence.

(8) A person or group of persons who aids or abets a political party, an aspirant or a candidate in contravening the provisions of subsection (5), commits an offence and is liable on conviction to a fine of N500,000 or imprisonment for a term of three years or both.

### ***Prohibition or use of force during Political Campaign***

The law prohibits the use of threats, force, or violence during political campaign for the purpose of compelling other person(s) to support or prevent them from supporting a political party or candidate. Section 93 (1) and (2) of the Act provides thus:

“A party, candidate, aspirant, or person or group of persons shall not directly or indirectly threaten any person with the use of force or violence during any political campaign in order to compel that person or any other person to support or refrain from supporting a political party or candidate. “

(2) A political party, candidate, aspirant, person or group of persons that contravenes the provisions of this section commits an offence and is liable on conviction— (a) in the case of a candidate, aspirant, or person or group of persons, to a maximum fine of N1,000,000 or imprisonment for a term of 12 months; and (b) in the case of a political party, to a fine of N2,000,000 in the first instance, and N500,000 for any subsequent offence.

All manners of thuggery are prohibited and liable to be sanctioned as specified above.

***Limitation on Political Broadcast and Campaign by Political Parties***

By the Electoral Act, political campaign shall begin 150 days before the election and end 24 hours to the election. In the event that a party violates the said time limit, on conviction, such political party is liable to fine of an amount not less than N500,000

Section 94 (1) and (2) of the Act provides thus:

“For the purpose of this Act, the period of campaigning in public by every political party shall commence 150 days before polling day and end 24 hours prior to that day.

94 (2) A registered political party which through any person acting on its behalf during the 24 hours before polling day—

(a) advertises on the facilities of any broadcasting undertaking; or  
(b) procures for publication or acquiesces in the publication of an advertisement in a newspaper, for the purpose of promoting or opposing a particular candidate, commits an offence under this Act and is liable on conviction to a maximum fine of N500,000.

***Allocation of time to candidates by public media during campaign period***

Where candidates or political parties deploy the use of the media for their political campaign programs, they shall be allocated equal time at similar hours of the day. Also, at public electronic media, equal time shall be allocated to parties subject to payment of requisite fees. Violation of the aforesaid by any party amounts to an offence. Section 95 (1) - (6) of the Act provides thus:

“(1) A candidate and his or her party shall campaign for the elections in accordance with such rules and regulations as may be determined by the Commission.

(2) State apparatus including the media shall not be employed to the advantage or disadvantage of any political party or candidate at any election.

(3) Media time shall be allocated equally among the political parties or candidates at similar hours of the day.

(4) At any public electronic media, equal airtime shall be allotted to all political parties or candidates during prime times at similar hours each day, subject to the payment of appropriate fees.

(5) At any public print media, equal coverage and visibility shall be allotted to all political parties.

(6) A person who contravenes subsection (3) and (4) commits an offence and is liable on conviction, in the case of -

a. a public media, to a fine of N2,000,000 in the first instance and N5,000,000 for subsequent conviction; and

b. principal officers of the media house, to a fine of N1,000,000 or imprisonment for a term of six months.

Publishing of any print or opposing a political party or candidate 24 hours before election is punishable with imprisonment or fine. Section 96 of the Act provides thus:

“(1) A person, print or electronic medium that broadcasts, publishes, advertises or circulates any material for the purpose of promoting or opposing a particular political party or the election of a particular candidate over the radio, television, newspaper, magazine, handbills, or any print or electronic media whatsoever called within twenty-four hours immediately preceding the or on election day commits an offence under this Act.

(2) Where an offence under subsection (1) is committed by a body corporate, the principal officers of that body shall be deemed to have equally committed the same offence.

(3) A person convicted of an offence under this section is liable—  
(a) in the case of a body corporate to a maximum fine of N1,000,000; and (b) in the case of an individual to a maximum fine of N1,000,000 or to imprisonment for a term of six months or both.

### ***Basing Campaign on Religion or Tribe***

In a situation where a person, candidate or association promotes or opposes a candidate on tribal or religious ground, such person, candidate or association commits a crime and if convicted may be liable to pay fine or imprisoned as the case may be.

Section 97 (1) of the Act provides thus:

“A candidate, person or association that engages in campaigning or broadcasting based on religious, tribal, or sectional reason for the purpose of promoting or opposing a particular political party or the election of a particular candidate, commits an offence under this Act and is liable on conviction— (a) to a maximum fine of N1,000,000 or imprisonment for a term of 12 months or both; and

(b) in the case of a political party, to a maximum fine of N10,000,000 “

### ***Offences in relation to registration***

By virtue of section 114 of the Act, the following are electoral offences:

- a. Destroying, mutilating, defacing or altering any document required for the purpose of registration;
- b. Where a person presents him or herself for registration or include him or herself in a register of voters in a constituency he or she is not entitled to be registered;
- c. Publish false report to prevent persons who are qualified to register from registering as voters;
- d. Where a person required a document, prepares, publishes or keeps for the purpose of registration, any entry or statement which he or she believes not to be true;
- e. Impeding or obstructing a registration officer or a revision officer in the performance of his or her duties;
- f. Without authority, impersonating a registration officer;
- g. Forgery of registration card;
- h. Carries out registration in a place not designated by the commission as registration centre.

Violation of any of the above amounts to commission of an offence which may attract up to N1,000,000 or imprisonment for a term of 12 months or both.

Section 114 quotes:

“A person who—

- (a) without authority, destroys, mutilates, defaces or remove or makes any alteration in any notice or document required for the purpose of registration under this Act;

- (b) presents his or herself to be or does any act whereby he or she is by whatever name or description howsoever, included in the register of voters for a constituency in which he or she is not entitled to be registered or causes his or herself to be registered in more than one registration or revision center;
- (c) publishes any statement or report which he or she knows to be false or does not believe to be true so as to prevent persons who are qualified to register from registering as voters;
- (d) makes in any record, register or document which he or she is required to prepare, publish or keep for the purpose of registration, any entry or statement which he or she knows to be false or does not believe to be true;
- (e) impedes or obstructs a registration officer or a revision officer in the performance of his or her duties;
- (f) without proper authority, wears the identification of a registration officer or assistant registration officer or wears any other identification purporting to be the identification of a registration officer or assistant registration officer;
- (g) forges a registration card; or
- (h) carries out registration or revision of voters at a center or place not designated by the Commission, commits an offence and is liable on conviction to a maximum fine of N1,000,000 or to imprisonment for a term of 12 months or both.”

The latter form part of the registration offences.

### ***Offences in relation to Nomination of Candidates***

The following amount to offences that relate to nomination:

Section 115 (1) of the Act provides thus:

“(1) A person who—

- (a) forges any nomination paper or result form,

(b) wilfully defaces or destroys any nomination paper or result form,

(c) delivers to an electoral officer any nomination paper or result form knowing it to be forged,

(d) signs a nomination paper or result form as a candidate in more than one constituency at the same election,

(e) forges any ballot paper or official mark on any ballot paper or any certificate of return or result form,

(f) wilfully destroys any ballot paper or official mark on any ballot paper or any certificate of return or result form,

(g) without authority gives a ballot paper or result form to any person,

(h) wilfully places in any ballot box any unauthorised paper or result form, (i) wilfully removes from a polling station any ballot paper or result form whether or not the ballot paper or result form was issued to him or her in that polling station,

(j) without authority destroys or in any other manner interferes with a ballot box or its contents or any ballot paper or result form then in use or likely to be used for the purpose of an election,

(k) signs a nomination paper consenting to be a candidate at an election knowing that he or she is ineligible to be a candidate at that election, commits an offence and is liable on conviction to a maximum term of imprisonment for two years.

(2) A person who—

(a) without proper authority prints a ballot paper or what purports to be or is capable of being used as a ballot paper or result form at an election,

(b) being authorised by the Commission to print ballot papers or result form, prints more than the number or quantity the Commission authorised,

(c) without authority, is found in possession of a ballot paper or result form when he or she is not in the process of voting and at a time when the election for which the ballot paper or result form is intended, is not yet completed,

(d) manufactures, constructs, imports into Nigeria, has in his or her possession, supplies to any election official or uses for the purpose of an election, or causes to be manufactured, constructed or imported into Nigeria, supplies to any election official for use for the purpose of any election, any ballot box including any compartment, appliance, voting device or mechanism or by which a ballot paper or result form may or could be secretly placed or stored in, or having been deposited during polling may be secretly diverted, misplaced or manipulated, commits an offence and is liable on conviction to a maximum fine of N50,000,000 or imprisonment for a term not less than 10 years or both.

(3) An attempt to commit any offence under this section shall be punishable in the same manner as the offence itself.”

The import of the above is that the person involved as opposed the party will bear the consequence in this regard.

### ***Disorderly behaviours and possession of weapon***

A person who acts or incites other persons to act in a disorderly manner or person who has in his possession an offensive weapon or missiles in the cause of a political gathering, commits an offence, and on conviction is liable to fine or/and imprisonment.

Section 116 of the Act provides thus:

“Any person who, at a political meeting – (a) acts or incites another to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was convened, or (b) has in his possession an offensive weapon or missiles, commits an offence and is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.

### **Inappropriate usage of voter’s card**

Inappropriate use of a voter’s card is illegal. This position is clear from the following provision:

Section 117 provides that:

“Any person who—

- (a) being entitled to a voter’s card, gives it to some other person for use at an election other than an officer appointed and acting in the course of his or her duty under this Act,
- (b) not being an officer acting in the course of his or her duty under this Act, receives any voters card in the name of some other person or persons for use at an election uses it fraudulently,
- (c) without lawful excuse has in his possession more than one voters card, or (d) buys, sells, procures or deals, with voters card otherwise than as provided in this Act, commits an offence and is liable on conviction to a maximum fine of N1,000,000 or imprisonment for a term of 12 months or both.”

Voter’s card does not belong to the holder so as to be used anyhow or abused in any form. The section provides sanction where such occurs.

### ***Inappropriate use of vehicles***

Government or public corporation’s vehicle or boat shall not be used to convey any person to the registration office or a polling unit (except such person is ordinarily entitled to use such boat or vehicle). Violation

of the foregoing amounts to commission of an offence which on conviction, attracts imprisonment or fine or both

Section 118 of the Act provides thus:

“(1) No person shall provide for the purpose of conveying any other person to a registration office or to a polling unit any government vehicle or boat, or any vehicle or boat belonging to a public corporation except in respect of a person who is ordinarily entitled to use such vehicle or boat and in emergency in respect of an electoral officer.

(2) Any person who contravenes the provisions of this section, commits an offence and is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of six months or both.

### ***Impersonation of voters and voting by unqualified voters***

A person who impersonates a living or dead person commits an offence under the Act. Multiplicity of votes, vote by an unqualified person, and inducing an unqualified person to vote amount to offences under the Electoral Act.

Section 119 of the Act provides thus:

“(1) Any person who— (a) applies to be included in any list of voters in the name of some other person, whether such name is that of a person living or dead or of a fictitious person ; (b) having once to his or her knowledge been improperly included in a list of voters under this Act as a voter entitled to vote at any election, applies, except as authorised by this Act, to be included in any other list of voters prepared for any constituency as a voter at an election ; (c) applies for a ballot paper in the name of some other person, whether such name is that of a person living or dead or of a fictitious person ; (d) having voted once at an election applies at the same election for another ballot paper ; (e) votes or attempts to vote at an election knowing that he or she is not qualified to

vote at the election ; or ( f ) induces or procures any other person to vote at an election knowing that such other person is not qualified to vote at the election, commits an offence and is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.

(2) Any person who commits the offence of impersonation or who aids, abets, counsels or procures the commission of that offence, is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.

***Dereliction of Duty, delivery of false certificate of return and announcement of false results***

An officer who omits or commits any act in breach of his or her prescribed duty commits an offence under the Act. Where an agent conspires to declare false result of an election, such agent commits an offence and upon conviction may be sentenced to imprisonment. Announcing false result, delivery of false certificates of return by an official is equally frowned at by the Act and considered a serious offence. The Act also prohibits the delivery of false result by an individual to any news media. Section 120 of the Act provides thus:

(1) Any officer appointed for the purposes of this Act, who without lawful excuse commits any act or omits to act in breach of his or her official duty commits an offence and is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both

(2) Any polling official who fails to report promptly at his or her polling unit on an election day without lawful excuse commits an offence of dereliction of duty and is liable on conviction to maximum fine of N500,000 or imprisonment for a term of 12 months or both.

(3) Any polling agent, political party or party agent who conspires to make false declaration of result of an election commits an offence and is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.

(4) Any person who announces or publishes an election result knowing same to be false or which is at variance with the signed certificate of return commits an offence and is liable on conviction to imprisonment for a term of 36 months.

(5) Any returning officer or collation officer who delivers or causes to be delivered a false certificate of return knowing same to be false, commits an offence and is liable on conviction to imprisonment for a maximum term of three years without an option of fine.

(6) Any person who delivers or causes to be delivered a false certificate of return knowing same to be false to any news media commits an offence and is liable on conviction to imprisonment for a term of three years.

### ***Prohibition of bribery and corruption***

Section 121 of the Electoral Act prohibits bribery, gift, loan, offer, promise, procurement received for the purpose of procuring the return of any person to any elective post. The same provision also frowns at vote buying and selling before, during and after election. Section 121 of the Act provides thus:

“(1) Any person who does any of the following— (a) directly or indirectly, by his or herself or by any other person on his or her behalf, corruptly makes any gift, loan, offer, promise, procurement or agreement to or for any person, in order to induce such person to procure or to endeavour to procure the return of any person as a member of a legislative house or to an elective office or the vote of any voter at any election ; (b) upon or in

consequence of any gift, loan, offer, promise, procurement or agreement corruptly procures, or engages or promises or endeavours to procure, the return of any person as a member of a legislative house or to an elective office or the vote of any voter at any election ; (c) advances or pays or causes to be paid any money to or for the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election; (d) after any election directly, or indirectly, by his or herself, or by any other person on his or her behalf receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting or having induced any candidate to refrain from canvassing for votes for his or herself at any such election, commits an offence and is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.

(2) A voter commits an offence of bribery where before or during an election directly or indirectly by his or herself or by any other person on his or her behalf, receives, agrees or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for his or herself, or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election.

(3) Nothing in this section shall extend or apply to money paid or agreed to be paid for or on account of any lawful expenses bona fide incurred at or concerning any election.

(4) Any person who commits the offence of bribery is liable on conviction to a maximum fine of N500,000 or imprisonment for a term of 12 months or both.

(5) Any person who conspires, aids or abets any other person to commit any of the offences under this Part of this Act commits the same offence and is liable to the same punishment.

(6) For the purpose of this Act, a candidate shall be deemed to have committed an offence if it was committed with his or her knowledge and consent.

### ***Secrecy in Voting***

Secret ballot system requires the identity of voters to be anonymous. This system is obtainable in Nigeria and provided for in Section 122 of the Electoral Act which reads:

“(1) Every person in attendance at a polling unit including every officer charged with the conduct of an election and his or her assistants and every polling agent and candidate in attendance at a polling station or at the collation center, as the case may be, shall maintain and aid in maintaining the secrecy of the voting.

(2) No person in attendance at a polling booth under this section shall, except for some purpose authorised by law, communicate to any person information as to the name or number on the register of any voter who has or has not voted at the place of voting.

(3) No person shall— (a) interfere with a voter casting his or her vote, or by any other means obtain or attempt to obtain in a polling unit, information as to the candidate for whom a voter in that place is about to vote for or has voted for; or (b) communicate at any time to any other person information obtained in a polling unit as to the candidate to whom a voter is about to vote or has voted for.

(4) Any person acting contrary to the provisions of this section commits an offence and is liable on conviction to a maximum fine of N100,000 or imprisonment for a term of three months or both.

Hence, no voter is permitted to openly display his preference in the process of voting. The entire process within the polling unit and cubicle must be shrouded in secrecy.

### ***Wrongful Voting and False Statements***

Inducing a prohibited person to vote, publishing of false withdrawal of a candidate, and publication of prejudicial statements targeted at a candidate are prohibited. A person or person who engages in such acts is liable on conviction to a fine of up to N100,000 or imprisonment for six months or both.

Section 123 of the Act provides that:

“Any person who— (a) votes at an election or induces or procures any person to vote at an election, knowing that he or she or such person is prohibited from voting at the election ; (b) before or during an election, publishes any statement of the withdrawal of a candidate at such election knowing it to be false or reckless as to its truth or falsity ; or (c) before or during an election publishes any statement as to the personal character or conduct of a candidate calculated to prejudice the chance of election of the candidate or to promote or procure the election of another candidate and such statement is false and was published without reasonable grounds for belief by the person publishing it that the statement is true, commits, an offence and is liable on conviction to a maximum fine of N100,000 or imprisonment for a term of six months or both.

### ***Voting by Unregistered Persons***

It is an offence for a person who is not a registered voter to vote in an election. Also, a person who brings another person voter’s card to the polling unit commits an offence, regardless of usage or otherwise.

Section 124. states as follows:

“(1) Any person who knowingly votes or attempts to vote in a constituency in respect of which his or her name is not on the register of voters commits an offence and is liable on conviction to a maximum fine of N100,000 or imprisonment for a term of six months or both. 124 (2) Any person who knowingly brings into a polling unit during an election a voter’s card issued to another person commits an offence and is liable on conviction to a fine of N100,000 or imprisonment for a term of six months or both.

### ***Election day Offences***

Any person who engages in any of the following commits an offence. Section 126 provides thus:

“(1) No person shall do any of the following acts or things in a polling unit or within a distance of 300 meters of a polling unit on the date on which an election is held—

- (a) canvass for votes;
- (b) solicit for the vote of any voter;
- (c) persuade any voter not to vote for any particular candidate;
- (d) persuade any voter not to vote at the election;
- (e) shout slogans concerning the election;
- (f) be in possession of any offensive weapon or wear any dress or have any facial or other decoration which in any event is calculated to intimidate voters;
- (g) exhibit, wear or tender any notice, symbol, photograph or party card referring to the election;
- (h) use any vehicle bearing the colour or symbol of a political party by any means whatsoever;
- (i) loiter without lawful excuse after voting or after being refused to vote;
- (j) snatch or destroy any election material; and
- (k) blare siren.

Section 126 (2) further provides as follows:

(2) No person shall within the vicinity of a polling unit or collation center on the day of which an election is held—

(a) convene, hold or attend any public meeting during the hours of poll as may be prescribed by the Commission;

(b) unless appointed under this Act to make official announcements, operate any megaphone, amplifier or public address apparatus; or

(c) wear or carry any badge, poster, banner, flag or symbol relating to a political party or to the election.

By section 126 (3), a person who contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine of N100,000 or imprisonment for a term of six months for every such offence.

By section 126 (4), a person who snatches or destroys any election material or any election device, commits an offence and is liable on conviction to imprisonment for a term of 24 months.

This is the most crucial part of the electoral process and enforcement agents are expected to ensure no contravention of the prohibitions.

### ***Undue influence***

The payment of money by any person to influence the conduct of election is prohibited. The law further prohibits a person from giving or taking money or any other inducement during election. Section 127 of the Act provides thus:

“A person who— (a) corruptly by his or herself or by any other person at any time after the date of an election has been announced, directly or indirectly gives or provides or pays money to or for any person for the purpose of corruptly influencing that person or any other person to vote or refrain from voting at such

election, or on account of such person or any other person having voted or refrained from voting at such election; or (b) being a voter, corruptly accepts or takes money or any other inducement during any of the period stated in paragraph (a), commits an offence and is liable on conviction to a fine of N100,000 or imprisonment for a term of 12 months or both.”

Vote buying is an offence and the enforcement agents are meant to uphold the provisions of the Act in this regard.

### ***Threats***

The law prohibits the use of threats, force, violence or restraint on voters. The Act in the same vein, frowns at infliction of injury, damage or harm on a person for the purpose of voting or restraining the person from voting. The law does not permit a candidate free use of media, vehicles and mobilization and campaign at an election. Section 128 of the Act provides thus:

“A person who— (a) directly or indirectly, by his or herself or by another person on his or her behalf, makes use of or threatens to make use of any force, violence or restraint; (b) inflicts or threatens to inflict by his or herself or by any other person, any minor or serious injury, damage, harm or loss on or against a person in order to induce or compel that person to vote or refrain from voting, or on account of such person having voted or refrained from voting; (c) by abduction, duress, or a fraudulent device or contrivance, impedes or prevents the free use of the vote by a voter or thereby compels, induces, or prevails on a voter to give or refrain from giving his vote; or (d) prevents any political aspirant from free use of the media, designated vehicles, mobilization of political support and campaign at an election, commits an offence and is liable on conviction to a fine of N1,000,000 or imprisonment for a term of three years.

Section 129 of the Act provides to the effect that offences referred to in this Act shall apply to recall of a member of a Legislative House and a member of an Area Council mutatis mutandis.

### ***Conclusion***

Globally, it is acceptable that electoral process is an integral part of the democratic process of a country. The strength of the electoral system could, in a state or country, determine the potency and viability of government and governance in that state or country, as it is that process that throws up credible leaders. What the current Electoral Act of 2022 has done is to rectify the issues previously contained in erstwhile electoral laws. The duties and roles of electoral officers are succinctly and well spelt out in the Act to avoid unnecessary dominance and abuse of administrative powers. The law is clear on the rights and powers of the political parties, its candidates and agents before, during and election period to ensure a free and fair election.

Most importantly, the Act envisaged all possible offences that could be committed under the electoral process and sanctions them respectively. Since however the provisions of the law is not self-executory, the responsibility for the trigger, implementation and enforcement is outsourced to the security agencies, the police being the domineering agent in this regard. Thus, the essence of this presentation is to acquaint the police with the offences and the sanctions as well as the enabling legal capacity vested in the police to enforce.