An Overview of the Limit of the Powers of the National Assembly to Legislate on the Conduct of Elections in Nigeria

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Abstract

In the build up to the 2019 general elections, the National Assembly amended the Electoral Act, 2010 by the enactment of the Electoral Amendment Bill (EAB) 2018. The EAB, amongst other things, amended Section 25 (order of the sequence of elections), Section 138 (grounds of election petition) and Section 152 (delegation of powers/registration of voters and the procedure for the conduct of Local Government elections) of the Electoral Act 2010. The President declined assent. The matter went to Court and the Court ruled against the National Assembly, but upon appeal, the decision of the lower Court was set-aside without the Appellate Court delving into the merit of the case. This article is an attempt to examine whether the amendment to Sections 25, 138 and 152 of the Electoral Act 2010 infringed the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) or any other Law as alleged by the President. Using the doctrinal methodology of research, the article examined the relevant constitutional/legal provisions and case law, and established that there is no constitutional impediment to the National Assembly proposing and carrying out any amendment to the Constitution or any existing legislation enacted by it in accordance with its powers under sections 4(2) & (58) of the Constitution. To this end, the article recommends that the judiciary should be cautious not to submit itself to be used by the Executive to trample on the powers of the Legislature, advocates the 9th National Assembly to reenact the provisions of the EAB 2018 to strengthen the administration of Nigeria's electoral process and urges the President to work in concert with the National Assembly and assent to a new EAB as soon as passed.

Key Words: elections, power, national assembly, conduct of elections.

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Introduction

The Electoral Amendment Bill (EAB) 2018 amongst other provisions, amended sections 25, 138 and 152 of the Electoral Act 2010. Section 25 of the Electoral Act 2010 provides that the Independent National Electoral Commission (INEC) shall determine the date for the conduct of National, State Assembly and Presidential and Governorship Elections in accordance with the provisions of the Constitution and Section 25(1)(3)(5) & (7) of the Act.[1]

Section 138 provides for grounds for challenging the outcome of an election. This section was amended to make non-compliance with the guidelines, regulations and manuals for the conduct of election issued by INEC a ground for challenging the election under section 138 (1)(b). While section 152, which authorises INEC to delegate its powers, was also amended to place the same procedural requirements placed on INEC in the Electoral Act 2010 on State Independent Electoral Commissions (SIECs), whenever the latter deploys the INEC register for the conduct of local council elections.

The President declined assent in accordance with his powers under section 58(4) CFRN 1999. Subsequent to this, the Accord Party instituted legal action against the National Assembly (NASS) at the Federal High Court.[2] The NASS raised a preliminary objection challenging the jurisdiction of the Court to entertain the suit on the ground that the suit was non-justiciable and the plaintiff had no *locus standi* because the action was premature and disclosed no valid cause of action. The Court dismissed the preliminary objection and without dealing with the merit of the case resolved the matter against the NASS; a decision that was upturned by the Court of Appeal.[3]

This article examines whether or not the reasons adduced by the president to justify the decline of presidential assent with respect to the amendments canvassed by the EAB 2018 in sections 25, 138 and 152 were valid in Law or not. For ease of clarity, the article is segmented into six parts as follows: Introduction; Overview of the EAB 2018; Presidential Reaction and the Accord Party Suit; Legal

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1 *Electoral Act 2010 (as amended 2015)*
2 *Accord Party v. National Assembly & Ors (2018), Suit N: FHC/ABJ/CS/232 (Unreported)*
3 *National Assembly v. Accord Party and Two Ors (2018), Appeal No. CA/A/485*

Opinion to Presidential Reaction and; Findings and Recommendations.

Overview of the Electoral Amendment Bill 2018

The EAB 2018 canvassed a holistic review of the Electoral Act, 2010 to remove some of the identified impediments to the smooth conduct of elections in Nigeria. The President's objections, however, centered on the amendments to three key provisions as contained in sections 25, 138 and 152 of the Electoral Act, 2010. The extant provisions of section 25 of the Electoral Act, 2010 provide for the elections into each House of the National Assembly, House of Assembly of a State, Presidential and Governorship elections to be held on a date appointed by the Independent National Electoral Commission (INEC) in accordance with the Constitution and section 25(1)(3)(5) & (7) of Electoral Act. It also gives a time frame for the conduct of elections for the National Assembly, Presidential and State Houses of Assembly and Governorship Elections.[4]

In the proposed amendment under the EAB 2018, the National Assembly sought to statutorily determine the sequence for the conduct of the general elections by the substitution of a new section 25(1). The new section seeks to provide for INEC to conduct elections in the following order: National Assembly Elections; State Houses of Assembly and Governorship Elections and; Presidential election. The elections are to be held on dates as appointed by INEC under the proposed new section 25(2), but in accordance with the sequence prescribed under subsection (1). This, in the wisdom of the National Assembly, would limit the capacity of the executive to manipulate INEC and allow it to be truly independent of the executive in the conduct of elections.[5]

Section 138(1)(b) of the Electoral Act, 2010 provides for grounds for questioning the return of a candidate in an election to the effect that such an election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act. This, too, was amended. The new amendment expanded the original provision in

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4 (n, 1)

5 https://www.premiumtimesng.com, accessed on 22 – 4 – 2020 at 2pm.

subsection (1) (b) to include that, in addition to non-compliance with the Act, an election can be petitioned for non-compliance with the published manuals, guidelines, regulations, procedures or directives of INEC that are not inconsistent with the Act. This is designed to enlarge the administration of the said ground of election to cover the subsidiary regulations of INEC, which at present are not covered under section 138(1)(b) of the Electoral Act, 2010.

The new amendment to the provisions of the Electoral Act, 2010 is also designed to save election petition litigants who suffer from the very strict technical interpretation of section 138(1)(b). The courts have always held, dismissing petitions that are couched in a language that extends or enlarges the provisions of section 138(1)(b) to include non-compliance with the rules, guidelines and regulations issued by INEC as containing extraneous matters to the provisions of Section 138(1)(b). This is because the proceedings of an election petition tribunal are strict. Election petition and the rules of application to it and its procedure are unique. It is the reason why election petition is described as *sui generis*. [6] Election petitions are different from other proceedings. They are neither allied to civil nor criminal proceedings. They stand on their own bound by their rules made under the law. Defects or irregularities which in other proceedings are not sufficient to affect the validity of the claim are not so in an election petition. The proposed amendment to section 138(1)(b) by the EAB 2018 is designed to cure this mischief by specifically making non-compliance with the guidelines, rules and regulations of INEC a ground for challenging the outcome of an election.

A new subsection (3) was also proposed to section 138; the new subsection seeks to limit grounds for disqualification of a candidate to an election to only those stated in the Constitution. It provides that the winner of an election cannot be challenged on grounds of qualification, if the winner satisfied the applicable requirements outlined in the Constitution, and also where the winner is not, (as may be applicable) in breach of sections 66, 107, 137 or

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[6] *Silas Bounwe v. Resident Electoral Commissioner Delta State* (2006) 1NWLR (pt. 961) 286 @316

182 of the Constitution. In other words, since the Constitution has covered the field on the issue of qualification for election no other extraneous matter should exist to interfere with the extant constitutional provisions.[7]

Section 152 of the Electoral Act, 2010 provides that INEC can delegate any of its powers to any of its officers subject to any conditions or limitations it may impose. However, such delegation must not be interpreted as limiting the right of the Commission to exercise such right itself. In the proposed amendment under the EAB 2018, four new subsections are sought to be inserted to section 152 of the Electoral Act 2010 that is, '(152A)', '(152B)', '(152C)' and '(152D)'. These new subsections target the State Independent Electoral Commission's (SIECs). The subsections seek to guarantee the conduct of free, fair and credible elections in elections conducted by the SIECs by making the provisions of the Act applicable to them with equal force (152A). It also adds that where the SIEC fails to comply with the spirit of the Electoral Act or its procedures in its conduct of elections to Local Government Councils of the Federation, the election shall be null and void. Furthermore, staff of the SIEC who contravenes this provision and other provisions of the Act would be liable to prosecution as if they were staff of INEC.

The President's Reaction and the Accord Party Suit

President Mohammadu Buhari declined presidential assent, stating three grounds upon which he was withholding assent to the EAB 2018 to say:[8]

a) The amendment to the sequence of elections in section 25 of the Electoral Act 2010 in the EAB 2018, may infringe upon the constitutionally guaranteed discretion of the Independent National Electoral Commission to organize, undertake and supervise all elections provided in Paragraph 15(a) of the Third Schedule to the CFRN 1999;
b) The amendment to section 138 of the Electoral Act 2010 by EAB 2018 deletes two crucial grounds (substantial non-compliance

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7 *AG of Abia State v. AGF* (2002) 9 NSCQLR 670, 785, 788

8 President Mohammadu Buhari's letter to the Speaker and President of the Senate dated 8th March 2018.

and qualification) upon which an election may be challenged by candidates, hence unduly limits the rights of candidates in an election to a free and fair electoral review process; and

c) The amendments to Section 152 of the Electoral Act 2010 and addition of (2) – (5) under the EAB 2018 raise constitutional issues over the competence of the National Assembly to legislate over local government elections.

Out of the three grounds of objection, the most contentious issue that informed the President's action was the amendment to Section 25 of the Electoral Act 2010. The objection was to the effect that the National Assembly lacks the power to interfere with the constitutionally guaranteed powers of INEC to organise, undertake and supervise the conduct of elections into the offices of the National Assembly, State Houses of Assembly, Governor and President as provided in Paragraph 15(a) of the Third Schedule to the CFRN 1999.

In support of the President's objection, the Accord Party instituted legal action by way of originating summons at the Federal High Court Abuja, for the Court to principally determine whether or not having regard to the combined provisions of sections 79, 116, 118, 132, 153, 160(1) and 178 of the CFRN 1999, read together with paragraph 15(a) of the Third Schedule to the said Constitution, INEC is not the only constitutionally recognised body vested with the powers and vires to organise, undertake and supervise elections to the offices earlier mentioned.[9] One of the remedies sought by the Plaintiff was an order of the Court to restrain the NASS from exercising its veto powers with respect to the passage of the EAB 2018 as provided under Section 58(5) of the Constitution.

In response to the suit, the NASS raised a preliminary objection challenging the jurisdiction of the Court to entertain the matter on the ground that the suit was non-justiciable and the plaintiff had no *locus standi*, because the action was premature and disclosed no valid cause of action. The Court, without dealing with

[9] (n, 2)

the merit of the case, resolved the matter against the objections raised by the National Assembly and further held:

> …that at the time the EAB 2018 was passed by the 1st Defendant, the 3rd Defendant had already issued the Time Table and schedule of activities for the 2019 General Elections. In issuing the Time Table, the 3rd Defendant had already executed the function. By trying to stop or reverse the decision of the 3rd Defendant, the 1st defendant was clearly in breach of the principles of separation of powers embodied in Sections 4, 5 and 6 of the Constitution. Furthermore, the 1st Defendant's conduct, being a breach of Section 1(3) of the 1999 Constitution, it follows therefore that Section 25 of the EAB 2018, which is the Section that contravenes the Constitution is HEREBY DECLARED A NULLITY[10]

The 1st Defendant being dissatisfied with the decision of the lower court appealed to the Court of Appeal challenging the decision of the lower court on two grounds to wit:

1. Whether the trial Court was not in error when it resolved the preliminary objection wherein the issues of (i) the premature nature of the action, (ii) non-justiciability, (iii) absence of locus standi, (iv) non-joinder of necessary parties, (v) non-disclosure of a reasonable cause of action, etc., were raised against the competence of the originating summons in favour of the Plaintiff/1st Respondent? And;
2. Whether the trial court was not in error when it resolved the substantive issue for determination against the Appellant and held that Section 25 of EAB 2018 is unconstitutional, null and void?

The Court of Appeal, per Zainab Bulkachuwa (PCA), resolved issue 1 in favour of the Appellant and nullified the judgment of the lower court and held that:

> …Having resolved issue No. 1 in favour of the appellant and held that the subject matter of the suit is not justiciable, that the trial court lacks

[10] Ibid

> jurisdiction to entertain it, that the Plaintiff had no locus standi to bring the suit, that the suit is academic and an abuse of court process, no useful purpose would be served in determining issue No. 2 in the appellant's brief.'[11]

The appeal, therefore, succeeded and the judgment of the lower court was set aside without the appellate court making a determination on the merit of whether or not the National Assembly has powers to enact the sequence of elections in the Electoral Act.

An Overview of the Decline of Presidential Assent over the Electoral Amendment Bill 2018

The Court of appeal resolved that the Federal High Court lacked jurisdiction to entertain any suit challenging the powers of the National Assembly to make laws for the order and good governance of the country as provided under section 4(2) of the CFRN, 1999, declined to enquire further if the enactment of the EAB 2018 was unconstitutional. If the Court had, however, delved into the merit of the case it would have come to the conclusion that while the President's withholding of assent was consistent with his powers under section 58(4) of the Constitution, the President's reasons for withholding assent were without merit. This is because the three grounds of objection were raised in error and at variance with the clear and unambiguous provisions of the Constitution, the Electoral Act 2010 and the spirit of the Electoral Amendment Bill 2018.

To appreciate the viewpoint canvassed above, five fundamental questions are formulated for resolution to say:

i. What is the limit of the legislative powers granted to the National Assembly under the CFRN 1999?
ii. What is the extent of the vires and powers vested in INEC under Paragraph 15(a) of the Third Schedule to the Constitution?
iii. Did the proposed amendment to the sequence of elections in section 25 of the Electoral Act 2010 in the EAB 2018 actually infringed upon the constitutionally guaranteed powers of INEC

[11] National Assembly v. Accord Party and Two Ors, (2018), Appeal No. CA/A/485

to organize, undertake and supervise all elections provided in Paragraph 15(a) of the Third Schedule to the Constitution?

iv. Did the proposed amendment to section 138 of the Electoral Act, 2010 in the EAB 2018 actually delete two crucial grounds upon which an election may be challenged by aggrieved candidates to an election as contended by the President?

v. Is the National Assembly completely precluded from legislating on matters pertaining to the conduct of local government elections such as to render the proposed amendments to section 152 of the Electoral Act 2010 by the EAB 2018 constitutionally nugatory?

The Scope of the Legislative Powers of the National Assembly under the 1999 Constitution

To answer the first question, which bothers on the limit of the legislative powers of the National Assembly to make laws under the Constitution, it is important to state the powers vested in the National Assembly by the Constitution. Section 4 (1) of the Constitution provides that the legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation, consisting of a Senate and a House of Representatives, while Section 4 (2) provides that the National Assembly shall have power to make laws for the peace, order and good governance of the Federation or any part thereof *with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution'*.

The underlined portion emphasizes that with respect to any matter included on the Exclusive Legislative List set out in part 1 of the Second Schedule to the 1999 Constitution. This clearly indicates that the powers of law making for the order and good governance of Nigeria are vested in the National Assembly to the exclusion of any other arm and authority of government. To this extent, an extreme view of the powers vested in parliament (National Assembly) is to suggest that the National Assembly is supreme. The implication is that the National Assembly has unfettered powers, subject only to the supremacy of the Constitution to make laws on any matter listed for its legislative competence under the Constitution.

Dicey, once opined that no one might question the validity of an act of parliament. He audaciously stated that, *'True it is that what parliament doth no authority on earth can undo'*.[12]This is because under the traditional British system, Parliament is restrained in the laws that it can pass only by its own better judgment. Nwabueze captured it this way:

> …The Legislature is the distinctive mark of a country's sovereignty, the index of its status as a state and the source of much of the power exercised by the executive in the administration of government. The sovereign power of the state is therefore identified in the organ that has power to make laws by legislation, and to issue 'commands' in the form of legislation binding on the community.[13]

To this extent, it is trite to stress that no one can question the legitimacy or legality of a law made by the National Assembly, except the Judiciary, and this is only where the law is inconsistent with the Constitution. [14] This means that the limit of the powers of the National Assembly is only circumscribed by the Constitution.[15] And this is only in so far as it relates to matters, which the Constitution itself has covered the field.[16] The principle is that where the Constitution has defined or provided for the exercise of a right in a particular manner, no legislation either by the National Assembly or a State House of Assembly can extend it in a statute except an outright constitutional amendment. [17], or duplicate, add or subtract from the provision.[18]

To this extent, only the Constitution is superior to the National Assembly and where the National Assembly exceeds its powers under the Constitution, only the Judiciary can step in to

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12 Teacher, Law. (November 2013). Retrieved from https://www.google.com.ng/?vref=1 on 9-3-2018

13 B Nwabueze, *Constitutional Democracy in Africa* (Vol. 1, Ibadan: Spectrum Books Ltd, 2003) p. 182

14 *Abacha v. Fawehinmi* (2000) 4SC (Pt. 11) and *Bolonwu v. Gov of Anambra State* (2009) 18 NWLR (Pt.1172) 13

15 Section 4(9) CFRN 1999

16 (N, 9)

17 *AG Ogun State v. AGF* [1982] 2 NCLR, 166, 180-181

18 *AG Abia State v. AGF* (2002) 9 NSCQLR 670, 785, 788

reverse it.[19] This is because under the principle of the doctrine of separation of powers under a constitutional democracy, the powers of checks and balances are distributed in the three arms of government to wit: the Legislature, which makes the law; the Executive, which implements the law; and the Judiciary, which interprets the law. In this regard, the legislative powers of the NASS are constitutionally subjected to the powers of the Judiciary to interpret the laws made by it to ensure that the NASS does not become a law unto itself. John Locke who propounded the constitutional theory of the doctrine of separation of powers wrote in his Second Treaties of Civil Government as follows:

> It may be too great a temptation for the humane frailty, apt to grasp at powers, for the same persons who have power of making laws, to have also in their hands the power to execute them, whereby they may exempt themselves from the law, both in its making and execution to their own private advantage.[20]

Thus, Section 4(8) of the Constitution provides that:

> Save as otherwise provided by this Constitution, the exercise of legislative powers by the National Assembly shall be subject to the jurisdiction of the courts of law and of judicial tribunals established by law and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a Court of law or of a judicial tribunal established by law.[21]

It is important to, however, note that by this provision the Constitution does not give the Court or anybody the powers to arrest the law making powers of the National Assembly. The Constitution requires that when an Act of the National Assembly is passed, the

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19 Section 4(8) CFRN 1999

20 P Laslett, (Ed) *The Founders Constitution Vol. 1, Chap. 10, (Separation of Powers) Doc. 3, Locke John, Two Treatise of Government 1689,* (Mentor Books, New American Library, 1965)

21 Section 4(8) CFRN 1999 (as amended)

courts in accordance with the principle of separation of powers reserve the right of judicial review of the enacted law to ensure it complies with the substantive and procedural requirements of section 58 of the Constitution. Neither the Court or the Executive branch of government is permitted to interfere in the legislative making processes of the National Assembly until the procedure for enacting an Act as provided under section 58 of the Constitution is complete. The process is complete when either of the provisions, that is, section 58(4) (assent by the President) or 58(5) (veto by the National Assembly) are complied with. A Bill even if duly passed by the NASS without assent by the President or veto by the NASS is not an Act.[22]

If any of the provisions of section 58(4) & (5) of the CFRN is not activated, it is still a Bill even if passed by the National Assembly. Since it is not an Act, no Court can purport to enquire into it under the guise of section 4(8) of the Constitution. In *AG Bendel State & Ors v. AGF*,[23] Bello (JSC) as he then was held that:

> I would endorse the general principle of constitutional law that one of the consequences of the separation of powers, which we adopted in our constitution, is that the Court would respect the independence of the legislature in the exercise of its legislative powers and would refrain from pronouncing or determining the validity of the internal proceedings of the legislature

In *National Assembly v. Accord Party & Two Ors,*[24] it was held, per Zainab Bulkachuwa (PCA) that: 'Once a Bill has become enacted as law, the judicial review jurisdiction of the courts of law under Section 4(8) of the Constitution comes alive. The fact that it

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22 *Great Oboru & Anor v. Dr Emmanuel Oduaghan* (2011) 17 NWLR (Part 1277) 727 at 757 H to 159

23 (1981) 1 ANLR 85 (In a concurring judgment Eso (JSC) stated that: '… the pertinent question in regards to the legislature is, what are those legislative power, the exercise of which is subject to the jurisdiction of the court or to ask in another form, where do the legislative powers begin and where do they end? In my view, legislative power begins or commences when a Bill introduced in either House of the National Assembly and end when the Bill is submitted to the President for his assent. I hold the view that what the President does, in assenting to the Bill is performing executive powers within a legislative process.)

24 (n, 13)

has become law cannot prevent the exercise of that jurisdiction'.[25] The implication is that it is only when a Bill becomes Law that anybody including the courts can challenge its validity, even the Executive symbolized by the President cannot challenge it because if he does as provided under section 58(4) of the Constitution, the National Assembly can override him as provided under section 58(5).

The Status and Powers of INEC under the Constitution

With respect to the second query regarding the scope of the powers of INEC, it is important to note that INEC is one amongst the Extra Ministerial Departments (EMDs) established under Section 153(1), CFRN 1999, particularly paragraph (f). By virtue of its establishment under the Constitution, its organic legal character is not like any other statutory agency or Commission established by an Act of the National Assembly. Bodies established by an Act of the National Assembly are inferior to INEC and EMDs created under Section 153(1) of the Constitution. This implies that INEC and all the EMDs established under Section 153(1) are constitutional creations almost akin to the National Assembly and it would not be presumptuous to state that the National Assembly cannot legislate on its powers, except expressly permitted to do so by the Constitution. [26]

Having established the constitutional status of INEC and the limits of the powers of the National Assembly to interfere with its powers, the next logical sub-question to resolve is what are these constitutional powers that cannot be subtracted or added to and those that the National Assembly is permitted to add, extend or subtract from INEC? This is the issue that appears to be the bone of contention in the President's submission with respect to the proposed reordering of the sequence of elections in the EAB 2018. The President's contention on the first point of objection was that the amendment impinged on INEC's constitutionally guaranteed discretion to undertake, organise and supervise the conduct of elections.

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25 (n, 3)

26 (n, 21) and (n, 9)

Paragraph 15(a) of the Third Schedule to the Constitution vests INEC with the sole constitutional powers to amongst other things *'organise, undertake and supervise all elections* to 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'. Section 132(1) provides that 'an election to the office of President shall be held on a date to be appointed by the INEC *in accordance with the Electoral Act'* (underlining for emphasis). Similar provisions are contained in Sections 76(1), 116(1) and 178(1), for National Assembly, State Houses of Assembly and Governorship elections. What this means is that in addition to the underlined powers under Paragraph 15(a) of the Third Schedule, which is the power to organise, undertake and supervise the conduct of elections to the mentioned offices, INEC also has the exclusive powers to fix the dates for the said elections. The Constitution is, however, silent on the powers to determine the sequence of elections and the type of voting procedure to be adopted.

The President, nevertheless, held the view that the powers to sequence the elections and all other incidental powers are also discretionary powers inherent in INEC by necessary constitutional implication. It is deduced that the President appeared to be persuaded in this line of thought because matters of sequence of elections have previously been discretionarily exercised by INEC without question. Secondly, the President was inclined to argue that a combined reading of the operative words in Paragraph 15(a) of the Third Schedule to the Constitution, which is to the extent that INEC is empowered to *'organise, undertake and supervise all elections to the offices of the President and Vice-President, etc., …* (underlining for emphasis)', must be broadly interpreted to vest INEC with a constitutional discretion in that regard.

Discretion that, regardless of the very clear and unambiguous provisions of the section, which clearly excludes the powers to decide the mode and sequence of elections, the President insisted must be interpreted to give absolute wholesomeness to the supremacy of INEC not only to conduct, but also sequence the elections without interference from any quarters. For example, the

argument by one of the presidential apologists was that the power to 'organise' should not only be understood to include the power of INEC to make necessary arrangements so that the conduct of elections can be executed effectively, but should also extend to the power to arrange by systematic planning and united efforts, the methodical and efficient sequencing of the elections such as to make the task for the conduct of the elections formed into a structured and coherent whole.[27]

In the case of the power to 'undertake', they contended that it must go beyond the mere assumption of responsibility for the conduct of the elections to the responsibility for the processes, procedures, sequence and order of the elections. While with regards to the power to 'supervise' it must not just be seen as the power to inspect with authority, but the power to superintend over the entire process of the conduct of the elections. This would necessarily include the discretion to determine when, where and how the elections are to be conducted, including the power to determine the mode, style and character of the elections. The powers to fix the date also having being granted by the constitution, it follows that the power to fix the time and sequence of the elections must be construed as being collateral to the constitutional power to fix the date, even though the constitution itself is silent on that and the mode and style of the election.

This undoubtedly will, however, amount to importing different wordings and meanings into the express, clear and unambiguous provisions of the Constitution. An action that is clearly ultra-vires the powers of the President, because it is contrary to the spirit and letter of the Constitution to expand words with specific meaning such as undertake, organise and supervise to connote sequence to clout INEC with a constitutional discretion, which is not otherwise conferred nor intended to be conferred by the Constitution. The three words used by the Constitution have unambiguous meanings that are in every material particular different from the word

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[27] This was the view expressed by Prof. Attahiru Jega, former Chairman of the Independent National Electoral Commission (INEC) at a Public Lecture Organised by The Youth Initiative for Advocacy Growth & Development, at Abuja on 22nd February 2018.

sequence. The latter means the order that event, action, etc., happens in or should happen in,[28] or put differently the succession order of following the arrangement of things, actions and events. It is different from undertake, organise and supervise. So to purport that these words are similar and refer to one and the same thing in meaning with sequence is an interpretation, which is certainly at variance with the spirit and the letter of the Constitution. In *Dominic Onuorah Ifezue v. Livinus Madugha & The Deputy Sheriff, Onitsha,*[29] the Supreme Court insisted that all Statutes and the Constitution must be literally construed and constructed where the wordings are clear, express and unambiguous.[30] and.[31]

It is, therefore, submitted with the utmost respect that the provisions of Paragraph 15(a) of The Third Schedule to the Constitution, cannot by any stretch of the imagination be so elastically interpreted, such as to confer on INEC a constitutional discretion to determine the sequence of elections as contended by the President when the Constitution itself has shied away from such course of action. To permit that will allow for a constitutional absurdity that would undermine the clear and express provisions of Paragraph 15(i) of The Third Schedule to the CFRN 1999 and the Electoral Act 2010.

The Legality or Otherwise of the Amendment to the Sequence of Elections by the EAB 2018

In response to issue three, which bothers on the President's first point of objection as to whether or not the National Assembly did not overreach itself by the reordering of the sequence of elections

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28 L. Hey, and S. Holloway. (Eds.) *Oxford Advanced Learners Dictionary* (9th edn. Oxford: Oxford University, Press, 2015), Pg. 1412

29 (1982). S.C. 68

30 *Ozonma v. INEC & Ors* (2015) 16 NWLR (Part 1485) 197 at 223 E-G and A

31 (2007) 12 NWLR (Part 1048) 222 at 259 C-D (Katsina Alu, JSC (as he then was) held that: 'It is a settled principle of interpretation that a provision of the Constitution or a Statute should not be interpreted in isolation but rather in the context of the Constitution or Statute as a whole. Therefore, in construing the provisions of a section of a Statute, the whole of the Statute must be read in order to determine the meaning and effect of the words being interpreted. See Buhari & Anor V Obasanjo & Ors (2005) 13 NWLR (Part 941) 1 (219). But where the words of a Statute are plain and unambiguous, no interpretation is required, the words must be given their natural and ordinary meaning)

as formulated in 4.0 above. The doctrine of covering the field applies.

The proposition is that ultimate coverage is constitutional coverage. It binds both arms and tiers of government to its prescription. Needless, to re-emphasis that on the weight of two previously quoted judicial authorities, once the Constitution itself has specifically provided for the exercise of a particular right or function in a specific way and manner, no matter how defective, not even the National Assembly can legislate to contrive an alternative way out of it, except through a constitutional amendment.[32] However, where it is silent on a particular matter it has partially covered the field, and the National Assembly and only it, is empowered to legislate to cover up the lacuna or cure the perceived mischief.[33]

This means that where there is any void in any constitutional provision, it is only within the constitutional province of the National Assembly to act in correction of the void. This is why the Supreme Court in the course of adjudicating over the 2011 round of election petitions was quick to admonish election petition litigants who felt a miscarriage of justice occurred by the strict interpretation of the 180 days 2010 amendment to the CFRN 1999, to appeal to the National Assembly for a further amendment rather than inviting the Court to strike it down. This is because, it is not permissible for the Judiciary or the Executive and its agencies, no matter how loftily crafted to assume the powers to act to cure the mischief, except such actions be limited to affirming the full meaning of the letter, spirit and intent of the Constitution or to interpret it as it is, not as it ought to be.

This principle was followed by the apex Court in *Abraham Adesanya v. President of the Federal Republic of Nigeria and Anor*,[34] where it held that 'courts have a duty when interpreting the provisions of the … Constitution to look at the Constitution as a whole and construe the provisions in such a way as not to frustrate the 'hopes and aspirations' of those who have made the strenuous efforts to provide the Constitution for the good government and welfare of all persons in the country on the principles of freedom,

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32 (n, 9)
33 Section 9 CFRN 1999 (As Amended)
34 (1981) 5. S.C. 112 at 134

equality and justice'.

To this extent, while we admit that it is tempting to stretch the execution and interpretation of the powers of INEC as enunciated in Paragraph 15(a) of the Third Schedule and sections 76(1), 116(1), 132(1) and 178(1) of the Constitution to purport to include the powers of INEC to fix the sequence of elections. The net effects of doing so will undermine Nigeria's constitutional and democratic system of governance, because the combined reading of all the relevant sections of the Constitution clearly indicates that the letter, spirit and intent of the Constitution failed to provide any such powers in the INEC to sequence or decide on the mode of elections.

On the contrary, the Constitution itself recognises that it has not covered the field, which is why sections 76(1), 116(1), 132(1), and 178(1) demands that INEC conduct elections it is empowered to conduct in accordance with the provisions of the Electoral Act as enacted by the National Assembly. Paragraph 15(i) of the Third Schedule to the Constitution particularly provides that in addition to the constitutional powers or functions vested in INEC, the Commission is to also 'carry out such other functions as may be conferred upon it by an Act of the National Assembly.' An injunction, which is consistent with the powers of the National Assembly under section 4(2) and as set out in Part I of the Second Schedule to the Constitution, particularly Items 67 and 68.

'Good government of the federation or any part thereof' as provided in section 4(2) of the Constitution is itself restricted to matters on the Exclusive List and not a blanket phrase or cover to translate a residual matter of administrative nature suited for recurrent administrative regulation to the legislative list. If it did, it would mean the National Assembly could pick on any subject matter at its whim (in spite of its apparent residual nature) and legislate on it to bind the Executive and its administrative agencies, the Judiciary and other tiers of government in the name of good governance of the federation or any part thereof from time to time.

It is important to emphasis the above point because the Constitution does not vest the National Assembly with such powers, because when a Constitution such as a written Constitution intends to give concurrent or exclusive power to an organ or constitutional

body of government, it does so positively and expressly (by providing, 'So and so organ of government shall, to the exclusion of all other organs, make laws on so and so, or determine so and so matter or question, in so and so way and manner, etc.). It does not give power in broad and uncertain terms to be interpreted or guessed at. The powers or functions are never presumed, they are certain and specific. The literally meaning of the wordings of the Constitution are to be understood as they are, not what they ought to be, because the Constitution is what it is and not what it ought to be.[35]

This clearly is the letter and spirit of the Constitution, which must be upheld. In *AG v. Mutual Tontine Westminster Chambers Association Ltd,*[36] and *Bradlaugh v. Clarke,*[37] Lord Jessel, M.R & Lord Fitzgerald maintained that the object of all interpretations is to discover the intention of the lawmakers, which is deducible from the language used. Once the language is clear and unambiguous, the courts are to give effect to it. The courts are not to defeat the plain meaning of an enactment by the introduction of their own words and meaning into the enactment.

Accordingly, in as much as the Constitution has not given the National Assembly the absolute powers to legislate on all matters, so also it has not specifically given INEC the powers to decide the sequence, method and time of election. In the absence of any specific provisions under all the relevant Sections of the Constitution granting INEC the powers to fix the sequence or the mode and style for the conduct of election (except date) it is empowered to conduct under the Constitution, such powers have always been the subject of legislation by the National Assembly under the Electoral Act. That is why Sections 76(1), 116(1), 132(1) and 178(1) of the Constitution, all command INEC to conduct its elections in accordance with the Electoral Act, which enacted by the NASS to provide for other material details not provided in the Constitution to guide INEC in the conduct of elections.

In the extant Electoral Act 2010, the mode and style of election is specified under section 52(1) as Open Secret Ballot, while

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35 (n, 3)
36 (1876) 1 Ex D 469
37 (1883) 8 App. Cases 354

electronic voting is prohibited under Subsection 2 of the said section. The mode of accreditation, section 48(1), the hour of election, section 49(1) & (2), and the sequence of elections, section 25. These powers are not constitutionally vested, but statutorily conferred by the Electoral Act, and left to the administrative discretion of the INEC to execute. These administrative regulations of INEC may be accorded the weight of Law, and where an election conducted by INEC falls short of the administrative regulations issued by INEC pursuant to these powers, such an election is liable to be nullified for substantial non-compliance with the provisions of the Electoral Act, if the regulations are consistent with the provisions of the Act.[38]

The law does not vest any discretion as to sequence of election to INEC because a calm and careful reading of section 25 of the Electoral Act 2010 indicates that the sequence of election is also provided in the Act. It provides that election shall be held in the following order- Section 25(1), National Assembly election, section 25(3) State House of Assembly election, 25(5), President/Vice Presidential election and section 25(7), Governor/Deputy Governorship election on a date to be appointed by INEC in accordance with the Constitution and the provisions of the Act. This is the sequence, which is outlined in the Electoral Act 2010. Whereas the sequence prescribed under section 25 of Electoral Act 2010, puts the National and State Houses of Assembly elections ahead of the Presidential and Gubernatorial elections, INEC has derailed from the sequence and by the acquiescence of all exploited the situation to its advantage. It has administratively reordered the sequence of elections in accordance with its discretion by merging the Presidential/National elections to hold on the same date, while the Governorship/State House of Assembly Elections hold on the same day on another date. The Commission also decides on which, comes first or last.

This has made it possible for the incumbents to influence the otherwise supposedly autonomous INEC, (as was the case with President Jonathan in 2011 and 2015) to determine the order and sequence of elections and dates. Incumbent Presidents since 2007

[38] Section 138(1)(b) & (2) Electoral Act 2010

have influenced INEC to determine that the Presidential elections should hold first. This is in order to create a bandwagon effect, as once the Presidential vote is decided; the other subsequent elections significantly follow the trend. This constitutes a serious mischief in the extant law, which the National Assembly may have deliberately allowed to fester because it favoured the incumbent majority party that controlled the National Assembly since 1999, but which the 8th National Assembly sought to correct in the EAB 2018, by making it a statutorily fixed sequence rather than discretionary, to provide a level playing field for all.

Another angle to look at it may be that the National Assembly in its own wisdom may have allowed INEC that prerogative or discretion (which is not constitutional but statutory) perhaps for the simple reason that such matters should be flexible and in the recurrent administrative purview of INEC regulated by its subsidiary legislation. However, administrative rules, acts, directives, orders, notices, circulars, subsidiary legislations or protocols in whatever form made under the direction of a superior legislative enactment are not laws in themselves. Subsidiary legislation (regulation) if consistent with its enabling Act becomes one unit of law or co-substantial with the parent Act. It cannot on its own strength cover any field or extend the scope of the parent Act where the parent Act does not indicate an intention to do so or the legislature has not specifically delegated the full coverage of the subject matter to internal legislation.

Coverage flows only from the constitutional provisions and the terms of the parent Act. In two sister cases *Airlines of New South Wales Pty Ltd v New South Wales,*[39] and *Airlines of New South Wales Pty Ltd v New South Wales,*[40] it was held by the Australian High Court that it would be a strange usurpation of legislative power by the executive if a Ministry, Department and Agency (MDA) were to make a regulation, expanding the scope of an enabling statute to completely exhaust and cover the field of the subject matter under the guise of delegated legislation and thereby tie down the hands of

[39] [1964] HCA 2
[40] (No 2) [1965] HCA 3

the legislative authority of the State in the process. This, the Court held, will unsettle the doctrine of separation of powers in its horizontal and vertical perspectives.

The National Assembly been the donor of the power, including the discretion to determine the mode of an election, the time for the election and the sequence for the conduct of the election can at any time amend the Electoral Act to extend or limit the power and discretion as it deems fit. That is why since 1960, the Parliament or National Assembly as the case may be, has always tinkered with the Electoral Act to guide the electoral umpire in the conduct of all elections, including the EAB 2018, which unlike the previous amendments has finally recognised electronic voting and transmission of results. This is in addition to the reordering of a fixed sequence of elections amongst several other novel provisions.

In this regard, it is most respectfully submitted that the objection by the President that the EAB 2018 was likely to compromise the constitutionally guaranteed discretion of INEC to undertake, organise and supervise the conduct of elections lacks any constitutional merit. The objection falls like a pack of cards under the combined weight of the relevant constitutional provisions, the jurisprudence of the Supreme Court of Nigeria and the judicial authorities cited from other Commonwealth jurisdictions.

The Amendment to Section 138 of the Electoral Act 2010 Reinforces the Constitutional Provisions on Qualifications for Election

Section 138(1) of the Electoral Act 2010 provides four grounds upon which an election may be questioned, that is to say that: 'An election may be questioned on any of the following grounds:

a) That a person whose election is questioned was, at the time of the election, not qualified to contest the election;
b) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;
c) That the respondent was not duly elected by majority of lawful votes cast at the election; or

d) That the petitioners or its candidate(s) was validly nominated but was unlawfully excluded from the election.

The relevant constitutional provisions relating to qualification for elections are as provided in sections 65, 106, 131 and 177, of the Constitution. The gravamen of the gist of the four Sections essentially limits the qualification to contest National Assembly, State Assembly, Presidential and Gubernatorial elections to:

a) A person who is a citizen of Nigeria;
b) Who has attained the prescribed age (Senate 35, House of Representatives 30, House of Assembly 30, President 40 and Governor 35);
c) Who is possessed of educational qualification up to at least School Certificate level or its equivalent; and
d) Who is a member of a political party and is sponsored by that political party?

The Constitution has also provided grounds for disqualification to contest elections in sections 66, 107, 137 and 182 respectively. It is these same grounds that are reaffirmed, amplified and distilled by the provisions of section 138(1) of the Electoral Act 2010, particularly subsection (1)-(a). The amendments to section 138 (1) (b) & (2) in the EAB 2018 seek to expand the original provision in the Electoral Act 2010 in Section 138(1) (b) to include that in addition to non-compliance with the Act, an election can be petitioned for non-compliance with the published manuals, guidelines, regulations, procedures or directives of INEC. The act of non-compliance is essentially targeted at the conduct of INEC field staff who are usually tempted to act outside the minimum prescribed standards for the conduct of 'free, fair and credible elections' as demanded by the Electoral Act and prescribed by INEC published manuals, guidelines, regulations, procedures or directives.

However, it requires that such an infraction, which may be contrary to published INEC manuals; guidelines, regulations, procedures or directives of INEC shall not be a successful ground for challenging the election and return of a candidate in section 138(1)

(b) if it is not also inconsistent with the Electoral Act. To this extent, it provides that:

> An act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of the election but which is not contrary to the provisions of this Act and published manuals, guidelines, regulations, procedures or directions issued by the commission for the conduct of the election, shall not of itself be a ground for questioning the election.[41]

It is important to note that this amendment is not entirely new because it only seeks to clarify and amplify the existing Subsection (2) of the Electoral Act 2010, which material provisions are for all intent and purposes same with the amendment in the EAB 2018. Subsection (2) of the Electoral Act 2010 provides that 'An act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of the election but which is not contrary to the provisions of this Act shall not of itself be a ground for questioning the election'[42]

While the insertion of a new subsection (3), contrary to the President's contention that it deletes two grounds upon which an aggrieved party to an election may challenge the return of another candidate seeks to limit grounds for disqualification to contest election as contained in section 138(1) of the Electoral Act 2010 to those stated in the Constitution. It provides that 'the winner of an election cannot be challenged on grounds of qualification, if the winner satisfied the applicable requirements outlined in sections 65, 106, 131 or 177 of the 1999 Constitution, and also where the winner is not, (as may be applicable) in breach of sections 66, 107, 137 and 182 of the Constitution.

This is designed to bring consistency and harmony to

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41 (2) Electoral Amendment Bill 2018

42 Section 138(2) Electoral Act 2010

Nigeria's prevailing electoral jurisprudence in the light of conflicting judgments, which have followed the outcome of election petitions in the past. It does not in any way contract, limit or delete the original four grounds upon which an election may be questioned in Section 138(1). If anything, it amplifies and seeks to align it with the extant provisions of the Constitution in sections, 66, 107, 137 and 182.

To this extent it is respectfully submitted that the contention by the President that the amendment to section 138 of the Electoral Act 2010 by the EAB 2018 deleted two grounds upon which a candidate aggrieved by the outcome of an election may be reasonably entitled to a free and fair electoral review process, was without any foundation, legally disingenuous and lacked any substance to have merited a withhold of assent.

The Concurrent Powers of the National Assembly to Legislate on Matters Pertaining to the Conduct of Local Government Elections under the Constitution

As a response to the fifth query, two reasons are deduced, which may have been responsible for the President's decline of assent to the EAB 2018. First, with reference to Paragraph 22 of the Exclusive Legislative List of the Second Schedule to the Constitution, it is tempting to agree with the President's objection that the National Assembly cannot legislate on matters pertaining to the conduct of Local Government Council elections. The referenced provisions of the Second Schedule if read alone, apparently appears to preclude the National Assembly from legislating on the conduct of elections to a Local Government Council or any office in that council.

Secondly, a superficial look at two Supreme Court decisions may also appear to reinforce this default view. The cases are *AG Abia State & Ors v. AGF*,[43] where the Supreme Court admonished that 'The Constitution intends that everything relating to Local

[43] (2005) SC. 99

Governments be in the province of the State Government rather than in that of the Government of the Federation.' Also, in *AG Abia State & Ors v. AGF*, [44] the Supreme Court also held that apart from the power conferred in Item II of the Concurrent Legislative List and Section 7(6)(a) of the 1999 Constitution, (power to make provision for statutory allocation of public revenue to Local Government Councils in the Federation) the National Assembly does not possess any other power to enact laws affecting Local Governments. It was also held that the National Assembly, being a creature of the Constitution, does not have any inherent power to make laws on any issue it deems fit.

It is, however, important to state that the two cases do not apply to the instant case as they relate to legislative action on direct revenue allocation to the Local Government Councils. Matters that the National Assembly is clearly disempowered by the Constitution to legislate upon by virtue of the emphatic provisions of Section 162(8) of the Constitution. The Section provides that '*The amount standing to the credit of Local Government Councils of a State shall be distributed among the Local Government Councils of the State on such terms and in such manner as may be prescribed by the House of Assembly of the State'*. This clearly precludes the National Assembly from any action on the matter. In this regard, the cases deal with matters of a residual character to which section 4(7) applies.

The instant case, however, relates to a matter in which the National Assembly has concurrent legislative powers. And in so far as the amendment deals with only matters of administrative nature rather than substantive, it is perfectly in the realm of the powers granted to the National Assembly to legislate over procedural matters under Section 4 Paragraph 11, Concurrent Legislative List of The Second Schedule, CFRN 1999. As such Section 4 Paragraph 12, which empowers the State House of Assembly to make laws with respect to election to Local Government Councils is only in addition

[44] (2002) 6 NWLR (Pt. 763) 264

to that made by the National Assembly pursuant to Section 4 Paragraph 11 and must not be inconsistent with the law made by the latter. Where any inconsistency exists Section 4(5) is automatically activated to apply to the extent of the inconsistency.

Secondly, the two authorities of the apex Court are also distinguishable from the proposed amendments of the EAB 2018 and the provisions of Paragraph 22 of the Exclusive Legislative List of The Second Schedule to the CFRN 1999. The reason being that while Paragraph 22 of the Exclusive Legislative List precludes the National Assembly from directly legislating on substantive matters pertaining to the conduct of elections to a or any office in such Council, the amendment to Section 152 of the Electoral Act 2010 does not deal with substantive matters pertaining to the conduct of elections to a Local Government Council or any office in such Council. If anything, the amendment seeks to impose an administrative or procedural duty on all SIECs to observe national minimum best practices or standards in the conduct of 'free, fair and credible elections' to all Local Government Councils in Nigeria. This is consistent with the constitutional powers of the National Assembly under Section 4 Paragraph 11, Concurrent Legislative List, which provides that 'The National Assembly may make laws for the Federation with respect to the registration of voters and the procedure regulating elections to a Local Government Council'.

The amendment to impose on SIECs national best practice or standard that must be observed as a minimum requirement in the conduct of Local Government elections under the EAB 2018 can not therefore be held to be unconstitutional or likely to raise any constitutional conflict. This is because the amendment relates to procedural rather substantive matters. And in so far as it is procedural, it is consistent with the powers vested in the National Assembly under Section 4 Paragraph 11, Concurrent Legislative List. The provisions in Paragraph 22 of the Exclusive Legislative List of The Second Schedule must therefore be read alongside the above

provisions to make the Constitution a composite whole.[45]

Besides, granted but not conceding that it is likely to raise any constitutional conflict as to the powers of the National Assembly to make laws relating to the conduct of Local Government elections as suggested by the President; it is our considered view that such a conflict if it ever arises at all shall be constitutionally resolved by virtue of the provisions of Section 4 Paragraph 12, Concurrent Legislative List and Section 4(5) of the Constitution. The two Sections provides that: 'Nothing in paragraph 11 hereof shall preclude a House of Assembly from making laws with respect to election to a Local Government Council *in addition to but not inconsistent with any made by the National Assembly'* and 'If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, *the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void'* (underlining supplied).

In *AG Abia State v. AGF,*[46] the apex Court held that:

> I agree that where the doctrine of covering the field applies, it is not even necessary that there should be inconsistency between the Acts of the State and that of the National Assembly. The fact that the National Assembly has enacted a law on the subject is enough for such law to prevail over the law passed by the State House of Assembly but where there is inconsistency, the State law is void to the extent of the inconsistency.

In *Osun State Independent Electoral Commission (OSIEC) & Anor v, Action Congress & Ors.,*[47] the Court of Appeal had held that 'By virtue of the combined provisions of paragraph 11 and 12 of the Second Schedule to the 1999 Constitution and section 121 of the Electoral Act 2006, the powers of the Osun State House of Assembly

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45 (n, 35)
46 (2002) 17 WRN 1 at 99,
47 (2010) LPELR-SC. 265/2009, 17th Dec. 2010

to make laws for the procedure for the conduct of election into the Local Government Council is subject to the Electoral Act 2006'. Muntaka Coomassie, JSC held affirming the judgment of the Appeal Court that:

> …. the timing and extent of the notice to be given for the conduct of Local Government election …… are vested in the National Assembly. It therefore follows that the State House of Assembly has no power to make laws on the subject matter, unless to make laws to conform with the provisions of the Act passed by the National Assembly. I therefore hold that the Osun State House of Assembly has no legislative powers to legislate on the procedure regulating elections to Local Government Councils, the issue of notice inclusive, if it must make law it has to be in conformity with the provisions of Section 31 of the Electoral Act, 2006.[48]

To this extent, it is most respectfully submitted that amendments to section 152 of the Electoral Act 2010 by the insertion of sections 152 (3)-(5) EAB 2018 raised no likelihood of any constitutional breach or conflict. The amendment was in order and the President's ground of objection was at best speculative, without substance, lacked merit and could not be sustained as a basis to withhold assent. No Court also ought to have entertained the matter prior to the said EAB 2018 being enacted into law.

Findings

Paragraph 22 of the Second Schedule to the Constitution, otherwise known as the Exclusive Legislative List, provides that the National Assembly shall have powers to enact laws with respect to the 'election to the offices of the President and Vice President or Governor and Deputy Governor and any other office to which a person may be elected under this Constitution, excluding election to

[48] Ibid

a Local Government Council or any office in such council'. It is pursuant to this provision, read in conjunction with the provisions of section 4(2) and Paragraph 15(i) of the Third Schedule to the Constitution that the National Assembly has always enacted the Electoral Act to guide the conduct of elections organised by INEC. The extant Electoral Act was enacted in 2010, and it is this Act that the National Assembly sought to amend in the EAB 2018, to amongst other things, amend the grounds for maintaining an election petition, amend the procedure for registration and conduct of local government elections and provide for the adoption of electronic voting, automatic electronic transmission of results and the reorder of the sequence of elections to commence with the National Assembly elections, followed by State Houses of Assembly/Gubernatorial elections and the Presidential elections to be held last.

By the President declining to assent to the EAB 2018 pursuant to his powers under section 58(4) of the Constitution nothing prevented the National Assembly from resorting to its veto power under section 58(5) of the said same Constitution to override the President to enact the EAB 2018 as the substantive Electoral Act for the conduct of the 2019 general election. Not even the action of the Accord Party, which amounted to academic exercise sufficed to have stifled the exercise of the National Assembly of its powers under the section 58(5). Even the injunction that was granted by the Court to restrain the National Assembly from the performance of its constitutional mandate was without jurisdiction and at best vexatious and superfluous.[49]

This article has established that:

1. The statutory determination of the sequence of the general elections as to which comes first, second and third does not in any material particular, impinge on the discretion of INEC to undertake, organise and supervise the conduct of elections under the CFRN1999.

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[49] Ibid

2. It is erroneous to hold the view that the amendment to section 138 of the Electoral Act 2010 to limit disqualification to the instances provided under the Constitution and add non-compliance with the guidelines, manuals and instructions issued by the electoral management body that are not inconsistent with the Electoral Act to grounds of election petition, limits the grounds for an election petition.
3. The imposition of minimum national procedural best practices or standards on SIECs, in the conduct of Local Government Council elections is in order in so far as the SIECs act under the constructive delegation of INEC with respect to the use of its voters registers to conduct Local Government Council elections.
4. The National Assembly has always legislated on the sequence of elections as evidenced in section 25 Electoral Act 2010. It is, therefore, completely against the spirit and letters of the Law to challenge the National Assembly as having no such powers as against a purported discretion vested in INEC whose powers in that regard are only donated by the Electoral Act enacted by the National Assembly.
5. The decline of presidential assent to the EAB 2018 was borne more out of political exigency than legal because it is not supported by any extant constitutional or legal provision in the laws of the Federal Republic of Nigeria.

Recommendations

Based on the forgoing findings and conclusions, this article recommends as follows:

1. That the amendments to section 25 as contained in the EAB 2018 by the 8th National Assembly be revisited by the 9th National Assembly, which should re-pass it in a new EAB to strengthen the conduct of the Nation's general elections by eliminating the exercise of any discretion by INEC as to the sequence of election. This will limit the exposure of INEC to manipulations by the Executive and the incumbent political party that usually

works in concert with the Commission to shuffle the order of elections to suit her mechanizations to secure bandwagon effect. The re-passage of the EAB by the 9th National Assembly would ensure that the spirit and letters of the CFRN 1999 which is anchored on the doctrine of separation of powers, as envisaged by the framers of the said Constitution is also upheld.

2. That the amendment to section 138 of the Electoral Act 2010 should be reconsidered and re-passed by the 9th National Assembly in line with the provisions of the EAB 2018. This would help save most of the election petitions which are usually dismissed by the courts on the basis of formulation of defective grounds of petitions by the addition of the words '…and guidelines, regulations and manuals of INEC…', hence expanding rather than limiting the grounds of election petition under section 138 of the Electoral Act 2010.
3. That SIECs must be made to comply with all the requirements relating to the registration of voters and procedures for voting as contained in the Electoral Act, which must be held as superior to all State laws establishing SIECs and granting them powers to conduct state elections, except where the SIECs are not relying on the voters register prepared by INEC.
4. That the Judiciary should, as a matter of policy, be cautious or out rightly decline the invitation by the Executive or any other body or person(s) to interfere in the internal processes and proceedings of the legislature. The Constitution should also be amended to expressly require that no suit shall lie at the instance of anybody or person(s) against the work of the legislature with respect to its law-making powers, except upon completion of the exercise. This will eliminate frivolous and vexatious litigations that are not designed to achieve any utility other than destabilize the Legislature from performing its constitutional duty of law making.
5. That the President should re-present the EAB 2018 as an executive bill and cause for the expeditious reconsideration and

passage by the 9th National Assembly of same. He should also quickly assent to the bill upon passage so that INEC would have a new enabling law that provides an improved legal framework for dealing with the observed shortcomings of the extant Electoral Act 2010. This would enable the Commission start early preparations for the 2023 general elections. This course of action is even more urgent now that Corona Virus Disease (COVID 19) is significantly changing the way we live, work and do things. If we do not move fast to adopt, for instance, electronic voting and other e-strategies for the seamless conduct of elections in Nigeria as articulated in the EAB 2018, it may be difficult for INEC to successfully deliver on its mandate in 2023 moving forward.