

THE LEGAL REGIME FOR COMPULSORY VOTING IN NIGERIA: AN APPRAISAL

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Abstract

Unarguably, the high rate of voter apathy in Nigeria is a huge problem facing the development and practice of democracy in the country. Many Nigerians today see election days as their best days to enjoy at home, have fun and play around with their family members and friends while only a handful go out to vote. Unfortunately, politicians also capitalize on this non-voting disposition of the electorates to advance their political interests. In this connection, politicians use their financial advantage and ‘bullion vans’ to mobilize some of the eligible citizens to vote in their favour thereby casting doubts on the general legitimacy of the Nigerian government. This research work considers the implementation of compulsory voting in Nigeria and finds that a major challenge militating against compulsory voting in Nigeria is the silence of our electoral laws on the duty to vote. The researcher also finds that countries such as Australia, Belgium and Brazil where compulsory voting is practiced do have strong compulsory voting laws and in those countries, voter turnout is considerably high. The researcher further finds that if voting is made compulsory in Nigeria, it will certainly improve the average voter turnout during elections and increase the legitimacy of our elected leaders. The researcher therefore recommends inter alia that our electoral laws (including the constitution) be amended to codify the duty to vote and that the Nigerian government should as well put in place other measures such as easy registration and stress-free election process, in order to complement the compulsory voting system.

Keywords: Law, Election, Electoral Act, Voting, Nigeria

1. Introduction

Nigeria is one of the countries facing the challenge of low turnout of voters during elections. It is unfortunate to underscore that the last two presidential elections in Nigeria (2015 and 2019) recorded below 50% each of average voters’ turnout. The level of decline in electoral participation in the past years is quite worrisome as it casts some doubt on the legitimacy of the elected governments and further questions our democracy. This paper considers and recommends the introduction of compulsory voting in Nigeria in order to solve the issue of low electoral participation. The argument herein is premised on two theories - the theory of democracy (by which democracy is universally understood as a form of government which primarily involves the rule by the people) and the theory of law as a means of social change (by which law is seen as a means of influencing the social behavior of people). In this connection, it is argued that a government that comes into power without the input of a considerable number of eligible voters in the country can hardly be adjudged as a government by the people. It is further argued that the law can therefore be used to influence eligible Nigerian voters to lay aside their various

excuses for non-voting and to develop a civic sense of the duty to vote. In as much as some scholars do not fancy the idea of compulsory voting, there is a general consensus that compulsory voting increases electoral participation. One of the chief opponents of compulsory voting argues that the right to vote is a promotion of self-interest just like marriage and no one should be forced to act in a particular way to advance of his/her own interest.¹ She admits that political participation is valuable but questions why any importance should be attached to electoral participation.² She however admits that compulsory voting may be necessary and accepted in the following situations: where (1) the state is weak, and inequalities of power leave peasants at the mercy of landowners, or workers vulnerable to employers – in order to protect the right of the voters and (2) In very large countries, or those riven by ethnic divisions – in order to gain support for a system of proportional representation that is fair to all social groups.³ Although this paper does not seek to delve into the arguments for or against compulsory voting, it is clear that Nigeria falls under the exceptions noted by the above critic of compulsory voting. It is important therefore to consider the place of compulsory voting in our legal regime. This paper will proceed in the following structure: the meaning and nature of compulsory voting; the legal regime and institutional framework for compulsory voting in Nigeria; the challenges and prospects of compulsory voting in Nigeria; a comparative analysis of compulsory voting in other jurisdictions and finally the recommendations of the researcher.

2. Meaning and Nature of Compulsory Voting

The expression ‘compulsory voting’ appears easy to define but it is interesting to note that there is actually a dearth of data specifically on the clear-cut definition of the expression. For instance, a learned author, after noting the misleading nature of the expression, proceeds to define it as ‘compulsory turnout’ or ‘compulsory participation.’⁴ However, the author’s definition too appears to beg the question. Thus, it is important to begin by deconstructing the expression for a better appreciation of its meaning. It

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¹ Annabelle Lever, “Compulsory Voting: A Critical Perspective” 40 (4) British Journal of Political Science, 2010, pg. 907 (pp. 897-915)

² Ibid pg. 908

³ Ibid pg. 915

⁴ Annabelle Lever, “Is Compulsory Voting Justified?” Vol 1, Issue 1, Public Reason, 2009, page 57-58 (pp, 57-74)

comprises of two major components - “voting” and “compulsory”. The first component ‘compulsory’ simply means ‘required’; ‘compelled’; ‘mandated by legal process or statute.’ The other component “voting” has been defined as the ‘casting of votes for the purpose of deciding an issue.’⁵ It also means “to cast ones vote for or to elect or defeat by vote.”⁶ Based on the literal combination of the two components above, ‘compulsory voting’ can simply be referred to as the compelled or enforced casting of votes by the people for the purpose of selecting or choosing a person to occupy a particular political office. In the context of this research work, voting simply means the attendance of polls during election for the purpose of selecting or choosing a person to occupy a particular political office. It involves the use of law as an instrument of compulsion to require eligible citizens to attend election polls for the purpose of exercising their rights to vote. Professor Adem Caylak and Murat Kacer define compulsory voting as a law, enacted against low turnout rates in elections in modern democracies and political inequality in society.⁷ Compulsory voting is a form of legal regulation in countries where participation in elections is considered as a duty. It is a system in which voters are constitutionally or by other legal means, compelled to vote in elections or attend a polling place on election day.⁸ The expression ‘compulsory voting’ is also known as ‘mandatory voting’ although some scholars prefer the latter expression because to them, it sounds more milder than the former.⁹ Whichever parlance one chooses (whether “compulsory” or “obligatory” or “mandatory” voting), the concept simply implies a system in which electors are obliged to vote in elections or attend a polling place on voting day. If an eligible voter does not attend a polling place, he or she may be subject to sanctions or punitive measures. To Sarah Birch, compulsory voting can be defined very simply as the legal obligation to attend the polls at election time and perform whatever duties are required there of electors.¹⁰ One thing to note about the nature of compulsory voting is that it merely seeks to compel eligible voters to register for voting, attend the polls during election and participate thereat. It does not however entail that the voters must cast their vote for at least any of the candidates. Thus, the voter may eventually cast a blank vote. This fact therefore amputates the argument that compulsory voting violates the right not to vote.

⁵ Bryan A. Garner, “Black’s Law Dictionary” 8th Edition, 2004, Thompson West Publishing Co, USA, page 1608

⁶ The Webster Comprehensive Dictionary of English Language, Deluxe Encyclopedic Edition, 2004, Typhoon International Corporation, USA, page 1410

⁷ Adem Caylak and Murat Kacer, “Voting: A Citizens Right or Duty? The Case of Compulsory Voting” Volume 5, Issue 567, November, 2017 Journal of Academic Social Science page 418 (pp. 418 to 444)

⁸ Ibid pg. 421

⁹ Anthoula Malkopoulou, “The History of Compulsory Voting in Europe: Democracy’s Duty?” Routledge Taylor and Francis Group, Third Avenue, New York, 2015, pg. 7

¹⁰ Sarah Birch, “Full Participation: A Comparative Study of Compulsory Participation” Manchester University Press, 2009, UK Pg. 2

3. Legal and Institutional Framework for Compulsory Voting in Nigeria

3.1 Legal Framework

Without doubts, a legal framework is crucial in order to enable compulsory voting in any society. Unfortunately, there is currently no law in Nigeria that directly and clearly codifies compulsory voting. However, a hint as to whether our extant laws promote or discourage compulsory voting can be gleaned by a careful perusal of the three major electoral laws in Nigeria – the Constitution of the Federal Republic of Nigeria, 1999 (As amended), the Electoral Act, 2010 and the INEC Regulations and Guidelines for the Conduct of Elections, 2019. These laws will be considered one after the other with a view to distilling the general disposition of our legal regime to compulsory voting.

a. The Constitution of the Federal Republic of Nigeria, 1999 (As amended)

The Nigerian constitution is the highest law in Nigeria. The constitution derives its supremacy directly from the people so that all other laws in Nigeria derive their validity from it.¹¹ By virtue of section 1 (3) of the CFRN, if any law is inconsistent with the provisions of the Constitution, the constitution will prevail and that other law shall, to the extent of its inconsistency with constitution, be void. It is therefore important to consider the spirit and letters of the constitution with respect to compulsory voting in Nigeria. To start with, it is interesting to note from the onset that the constitution does not expressly codify the right to vote. This point is important because most opponents of compulsory voting start off by arguing that voting is a right and that no citizen should be compelled to exercise his/her own right. This argument will therefore not hold sway if the constitution itself does not recognize voting as a right. The implication is that the issue of non-codification of voting as a right in the constitution may be resolved in favour of the proponents of compulsory voting as it creates the impression that voting may be more of a privilege (or perhaps, a duty) than a right in Nigeria. A careful perusal of chapter IV of the CFRN shows that the right to vote is not listed amongst the fundamental human rights recognized under the constitution. A voyage will therefore be made into other provisions of the constitution to ascertain if the right to vote is recognized. Section 77 of the CFRN which deals with election into the National Assembly, provides as follows:

- (1) Subject to the provisions of this Constitution, every Senatorial district or Federal constituency established in accordance with the provisions of this Part of this Chapter shall return a member who shall be directly elected to the Senate or the House of Representatives in such manner as may be prescribed by an act of the National Assembly.

¹¹ See the preamble to the Constitution

- (2) Every citizen of Nigeria, who has attained the age of eighteen years residing in Nigeria at the time of the registration of voters for purposes of election to a legislative house, *shall be entitled to be registered as a voter for that election.*¹²

From the above provision, it is clear that once a person who is a citizen of Nigeria has attained 18 years of age and resides in Nigeria at the relevant time of registration of voters for the purposes of election to a legislative house, such a person has a right to be registered as a voter for that election. Curiously, apart from the fact that the above provision indicates that voting is not in itself an absolute right, it also creates some ambiguity between the right to vote per se and the right to be registered as a voter. This is more so when one considers Section 132 (5) of the CFRN which is couched in a different language. Section 132 (5) provides that every person who is registered to vote at an election of a member of a legislative house *shall be entitled to vote at an election to the office of President.*¹³ If the provisions are to be given their literal meaning, then it means that there is a difference between being “*entitled to be registered as a voter*” for a particular election on the one hand, and being “*entitled to vote*” at the election on the other hand. It is no wonder that a learned writer has on the basis of the above ambiguities, submitted that that Nigerian constitution does not enshrine the right to vote.¹⁴ This is further buttressed by the fact that the above provisions are context-specific. Therefore, unlike the Kenyan¹⁵ and Ethiopian¹⁶ Constitutions, the Nigerian constitution does not expressly codify the right to vote though it could be inferred.

Does the Constitution Codify a Duty to Vote?

Again, it is unfortunate to note that the Nigerian constitution does not specifically codify the duty to vote. Section 24 of the CFRN provides for the following duties of every Nigerian citizen: (a) abide by this Constitution, respect its ideals and its institutions, the National Flag, the National Anthem, the National Pledge, and legitimate authorities; (b) help to enhance the power, prestige and good name of Nigeria, defend Nigeria and render such national service as may be required; (c) respect the dignity of other citizens and the rights and legitimate interests of others and live in unity and harmony and in the spirit of common brotherhood; (d) make positive and useful contribution to the advancement, progress and well-being of the community where he resides; (e) render assistance to appropriate and lawful agencies in the maintenance of law and order; and (f) declare his income honestly to appropriate and lawful agencies and pay his tax promptly. As can be seen from the above list, the duty to vote is not included and it is a hallowed canon of

¹² Emphasis mine. See also section 117 of the CFRN which contains similar provisions in respect of election into the House of Representatives

¹³ Emphasis mine. See also section 178 (5) of the CFRN which contains similar provision in respect of election to the office of a governor of a State

¹⁴ Basil Ugochukwu, “Ballot or Bullet: Protecting the Right to Vote in Nigeria” 2012, Vol. 12 African Human Rights Journal, page 550 (pp. 539-563)

¹⁵ Part 2 of the Kenyan Constitution, 2010

¹⁶ Article 38 of the Ethiopian Constitution, 1995

statutory interpretation that the express mention of one thing means the exclusion of the other. However, the constitution leaves a room for one to argue that the duty to vote exists under its provisions. Section 14 (2) (c) of the CFRN provides that “the participation by the people in their government shall be ensured in accordance with the provisions of this Constitution.” This provision presupposes amongst other things that the constitution prioritises the participation of Nigerians (including electoral participation i.e. voting) in the government and therefore tasks the government to ensure that Nigerians participate electorally and otherwise in the government, provided that the means adopted by the government to achieve the aim is in line with the provisions of the constitution. Now, section 23 of the CFRN provides that *discipline* and *patriotism* amongst other things are the core national ethics of the country while section 24 (a) of the CFRN provides that every citizen of Nigerian is bound to abide by the constitution and to respect its ideals. The logic is that electoral participation (voting) is a mark of discipline and patriotism as envisaged under section 23 above and also qualifies as one of the ideals of the constitution, so that every Nigerian is bound to respect it in line with section 24 (a) of the CFRN. Section 17 (1) (a) further provides that every citizen shall have equality of ...obligations ... before the law.” This means that the obligation to respect electoral participation as an ideal of the constitution is equal and no Nigerian should be more or less obliged than the other to comply with that obligation. It is on this basis that it could be inferred that the constitution discourages non-voting. However, it is apposite to note that the above inference has not been deliberated upon nor tested by court. Thus, it is submitted in any case, that there is still need to amend the constitution to expressly codify the duty to vote if Nigeria is to be seen as one of the States where compulsory voting applies.

b. The Electoral Act, 2010

After the Nigerian constitution, the Electoral Act is the next major law that deals with electoral participation or voting in Nigeria. Just like the constitution, the Electoral Act does not expressly recognize the right to vote. Under section 12 of the Act which deals with the qualifications for registration as a voter, it is seen that, apart from being a Nigerian and attaining 18 years of age, a person must ordinarily reside in, work in and originate from the Local Government Area Council or Ward covered by the registration center and must present himself to the officers of INEC for registration, before he/she can be qualified to vote in an election. In fact, section 122 (1) (d) of the Act further criminalizes voting or attempting to vote at an election without being qualified to vote.¹⁷ A combined reading of the above provisions further accentuates the issue raised earlier in this paper that voting is not an automatic or absolute right in Nigeria. However, just like the constitution, the Electoral Act does not also provide for a duty to vote neither does it provide for a duty to be registered as a voter. Under section 12 of the Act, a person who has met other requirements for qualification to vote can decide not to present

¹⁷ See also section 126 of the Act

himself/herself to the officers of INEC for registration and there is no penalty for such decision. Interestingly, however, the Electoral Act appears to codify the duty not to prevent another person from registering as a voter. Under section 24 (2) of the Act provides that 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 shall be liable on conviction, to a fine not exceeding N500,000.00 or imprisonment not exceeding 5 years. The Electoral Act via section 129 (1) also penalizes the act of persuading a voter (i.e. a person who has already registered to vote) not to vote on the election day.¹⁸ Thus, in as much as the Electoral Act does not expressly codify the duty to vote or duty to be registered as voter, the Act however impliedly contains the duty not to prevent or dissuade others from voting or registering as voters, a breach of which amounts to an offence punishable under the Act.

c. INEC Regulations and Guidelines for Conduct of Elections, 2019

The INEC Regulations and Guidelines for Conduct of Elections, 2019 was issued pursuant to the 1999 Constitution and the Electoral Act, by INEC on the 12th of January, 2019 to regulate the conduct of elections in Nigeria. In line with the qualifications contained in section 12 of the Electoral Act, the INEC Regulations and Guidelines provides that a person is eligible to vote at an election conducted by the Commission if: (i) he/she is a Nigerian; (ii) he/she is registered as a voter; (iii) his/her name appears on the Register of Voters; and (iv) he/she presents a valid Permanent Voter's Card (PVC) at his/her Polling Unit. In as much as the above provision of the Regulations further accentuates the argument that the right to vote is not automatic in Nigeria, it must also be pointed out that the Regulations do not provide for a duty to vote. The Regulations however contain some provisions couched in mandatory sense in respect of accreditation and voting at the election. Section 8 (c) of the INEC Regulations and Guidelines for Conduct of Elections, 2019 provides as follows:

Each voter *shall* cast his/her vote in person at the Polling Unit/Voting Point Settlement/ Voting Point where he/she registered or was assigned, in the manner prescribed by the Commission

Section 10 (e) of the Regulations further provides that the voter "*shall*" present himself/herself to the APO (assistant presiding officer) III for the Polling Unit, Voting Point Settlement or Voting Point for the purposes of accreditation. After being cleared by the APO III, section 10 (f) provides that the voter "*shall*" on request of the APO III proceed to APO I for further confirmation. The APO I after confirming the voter will request him/her to proceed to APO II and the voter "*shall*" proceed to the APO II. The voter "*shall*" further proceed to the PO (presiding officer) for final confirmation and voting. The PO is required to direct the voter to the voting cubicle to mark his/her choice

¹⁸ See also section 130 (a) and 131 (b) of the Act which punishes the use of money or threats to influence or compel people not to vote.

on the ballot paper and must ensure that the voter deposits the marked ballot paper in the appropriate ballot box.¹⁹ The use of the word “shall” in the above provisions creates the impression that any voter who attends the poll during election in Nigeria is under some mandatory duty to participate in the voting exercise to the point of marking his/her choice in the ballot paper and depositing same in the appropriate ballot box. There is however no penalty for abruptly refusing to vote after having attended the polls.

Comments: A look at our electoral laws shows that our legal regime contains no express compulsory voting requirement. There is thus an urgent need to amend our laws starting from the constitution in order to provide a duty to vote and the sanctions for violation.

3.2 Institutional Framework for Compulsory Voting in Nigeria

Apart from a legal framework for compulsory voting (which may only codify the duty to vote and stipulate the payment of fines or imprisonment terms for non-voting), there is also a need for the institutionalization of some strategic measures in order to secure effective compulsory voting system in Nigeria. Some of these practical measures include making an up-to-date registered voter card necessary for (a) certain financial transactions like opening or upgrading of bank accounts; (b) application for admission into government-owned universities or educational institutions; (c) application for employment into government-owned institutions or civil service; (d) application for national identification cards; (e) application for international passport; (f) application for drivers licence; (g) application for registration of business names, companies, limited liabilities, partnerships, incorporated trustees under the Companies and Allied Matters Act; (h) application for loans and grants from government; (i) disqualifying the defaulter from standing for political positions or from receiving political appointments; (j) disqualifying the defaulter from tax exemptions; etc. Some of the institutional measures listed above have been tested in certain jurisdictions such as Belgium, Singapore, Argentina, Bolivia, Greece, Australia, Italy, e.t.c, and the measures worked to a considerable extent to influence voter’s compliance with the compulsory voting law although some countries (e.g. Italy) later dropped those measures.²⁰

Comments: The institutional measures listed above can only happen where there is a law recognizing compulsory voting. In the absence of such law, attempting to subject people to the above measures as punishment for non-voting will certainly violate their constitutional rights and eventuate an armada of court actions. Similarly, a strict application of the measures may amount to robbing Peter to pay Paul. For instance, limit employment in public institutions to active voters, may lead to employments that are not based on merits. Also, shutting out defaulters from certain financial transactions as punishment may affect the financial health of the banks and the country by extension.

¹⁹ See section 11 (a) of the INEC Regulations

²⁰ Sarah Birch, *supra*, note 10 at pg. 7-10

Having noted this point, it is pertinent to look at the challenges of compulsory voting in Nigeria as contained in the next unit.

4. Challenges of Compulsory Voting in Nigeria

a. Absence of a Legal Backing: The first and major challenge to compulsory voting in Nigeria is the absence of a statutory recognition of the duty to vote. All the laws governing election in Nigeria (including the 1999 constitution) are silent on the issue of compulsory voting thus making it impracticable to classify Nigeria as a compulsory voting jurisdiction.

b. Constitutional obstacles: The Nigerian constitution does not expressly codify the right to vote or not to vote. However, apart from the fact that the constitution does not also codify a duty to vote, some of its provisions (except where amended) can pose problems to the implementation of compulsory voting in Nigeria. These include provisions enshrining the citizens' right to freedom of thought, conscience and religion,²¹ right to freedom of expression²² and the right not to be discriminated upon on grounds of the citizen's political opinion.²³ Relying on these provisions, aggrieved citizens may bombard the courts with suits challenging the constitutionality or otherwise of compelling them to vote in an election and/or discriminating against them for non-voting.²⁴

d. Permissive Language of the Electoral Act: Apart from the fact that the Nigerian Electoral Act does not provide for a duty to vote, some of provisions are couched in such a way to voting is seen as a voluntary option on the part of the electorates. Section 49 (1) of the Act, for instance, provides that any person *intending to vote* with his voter's card shall present himself to a Presiding Officer at the polling unit in the constituency in which his name is registered with his voter's card. This suggests that the voter is not under any obligation to present himself/herself to a Presiding Officer for the purposes of voting at the election except he/she chooses or intends to vote. In other words, he/she can choose or intend not to vote and as such is not obliged to present himself or herself to a presiding officer for the purposes of accreditation and voting.²⁵ Section 12 (1) (d) of the Act further gives the voter an option of disqualifying himself/herself from being registered as a voter by refusing to present himself to the registration officers even where he/she has met other requirements envisaged in the Act.

²¹ Section 38 of the CFRN, 1999

²² Section 39 of the CFRN, 1999

²³ Section 42 of the CFRN, 1999

²⁴ See however the case of *X v Austria* (1972) 15 Yearbook of the European Convention on Human Rights 468, 472-4, where the Court ruled that, provided there was no compulsion to mark the ballot formally, compulsory voting does not violate the right to freedom of conscience and thought.

²⁵ See also section 10 (a) of the INEC Regulations and Guidelines, 2019, where the same permissive language was used.

d. **Insecurity:** One of the major factors militating against electoral participation in Nigeria is the issue of electoral violence. The spate of bombings, kidnapping, massive fraud and harassment associated with the electoral process in Nigeria grossly affect voters' interest in politics.²⁶ Therefore, it may be difficult and undemocratic to compel Nigerians to vote without putting in place necessary measures to checkmate the problem and risks of insecurity and loss of lives during elections.

e. **Cumbersome Registration and Election Process:** During elections in Nigeria, electorates often complain of rigorous registration and election process such as: INEC officials moving from place to place with inadequate information as to their next move; technical failures and allegations that these officials asked the electorates to pay for ink and batteries required to run the Direct Data Capture machines,²⁷ long queues and inadequate polling units, etc.

f. **High Rate of Illiteracy and Poverty:** A good number of Nigerians are illiterates and do not have any civic education of their rights and duties. Some others live in abject poverty and find it difficult to feed themselves and their families. Subjecting this category of people to sanctions for non-voting implies that the government will have enough bone to pick because there would certainly be a high rate of non-compliance with the compulsory voting law.

g. **Potential Armada of Uninformed Votes** – Further to the above challenge, compulsory voting in Nigeria could lead to a challenge of countless uninformed votes. Jason Brennan must have had this issue at mind when he argued that some people should not vote – referring to people who are uninformed, ignorant or irrational about politics and therefore have the tendency to vote wrongly.²⁸ Another scholar also argues in this connection that if voting is to be a civic duty, then it should be typically concerned with informed and conscientious voting so that voting without consciousness and interest cannot and should not count as fulfilling this duty.²⁹

h. **Potential Abuse of Democracy** – Compulsory voting without a corresponding adequate political education of the people will not only lead to an armada of uninformed votes but also the abuse of democracy. Research has shown that in Nigeria, emphasis is

²⁶ Nuka S. Amanyie, Kia Bariledum and Nwibor B. Lucky, "Electoral Violence and Political Apathy in Nigeria: Issues and Challenges" Vol 13 (1) British Journal of Humanities and Social Sciences, April, 2015 pg. 156 (pp. 155-173)

²⁷ See Jane Mbah, "Making a Case for Compulsory Voting in Nigeria" Vol. 7 (1) International Journal of Academic Research and Reflection, 2019, pg. 19 (pp. 16-22)

²⁸ Jason Brennan, "Ethics of Voting" Princeton University Press, United Kingdom, 2011, page 6

²⁹ See Annabelle Lever, "A Liberal Defence of Compulsory Voting: Some Reasons for Scepticism" Vol 28 (1) *Politics*, 2008, pg. 62 (pp. 61-64)

usually placed on voting as if it was the only aspect of democratic participation.³⁰ The replacement of direct participation before, during and after elections with only voting in periodic elections may lead to the abuse of democracy. This is because democracy is grossly abused when the citizens are not mobilized to be part of the governance through their participation in the democratic activities but only needed and compelled to participate during voting.

i. Cost of Enforcement: Compulsory voting laws do have attendant enforcement costs. These include the cost of investigating cases of non-voting and prosecuting the offenders. There is no doubt that many eligible voters in Nigeria will be in breach of the compulsory voting law especially in the early years of its passage. Investigating and prosecuting millions of cases of non-compliance will certainly pose a serious problem for country like Nigeria that still battles with heavy electoral expenses.

5. Prospects of Compulsory Voting in Nigeria

a. Increased Voter Turn Out: Compulsory voting in Nigeria will combat the issues of low turnout in elections. For instance, the specific level of voter turnout in Nigeria for the presidential elections is as follows: 1999 (52.26%), 2003 (69%), 2007 (57.49%), 2011 (54.07%), 2015 (43.65%) and 2019 (49.78%).³¹ This means that roughly half of the eligible voters in Nigeria do not turn out on the election day. It is no wonder that compulsory voting has been suggested to have a high chance of increasing electoral participation in Nigeria.³²

b. Bridging the Socio-Economic Status Gap in Voting: Aside from the general problem of low and declining turnout in advanced democracies, equally worrying is the persistence and widening of the socio-economic status ('SES') voting gap whereby voting participation is concentrated among the more prosperous members of the country. Compulsory voting could therefore be a valuable aid in arresting this trend.³³ By motivating people to express their voice, compulsory voting involves those most likely to become alienated from politics. This way, politicians have to listen to their voices, which would otherwise never be heard.

³⁰Osondu Monica Oluchi, "Democracy and Political Participation in Nigeria: The Case of Imo State in the 2007 General Elections" Vol. 9 (1) International Journal of Development and Management Review (INJODEMAR) June 2014. Page 35 (pp. 35- 49)

³¹ Retrieved from <https://www.electionguide.org/countries/id/158/> last accessed on 7th February, 2021; see also Iwuoha Victor Chidubem, "ICT and Elections in Nigeria: Rural Dynamics of Biometric Voting Technology Adoption" Vol. 53 (3) Africa Spectrum, 2018 pg. 93 (pp. 89–113)

³² Sylvia Uchenna Agu, Okeke, Vincent Onyekwelu Sunday and Idike, Adeline N, "Voters Apathy and Revival of Genuine Political Participation in Nigeria" 4 (3) Mediterranean Journal of Social Sciences, September, 2013, pages 447-448 (pp. 439-448)

³³ Lisa Hill, "Compulsory Voting in Australia: A Basis for a 'Best Practice' Regime" Vol. 32 (3) Federal Law Review, September, 2004, pg. 480 (pp. 479-497)

c. Increase of Legitimacy of Government: An increase in voters turn out in Nigerian elections, as a result of compulsory voting, will not only bridge the socio-economic status gap in voting, but it will also confer a considerable level of legitimacy on the elected candidates. This is because, as Bart Engelen puts it:

“Political participation is also crucial for guaranteeing the legitimacy of a democratic regime. The more citizens abstain, the more the elected bodies lose their accountability...As democracy cannot imply that laws are enacted by legislators representing a minority of eligible voters, one has to conclude that high turnout levels are necessary for any democracy claiming legitimacy.”³⁴

d. Increased Political Accountability: A major corollary of the legitimacy conferred on the elected candidates through a greater turn out of voters is the sense of accountability and duty to perform to their best abilities.

e. Curbing of Voter’s Impersonation: A compulsory voting law increases the expectation that all eligible voters will turn out to vote, thereby making it practically impossible for any of the voters to be impersonated. Therefore, a compulsory voting law in Nigeria will go a long way to complement the prohibition of impersonation in section 122 (2) of the Electoral Act.

f. Inculcation of Civic Sense of Political Participation in Nigerians: Compulsory voting will not only improve electoral participation of the electorates, it will also draw them closer to political participation. This is because, having effectively participated in voting, citizens will be on alert to ensure that their votes count. This will also put the INEC and politicians on the guard against electoral corruption.

g. Removal of the Political Manipulation of Voters: Nigerian politicians are apparently capitalizing on the political apathy of Nigerians and the absence of compulsory voting in Nigeria. This is because an average Nigerian assumes that his/her vote does not count and thus feels lazy to participate in voting during election. Aware of this fact as well as the wrongness of such assumption, politicians approach many of these unwilling eligible voters with bribes and promises to vote in a particular way. So that a good number of those who finally turns out to participate in voting are those who ordinarily would not have voted but for the bribes and promises they have received from the politicians. Politicians know how powerful the vote of each citizen can be and they also know that most Nigerians do not appreciate the importance of voting. As a result of this, they try as much as possible to buy the votes of some of these citizens and at the end, the number of votes which they get from such hitherto unwilling voters may turn

³⁴ Bart Engelen, “Why Compulsory Voting Can Enhance Democracy” Vol. 42 Acta Politica, 2007, pg. 25 (23–39)

out to be the deciding factor in the election. Therefore, compulsory voting will not only tackle the issue of forcing people with money to vote in a particular way, it will also pressure the politicians to provide more cogent bases in order to deserve the votes of the citizens.

6. Compulsory Voting in Other Jurisdictions

a. Belgium

Belgium is regarded as the first country to adopt compulsory voting on a nationwide level.³⁵ The duty to vote is enshrined in the Belgian Constitution³⁶ and is further expanded under the Belgian Electoral law.³⁷ It was introduced in 1893 with the aim of preventing forced abstention (i.e. through threats or intimidation by employers) and complementing the introduction of universal suffrage.³⁸ In Belgium, citizens receive a voting card two weeks before elections that states that they could be fined for not voting, and eligible voters who fail to vote without reasonable excuses would have to pay a fine of up to €10 (\$11.15) the first time, and up to €25 (\$27.88) the second time.³⁹ If an unexcused voter fails to vote at least four times over 15 years, they are struck off the electoral register for 10 years. They also can't receive any "nomination nor promotion nor distinction from any public authority" during those years.⁴⁰ Since the inception of mandatory voting in Belgium, the average voter turnout has been around 90%. Voting became a way of life, and compliance was due more to social norms than to actual sanctions. Although the sanctions were rarely applied, Belgian citizens see voting as a duty and they find it easier to vote than not to vote. It is no wonder that a scholar had entertained doubts as to whether compulsory voting law in Belgium is the only reason why the citizens turn out to vote.⁴¹ Perhaps, therefore, other factors such as the fact that Belgium allows for vote by proxy and postal vote may be reckoned with in justifying the increased electoral participation in Belgium.⁴²

b. Australia

Compulsory voting was introduced in Australia in 1924. Under section 245 of the Commonwealth Electoral Act of 1918, every elector has a duty to vote at the election.

³⁵ Elzebieta Kuzelewska, "Compulsory Voting in Belgium: A Few Remarks on Mandatory Voting" Volume 20 *Białostockie Studia Prawnicze*, January 2016, page. 40 (pp. 37-51)

³⁶ See the Article 62 of the Belgian Constitution (as amended in 2014)

³⁷ See Chapter VI of the Belgian Electoral Code of 1894, Arts 207-210

³⁸ Anthoula Malkopoulou, "Democracy's Duty: The History of Political Debates on Compulsory Voting" being a PHD Dissertation submitted to the Department of Social Sciences and Philosophy, University of Jyväskylä, 2011 (page 19)

³⁹ Annabelle Timsit, "Why Are Belgians So Much Better at Voting Than Anyone Else" published by Quartz on May 1st, 2019, available at <https://qz.com/1605690/european-election-belgiums-voter-turnout-rate-is-an-outlier/> last accessed on 6th February, 2021

⁴⁰ Ibid

⁴¹ Serah Birch, *supra*, note 10, pg. 6

⁴² Elzebieta Kuzelewska, *supra*, note 35, pg. 43

The section goes on to establish a penalty of A\$20 (US\$12) or A\$50 (US\$30) if the matter is dealt with by a court) for electors who fail to vote and who cannot provide a valid and sufficient reason. The advent of compulsory voting in Australia saw the average voter turnout increase from 58% (as at 1922) to 91% (as at 1925).⁴³ Australian scholars further reveal that even after the war, average turn out in Australia has since been about 94.5% so that the issue of turn out during elections is no longer an issue in Australia. It has been argued that Australia has the most efficient, effective and equitable compulsory voting system in the world and that it enjoys turnout levels coupled with such low transaction and opportunity costs to voters and as such occupy an enviable position before the industrialized voluntary voting world.⁴⁴ Since Australian electoral commissions actively seek and assist with registration, and because polling booths are generally close at hand, elections are held on a Saturday and absent voting, mobile polling and postal voting are readily available, voters don't have to forego too much in terms of opportunities for work or leisure in order to vote.⁴⁵ Australian law and practice has been fairly liberal, in line with the idea that every vote is precious—the flipside of the compulsion to vote.⁴⁶ Failure to vote cases are usually dealt with through 'please explain' letters provided by abstainers themselves. If the reasons are deemed by the relevant electoral commission to be 'valid and sufficient' no penalty is applicable. It is notable that well below 1 percent of the Australian electorate is ever faced with a fine or court attendance in any given election period.⁴⁷ It is also important to note that section 85 (2) of the Electoral Act of 1985 (for South Australia) further clarifies that an elector who leaves the ballot paper unmarked but who otherwise complies with the formalities of voting does not breach the compulsory voting requirement.

a. Brazil

Brazil is one of the countries where compulsory voting is seriously practiced. In Brazil, while voting is compulsory for all literate citizens between the ages of 18 and 69; it is voluntary for illiterates and for those aged 16-17 and 70 and over. Once registered, citizens must vote in order to maintain their *título eleitoral* (voter registration card). A citizen who fails to vote has 60 days to appear before a judge and provide a valid explanation for failing to do so. In as much as the fines for non-compliance are not excessive, there is a long list of non-monetary penalties for defying Compulsory Voting

⁴³ Jonathan Louth and Lisa Hill, "Compulsory Voting in Australia: Turn out with and without it" Vol. 6 (1) Australian Review of Public Affairs, 2005 pg. 27 (pp. 25 -37)

⁴⁴ Ibid pg. 26

⁴⁵ Lisa Hill, supra, note 33, page 489

⁴⁶ Graeme Orr, Bryan Mercurio and George Williams, "Australian Electoral Law: A Stocktake?" Vol. 2 (3) Election Law Journal, 2003, page 390 (pp. 383-402)

⁴⁷ Prof. Lisa Hill, "Compulsory Voting in Australia Makes Governments More Representative of the People, but it Won't Work Everywhere" Electoral Regulation Research Network/Democratic Audit of Australia Joint Working Paper Series, No. 16 (October, 2019) pg. 4 available at https://law.unimelb.edu.au/data/assets/pdf_file/0010/3185335/WP62_Hill.pdf last accessed on 6th February, 2021

Law – (a) Citizens who do not vote without justification in three consecutive elections can expect to have their voter registration card cancelled; (b) citizens without an up-to-date *voters registration card* are prohibited from taking civil service examinations or (c) holding any form of government employment, or (if already employed by the public sector) from receiving any government paychecks from the second month after the missed election; (d) They cannot enroll or renew registration at public schools or universities, or in fact any educational institution accredited by the federal government; (e) they cannot obtain an identity card or passport; (f) they cannot obtain credit at any state-owned bank or do business with any state or parastatal enterprise; and (g) they are barred from any activity which would require proof of military service or of payment of income tax.⁴⁸ Despite the criticisms of the Brazilian compulsory voting system, it has positively impacted the turnout rates of voters during elections. For instance, abstention rate at the 2018 Presidential election was only 21.3%.⁴⁹ To a learned writer, the Brazilian case highlights the potential usefulness of compulsory voting for emerging democracies and it not only serves to moderate the effect of extreme wealth inequalities in Brazil, but is a useful means of installing civic habits and building a participatory culture in nations where democracy is not yet consolidated.⁵⁰

7. Conclusion

We have seen from the above that, unlike Nigeria, countries such as Belgium, Australia and Brazil enjoy high turnout of voters during elections, thanks to their various compulsory voting laws. The introduction of compulsory voting in these countries achieved the desired result of scaling up their average voter turnout thereby improving political participation of their electorates and arguably conferring legitimacy on their governments. We glean from Belgium and Australia, that an effective compulsory voting system requires other complementing measures such as possibility of voting by proxy, postal votes, easy access to polling booths, mobile polling, stress-free registration and election process, etc. We further learn from these States that even where sanctions for non-voting are not strictly implemented, the mere fact that it is codified in a statute instils in the citizens a sense of civic duty to vote. Brazil also has a strong compulsory voting legal system which has improved their average voter turnout. We have seen for instance that in their 2018 presidential elections, the abstention rate was only 21.3% whereas the abstention rate in the Nigerian presidential election was over 50%. The fact that compulsory voting works in Brazil shows that it can be tried in other developing States like Nigeria.

⁴⁸ See Timothy J. Power, “Compulsory for Whom? Mandatory Voting and Electoral Participation in Brazil (1986-2006)” Vol.1, *Journal of Politics in Latin America*, 2009 pg. 107 (pp. 97-122)

⁴⁹ See “Brazilian Presidential Elections 2018: Statistics and Facts” published by Statista Research Department, May 19, 2019 available at <https://www.statista.com/topics/4888/brazil-election-2018/> last accessed on 6th February, 2021

⁵⁰ Lisa Hill, *supra*, note 33 at page 489

8. Recommendations

Therefore, this work recommends as follows:

- a. That section 24 of the Nigerian constitution be amended to recognize the duty of every adult Nigerian citizen (18 years and above) to register and obtain a voter's card and to vote during elections.
- b. That the Nigerian Electoral Act be amended to remove its permissive provisions as regards compulsory voting and to elaborately codify the duty to vote and the sanctions for breaching the duty.
- c. That section 45 of the CFRN, 1999 which provides exceptions in respect of the rights contained in sections 37-41 of the CFRN, should be amended to also include the exception of enforcement of the legal duty to vote.
- d. In as much as it is not clear whether the choice to vote or not to vote translates to a political opinion in the strict sense of it, it is important to qualify the expression "political opinion" in section 42 of the CFRN, 1999 to exclude a decision not to vote during elections.
- e. That the government should put in place 'vote facilitation' mechanisms such as automatic or easy registration, availability of proxy voting, holding voting on a rest day, holding elections over more than one day, allowing absent and/or early voting, covering the travel expenses of voters who are temporarily away from their places of residence or by offering selective incentives to voters, e.t.c.
- f. That stricter measures should be adopted against the perpetrators of electoral violence in Nigeria. In other words, any person caught in any form of violence in connection with the election, whether before, during or after the elections, or whether by threats or actual violence, should be dealt with in accordance with the law.