ELECTORAL LAWS AND ELECTIONS IN NIGERIA: ENTHRONING A NEW LEGAL FRAMEWORK FOR THE CONDUCT OF ELECTIONS IN NIGERIA

Abstract

It is settled law and principle that the definitive aim of a truly democratic nation is to conduct free, fair, credible, and transparent elections. Election as a core democratic process, underscores the strength of the electorate's power in determining political power positions. However, Nigeria is known to have conducted elections damaged by rigging, vote buying, a re-run of elections, irregularities, malpractices, declaration of the election as inconclusive and the likes. Since the birth of the Fourth Republic, the conduct of elections in Nigeria has been overwhelmed with accelerating malpractices in the electioneering process. The trend has worsened with each round of elections, as epitomized by the 1999, 2003, 2007, 2011, 2015, 2019, and 2023 polls. These structural problems have necessitated the reform of the electoral system, including the legal framework of the electoral process that will ensure substantial free and fair elections. It is an uncontroverted fact that the innovations introduced by the various Acts have not produced the desired results as the just concluded 2023 general elections were marred by institutional feebleness. Accordingly, the paradoxes and shortfalls of the current electoral laws proclaims great threat for Nigeria's subsequent general elections. To address this, this study evaluated the challenges and pitfalls of the legal framework for the conduct of free, fair, credible and transparent elections in Nigeria. Hence, it observed that the most recent, 2023 general elections were marred by colossal irregularities as a result non implementation of the new innovations and inadequacies of the electoral laws. Consequently, it is submitted that the electoral system and processes should be restructured to meet the increasing demands and tasks of the modern day Nigerian political environment.

Key Words: Constitution, Election, Electoral Act, Election Petition, INEC

1.1 Introduction

The history of elections in Nigeria dates back to the colonial period when the country was a British colony. The first election held in Nigeria was the 1951 general election, which was held under the Lyttleton Constitution. This election marked the beginning of a new era in Nigerian politics, as it was the first time that Nigerians were allowed to participate in the democratic process and elect their own leaders. The 1999 general elections marked the beginning of the fourth republic in Nigerian politics, as it marked the end of military rule and the return to civilian democracy. The election was held under the supervision of Independent National Electoral Commission (INEC) which was established to oversee the electoral process and ensure that it was free and fair. Since the return to civilian rule, Nigeria has held several general elections, including 2003, 2007, 2011, 2015, 2019, and 2023 elections. These elections have been characterized by a high level of competition and electoral malpractices.

To address the issue of lack of transparency in votes counting and manipulation of polling units' results, INEC, pursuant to the provisions of the Electoral Act, 2022,[1] introduced the INEC Result Viewing (IReV)

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Section 60(5); Clause 38 Regulations and Guidelines for the Conduct of Elections, 2022.

portal as a dedicated web portal for the public to view polling units' results in real time as soon as they are finalized on Election Day. This new introduction further gave stronger legal basis to use technology and increased confidence in the credibility of the electoral process. The commission consistently reassured Nigerians that election result will be electronically transmitted to IReV portal from the polling units.[2] The electorates went into the 2023 general election with the assurance that technology will help eliminate the issues that have dented the credibility of past elections in Nigeria.

Regardless of the considerable resources expended, the 2023 general elections have been dubbed as one of the same kind in the history of electioneering in Nigeria since the birth of the fourth republic. To the disappointment of many Nigerians, there was real time selective transmission of the election results to the IReV portal from the polling units. Other issues of great concern are the provisions of section 134(2) (b)[3], electoral fraud, and irregularities. Poised by these observations, this study pursues to uncover the means vital to reinforce and advance our electoral jurisprudence.

2. 1Historical Trajectory of Elections in Nigeria

Prior to the advent of colonialism in Nigeria, there was the existence of close to three hundred ethnic groups possessing different languages and systems of rule and governance. Each of the various existing political units had their way of selecting their rulers. In the Oyo Empire for instance, the king was selected from one of the ruling houses, a council of notables known as the Oyomesi and the Ogboni society. These various organizations had their various peculiar duties which enhanced checks and balances in the governance and rule of the Oyo Empire.[4] The system of elections was totally unfamiliar to the various societies and communities existing during pre-colonial times. [5]

The clamour for elective principle in Nigeria was first made in 1881 during the agitations for the separation of Lagos from the Gold coast colony. Notwithstanding the fact that the colonialists ignored the demands, the agitation continued and became stronger.

In 1920, Joseph Casely Hayford and Dr. Akinwande Savage formed the National Congress of British West Africa in Accra, Ghana. After its inauguration, a petition containing its demands for the grant of elective principle was presented by its delegation to the Secretary of State for colonies, Lord Mimer. The delegation returned without success having had their petitions unattended to by the Colonial secretary. Even the colonial governors in West Africa were opposed to the demands of the National Congress of British West Africa. The Colonial office were in full support of the West African Colonial Governors and they opined that to have half-elected legislative councils would be tantamount to abandoning absolute financial control of the colonies which would be disastrous to their aims and objectives.[6]

In 1906, the Colony and protectorate of Lagos became part of Southern Nigeria. The Northern and Southern protectorates of Nigeria were amalgamated in 1914 with Lord Lugard becoming the first Governor General of the country. Sir Hugh Clifford succeeded him as the Governor General of Nigeria in 1922, and the Clifford's Constitution became the constitution in force during that period. The 1922 constitution was very crucial to the development of the electoral process in Nigeria. The constitution was

[2] INEC's Press Release on Arise TV on "Alleged Plot to Abandon the Transmission of Polling Unit Results to IReV Portal", Friday 11th November, 2022.
[3] 1999 Constitution (as amended) LFN Cap C23 2004.
[4] Unity in Diversity; <http://ukoima.blogspot.com.ng/p/unity-in-diversity.html>, Accessed August 26, 2024.
[5] A, Babalola, *Election Law and Practice* (Ibadan: Intec Printers, 2007) p 69.
[6] A, Babalola, *Election Law and Practice* (Ibadan: Intec Printers, 2007) p 69.

the first constitution to contain elective principles. The constitution gave rise to a legislative council which consisted of forty-six members, twenty-seven unofficial members and nineteen official members. Four of the unofficial members were to be elected by an adult male suffrage with residential qualification of one year, and a gross income earning of £100 per annum. One of them was to represent Calabar, while the other three were to represent Lagos. The reason for this provision was due to the fact that Lagos and Calabar were considered to be the two major towns in Nigeria during that period. Moreover, the population of the two towns consisted of educated individuals who could be entrusted to use their franchise properly. The new constitution, with its introduction of the elective principle fostered the formation of various political organizations in the country.[7]
The Richards Constitution of 1946 which was in force after the expiration of the term of Sir Hugh Clifford, did not increase the number of elective posts available for Nigerians. This greatly upset the masses.

The 1951 Constitution expanded the electoral field to a great extent. A central legislative House, which was the House of Representatives was established. The House of Representatives consisted of one hundred and forty-eight members. One hundred and thirty-six members out of the one hundred and forty-six members were to be elected Nigerians. The existing regional councils in the various regions in Nigeria were constituted into Houses of Assembly whose members were selected through electoral colleges. The electoral colleges had three stages- the primary, the intermediate and the final electoral colleges. Tax payers possessed franchise at the primary level. The final electoral colleges were small groups directly responsible for the election of persons into the various Houses of Assembly. Voting at the primary and intermediate colleges was done by a show of hands, while at the final Electoral College, the secret ballot was adopted.

The 1954 constitution replaced the 1951 constitution. The 1954 Lyttleton constitution further expanded the electoral field and also provided a foundation for the Independence of Nigeria. The constitution introduced a federal system of government by sharing powers between the centre and the regions. It also introduced a unicameral legislature for the country to be presided over by a speaker instead of the governor. Membership of the house was to consist of one hundred and eighty-four elected members. The Nigerian Order in Council was passed on the 12th of September, 1960, thereby granting Nigeria independence and sovereignty. [8]

It is vital to note that in Northern Nigeria, up till 1959, women were restricted from running as candidates in elections despite all the parameters provided by the constitution as to the qualifications for running as a candidate in elections. Only male persons were eligible to be nominated as candidates in the Northern region. However, as the electoral process continued to evolve, the discrimination against women gradually became a thing of the past.[9]

In 1966, Nigeria witnessed a military coup which occasioned the military takeover of government as opposed to democratic rule. The military rule strictly prohibited elections and the elective principles were

[7] A, Babalola, *Election Law and Practice* (Ibadan: Intec Printers, 2007) p 69.
[8] *Ibid.*
[9] *Ibid*.

automatically suspended. However, in 1979, Nigeria witnessed the springing up of various political parties. The election was won by the National Party of Nigeria candidate, Shehu Shagari, who defeated the Nigeria People's Party candidate, Nnamdi Azikwe by a close controversial vote. The federal military government handed power over to the new civilian president, Shehu Shagari, thereby ushering in the second republic.

The 1979 constitution for the first time introduced a presidential system of government as opposed to the parliamentary system of government which was in force before the second republic. It is expedient to note that the second republic in 1979 also introduced election petition tribunals to handle election matters with restricted appellate rights with the sole aim of dispensing justice speedily with regards to election petition matters.

The elections of 1999 saw three political parties winning elections at the state and national levels, with the PDP producing the President of Nigeria; so arranged to assuage the ill feelings generated by June 12 annulment and crises. Since then, successive general elections have been held till 2023 with indicting reports of massive riggings, irregularities, and results manipulation.

3.0 Electoral Laws in Nigeria

3.1 The Constitution of the Federal Republic of Nigeria 1999 (As Amended)

In Nigeria, the legal framework for the electoral processes are planned to guarantee fairness, transparency, and accountability in conducting elections at various levels, including national, state, and local government elections.

The major law that governs the electoral processes in Nigeria is the 1999 Constitution (as amended). Sections 65[10], 106[11], 131[12] and 177[13] provide for the qualifications for candidate to be elected into various political offices in Nigeria. Qualification is a condition precedent for participating in any election as a candidate.[14] The right to aspire to an elective office and participate in any election in Nigeria as a candidate is a right that is attached to citizenship. Only persons who are citizens of Nigeria are qualified to contest for elective offices in any general elections.[15] Consequently, sections 25[16], 26[17] and 27[18] provides that citizenship status may be acquired either by birth, registration or naturalization; while any citizen of Nigeria, regardless of how his citizenship is acquired is qualified to run for election as a member of the National Assembly[19] and the House of Assembly of a State[20], only persons who are citizens by birth are qualified for election to the Offices of the President and Vice-President; Governor and Deputy-Governor of a State respectively.[21]

[10] 1999 Constitution (as amended) Cap C23 LFN, 2004.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Gwede v INEC & Ors (2014) 18 NWLR (Pt 1438) p. 56 at 102, paras. A-B.
[15] Sections 131 (a), 177 (a), 106 (a) and 65(1) (a) and (b) 1999 Constitution; Lawan v Yama & Ors (2004) 9 NWLR (Pt 877) p 117 at 132; Ogbeide v Osula & Ors (2004) 12 NWLR (Pt 886) p 86 at 138-139.
[16] Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23 LFN, 2004.
[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] Ibid.
[21] Ibid.

The Constitution prescribes different age limit for various offices to be contested in any general elections in Nigeria. Only candidates who attained the requisite age at the time of the election are qualified to participate in such elections. There are different age prescriptions for different elective offices under the Constitution. They are:

a) For the Office of the President and Vice-President, the prescribed age is forty (40) years.[22]
b) For the Office of the Governor and Deputy-Governor, the prescribed age is thirty-five (35) years and this also applies to election to the Senate.[23]
c) For membership of the House of Representatives and the State House of Assembly, the minimum age is thirty (30) years.[24]

However, Not Too Young to Run Act, reduced the constitutional age. The Act reduced the age of running for elective positions in the House of Assembly and House of Representatives from 30 to 25 years old, the Senate and Governorship from 35 to 30 years old, and President from 40 to 35 years old. Where it is established before a competent election tribunal or court that a candidate has not attained the requisite age for contesting an election, at the time the election was conducted, his or her election shall be declared a nullity.

Again, any person seeking to contest election in Nigeria, regardless of the elective office in issue must have a minimum educational attainment of, up to, at least, school certificate level or its equivalent.[25] Section 318 of the 1999 Constitution defines School Certificate or its equivalent thus:

a) A Secondary School Certificate or its equivalent, or Grade II Teacher's Certificate, the City and Guilds Certificate; or
b) Education up to Secondary School Certificate level; or
c) Primary Six School Leaving Certificate or its equivalent and
    i. Service in the public or private sector in the Federation in any capacity acceptable to the Independent National Electoral Commission for a minimum of ten years, and
    ii. Attendance at courses and training in such institutions as may be acceptable to the Commission for periods totaling up to one year, and
    iii. The ability to read, write, understand and communicate in English language to the satisfaction of the Commission; and
d) Any other qualification acceptable to the Independent National Electoral Commission.

The first category under the meaning ascribed to "School Certificate or its equivalent" is a Secondary School Certificate or its equivalent or Grade II Teacher's Certificate, the City and Guilds Certificate. The second broad category of educational qualification stated in section 318[26] is "education up to Secondary School Certificate or its equivalent". This category is different from the first because what is relevant under this category is only educational attainment up to Secondary School Certificate or its equivalent, and not, the certificate itself. What the Constitution prescribes is that such a candidate shall be qualified if he has been educated up to at least School Certificate level.

In *Imam & Ors v Sheriff & Ors*[27], the Court of Appeal interpreting section 177 (d) of the 1999 Constitution held that what is necessary to meet the requirement is not evidence that the person passed the

[22] Section 131 (b) Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23 LFN 2004.
[23] Section 177 (b) and 65(1) (a) 1999 Constitution (as amended) Cap C23 LFN, 2004.
[24] Section 65(1) (b) and 106 (b) 1999 Constitution (as amended) Cap C23 LFN, 2004.
[25] Sections 65(2) (a) for membership of National Assembly; 106 (c) for membership of a State House of Assembly; and 131 (d) and 177 (d) respectively for the office of President and Governor.
[26] Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23 LFN, 2004.
[27] (2005) 4 NWLR (Pt 914) 80.

examination but evidence that the person was educated up to, at least, School Certificate level or its equivalent. The court therefore held that a candidate who attended a post-secondary institution for "A" level and a remedial "O" level has attained the minimum educational qualification to entitle him to contest for the governorship election of his State. It is ludicrous that the least certificate constitutionally required for an elective position in Nigeria is "O" Level certificate, whereas, it requires at least a Master's Degree to be qualified as a university lecturer.

Also, no one is eligible to contest an election without first being a member of a political party; and sponsored by the same political party for the election.[28] It is a mandatory constitutional requirement that only members of a political party are qualified to contest elections.[29]

3.2 Electoral Act, 2022

Section 3(3) of the Act provides that the election funds due to the Commission for any general elections are to be released to the Commission not later than one year before the next general election. To ensure fairness and transparency, the Act stipulates that the appointment of a Resident Electoral Commissioner shall be in compliance with section 14(3) of the Constitution of the Federal Republic of Nigeria and section 4 of the Federal Character Commission (Establishment, etc.) Act.[30]

The Act mandates the Commission to issue notice of election. In the words of the provisions, the Commission shall, not later than 360 days before the day appointed for holding of an election under this Act, publish a notice in each State of the Federation and the Federal Capital Territory[31] -

a) Stating the date of the election; and
b) Appointing the place at which nomination papers are to be delivered.

2) The notice shall be published in each constituency in respect of which an election is to be held.

By the virtue of section 34(3) (a) of the Act, INEC is required to suspend elections for not more than 21 days in cases where a nominated candidate dies after commencement of an election but before the announcement of result and declaration of winner. If it is a legislative election, the election is to start afresh and if the party with the deceased candidate so wish, they are to conduct fresh primaries within 14 days and nominate a new candidate for replacement.[32] If it is a Presidential/Governorship/FCT Area Council Election, the running mate shall nominate a new running mate and continue with the election.[33] The Act equally empowers INEC to review within 7 days declaration of election result and return where it determines it was not made voluntarily or contrary to the provisions of the law, regulations and guidelines, and manual for the election.[34] However, a decision of the returning officer under subsection (1) may be reviewed by an election tribunal or court of competent jurisdiction in an election petition proceeding under this Act.[35]

Furthermore, the Commission is mandated by the Act to maintain a National Electronic Register of Election Results which shall be a distinct database or repository of polling unit by polling unit result, including collated election results, of each election conducted by the Commission in the Federation, and

[28] Sections 65(2) (b), 106 (d), 131 (d), and 177 (d) 1999 Constitution (as amended) Cap C23 LFN, 2004.
[29] Onejeme v Azodo & Ors (2005) 2 LRECN 488 at 514.
[30] Section 6(4) Electoral Act, 2022.
[31] Section 28(1) Electoral Act, 2022.
[32] Section 34(3) (b) Electoral Act, 2022.
[33] Section 34(3) (b) Electoral Act, 2022.
[34] Section 65(1) Electoral Act, 2022.
[35] Section 65(2) Electoral Act, 2022.

the Register of Election Results shall be kept in electronic format by the Commission at its national headquarters, and which should be made available to any member of the public upon request and payment of prescribed fees.[36]

Unlike the Electoral Act, 2010, this Act expressly provides that to vote, the presiding officer shall use a smart card reader or any other technological device that may be prescribed by the Commission, for the accreditation of voters, to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission.[37] In the 2023 general elections, Bimodal Verification Accreditation System (BVAS) was prescribed as the technological device. The BVAS is an electronic device designed to read Permanent Voter Cards (PVCs) and authenticate voters by using the voters' fingerprints in order to prove that they are eligible to vote at a particular polling unit.[38] BVAS usage entails either scanning the barcode/QR code on the PVC/Voter's register or entering the last six digits of the Voter Identity Number or typing in the last name of the voter by the Assistant Presiding Officer to verify and authenticate the voter.[39]

In addition, the Act clothes INEC with the discretion to prescribe method of transferring results including total number of accredited voters and results.[40] Again, section 51 of the Act provides that the total number of accredited voters will become a factor in determining over-voting at election tribunals. Thus, where the number of votes cast at an election in any polling unit exceeds the number of accredited voters in that polling unit, the presiding officer shall cancel the result of the election in that polling unit. This is an improvement on the repealed electoral law which provided that the number of registered voters, as opposed to accredited voters, shall be the factor in determining over-voting at election tribunals.
To improve the integrity of internal affairs of political parties, the Act makes it mandatory that every registered political party shall maintain a register of its members in both hard and soft copy. Accordingly, such register must be made available by parties to the Commission not later than 30 days before primaries, congresses or convention.[41] Interpreting this provision, the Court of Appeal[42] held that one cannot contract the grounds for disqualification for president of Nigeria by using section 77.[43] To deepen democratic practices, section 29(1) of the Act provides that every political party shall, not later than 180 days before the date appointed for a general election under this Act, submit to the Commission, in the prescribed Forms, the list of the candidates the party proposes to sponsor at the elections, who must have emerged from valid primaries conducted by the political party. A primary election is organized by the political party and governed by its internal rules. In *All Progressives Congress & Anor v Hon. John Halims Agoda & Anor*[44], the Court of Appeal per his Lordship Moore Aseimo Abraham Adumein, JCA held thus:

[36] Section 62(1) and (2) Electoral Act, 2022.
[37] Section 47(2) Electoral Act, 2022; Clause 14 Regulations and Guidelines of the Conduct of Elections, 2022.
[38] INEC 2023 General Election Voting Procedures, p 4; <https://dailytrust.com/explainer-what-inecs-bvas-means-and-how-to-minimise-its-failure-during-elections/>; Accessed August 27, 2024.
[39] Ibid.
[40] Section 60(5) Electoral Act, 2022; Clause 38 Regulations and Guidelines of the Conduct of Elections, 2022; INEC's Press Release on Arise TV on "Alleged Plot to Abandon the Transmission of Polling Unit Results to IReV Portal", Friday 11th November, 2022.
[41] Section 77(2) and (3) Electoral Act, 2022.
[42] APM v Peter Obi & Anor; suit number CA/ABJ/CV/1414/2022.
[43] Electoral Act, 2022.
[44] Unreported Appeal No. CA/B/124/2019 delivered on 1/4/2019.

> It should be noted that the selection of a candidate to be fielded in any general election by a political party is by a primary election. Primary election, often shortened to 'primary' means "a preliminary election in which a political party's voters nominate the candidate who will run in the general election.

To guarantee a valid election during political party's congress, convention, conference or meeting, the Act requires the party to give at least 21 days' notice of such gathering to the Commission or risk such gathering as invalid.[45] In the case of nominating a consensus candidate by the party, it shall secure the written consent of all cleared aspirants for the position, indicating their voluntary withdrawal from the race and their endorsement of the candidate.[46]

Augmenting the constitutional provisions, section 84(12)[47] provides that anyone holding a political office must vacate the position before he or she can be eligible to participate in a primary election, convention or congress of political parties either as a candidate or as a delegate. The import of this section is that political appointees are not barred from participating actively during the convention of their respective political parties for the purpose of nominating candidates for elective positions nor be voted for, save that such appointee resigns prior to the convention or congress.[48] The intended mischief targeted at seems to be the avoidance of conflict of interest by the political appointees, misappropriation of public funds and level playground for aspirants.[49] It did not stop at this; subsection (13)[50] provides that; "Where a political party fails to comply with the provisions of this Act in the conduct of its primaries, its candidate for election shall not be included in the election for the particular position in issue".

With respect to political parties changing candidates, the Act stipulates that "A political party shall not be allowed to change or substitute its candidate whose name has been submitted in compliance with section 29 of this Act, except in the case of death or withdrawal by the candidate" – provided that in the case of such withdrawal or death of a candidate, the political party affected shall, within 14 days of the occurrence of the event, hold a fresh primary election to produce and submit a fresh candidate to the Commission for the election concerned.[51] Regarding the invalidity of multiple nominations, section 35[52] provides that "Where a candidate knowingly allows himself to be nominated by more than one political party or in more than one constituency, his nomination shall be void." The Court of Appeal in *Ekpeudom v APC & Anor*[53], per Tsamani JCA, put it succinctly that; "This provision of the Electoral Act, 2022 clearly stipulates the invalidity of multiple nominations and by the use of the word "shall" in the statute,, it amounts to a command, a must, compulsion or an obligation or mandatory.

[45] Section 82(1) and (5) Electoral Act, 2022.
[46] Section 84(9) Electoral Act, 2022.
[47] Electoral Act, 2022.
[48] Nwakoby C. S., Ihediuche T. M., 'Section 84(12) Electoral Act: Issues and Controversies Towards 2023 General Elections', *International Journal of Law,* Volume 8, Issue 4, 2022, pp 58-62.
[49] Ibid.
[50] Section 84(13) Electoral Act, 2022.
[51] Section 33 Electoral Act, 2022.
[52] Electoral Act, 2022.
[53] (2022) LPELR-56956 (CA).

3.3 Independent National Electoral Commission (INEC) Bye-Laws

INEC is the electoral body which oversees elections in Nigeria. It was established by the 1999 Constitution of the Federal Republic of Nigeria[54] to among other things organize elections into various political offices in the country. The functions of INEC as contained in section 15, Part I of the Third Schedule[55] and section 2[56] include the following:

Organize, 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;

a. Register political parties in accordance with the provisions of the constitution and Act of National Assembly;
b. Monitor the organization and operation of the political parties, including their finances, conventions, congresses and party primaries;
c. Arrange for the annual examination and auditing of the funds and accounts of political parties, and publish a report on such examination and audit for public information;
d. Arrange and conduct registration of persons qualified to vote and prepare, maintain and revise the register of voters for the purpose of any election under this constitution;
e. Monitor political campaigns and provide rules and regulations which shall govern the political parties;
f. Conduct voter and civic education;
g. Promote knowledge of sound democratic election processes; and
h. Conduct any referendum required to be conducted pursuant to the provisions of the 1999 Constitution or any other law or Act of the National Assembly.

INEC in exercising the powers conferred on it by the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act 2022, issued guidelines for the conduct of elections into any elective office in Nigeria. The 2022 Regulations and Guidelines supersede all other regulations on the conduct of elections that have been issued by the Commission and it shall remain in force until replaced by a new regulation or its amendment. It is convenient to note at this point that these regulations and guidelines are binding. In *Air Commodore Yushau v INEC*[57], the court was emphatic that "the manual for the conduct of elections and their guidelines are meant to be obeyed". In several cases, the courts have reiterated that, Regulations and Guidelines and Manual for Election Official, issued in accordance with the Act and which embody all steps to comply with in the conduct of free, fair and hitch free elections, are subsidiary legislations, and its provisions, must be invoked, applied and enforced.[58] Some salient provisions of the Regulations and Guidelines are highlighted below. Primarily, for the conduct of general elections, date for election to the office of President and Vice President as well as National Assembly shall hold on the Third Saturday of February of any General Election year, while election to the office of Governor and Deputy Governor and the State Houses of Assembly shall hold two (2) weeks thereafter.[59] For an off-cycle Governorship election, that is any Governorship election that falls outside a General

[54] Section 153(1) (f) 1999 Constitution (as amended) Cap C23 LFN, 2004.
[55] 1999 Constitution (as amended) Cap C23 LFN, 2004.
[56] Electoral Act, 2022.
[57] (2019) LPELR-49629 (CA); Action Alliance v INEC (2019) LPELR-49364 (CA) at 36.
[58] Faleke v INEC (2016) 2 NWLR (Pt 1543) 61 at 120 paras. E-G.
[59] Clause 2 Regulations and Guidelines for the Conduct of Elections, 2022.

Election, the election shall hold on the Saturday following the 100th day to the end of the tenure of the incumbent, or as may be determined by the Commission.[60]

Clause 17 of the Regulations and Guidelines expressly provides that at 8:00am or at a time prescribed by the Commission, the Presiding Officer (PO) of a PU shall introduce himself/herself, the Poll Officials, Polling Agents and Accredited Observers present and cross-check the adequacy of electoral materials. Before the exercise of franchise, no person shall be allowed to vote at any PU other than the one at which his/her name appears in the Register of voters and he/she presents his/her PVC to be verified using the BVAS, or as otherwise determined by the Commission.[61] It is sacrosanct that in accordance with section 47(2) of the Electoral Act 2022, a person intending to vote shall be verified to be the same person on the Register of Voters by the use of BVAS or any other device approved by the Commission, in the manner prescribed in these Regulations and Guidelines.[62] In the event of sustained malfunction of the BVAS, clause 23 stipulates that the PO shall:

(i) Immediately inform the LGA and RA Supervisors, the Supervisory Presiding Officer (SPO), the Electoral Officer (EO), and the Election Monitoring and Support Centre (EMSC) for replacement.
(ii) Suspend Accreditation and voting until a new BVAS is made available.
(iii) File a report of the incident to the designated Official.
(iv) Inform the voters and polling agents of the situation.

On the completion of all the polling unit voting and results procedures, the PO shall[63]:

(i) Electronically transmit or transfer the result of the PU, direct to the collation system as prescribed by the Commission.
(ii) Use the BVAS to upload a scanned copy of the EC8A to the INEC IReV, as prescribed by the Commission.
(iii) Take the BVAS and the original copy of each of the forms in tamper-evident envelope to the Registration Area/Ward Collation Officer. In the company of Security Agents. The polling agents may accompany the PO to the RA/Ward Collation Centre.

In the course of collation of results, an election result shall only be collated if the Collation Officer ascertains that the number of accredited voters agrees with the number recorded in the BVAS and votes scored by political parties on the result sheet is correct and agrees with the result electronically transmitted or transferred directly from the PU as prescribed in these Regulations and Guidelines.[64] If it occurs that the Collation or Returning Officer determines that a lower level of collation is not correct, he/she shall use the result electronically transmitted or transferred directly from that lower level to collate and announce the result.[65] In addition to this, where the INEC hardcopy of collated results from the immediate lower level of collation does not exist, the Collation Officer shall use electronically transmitted results or results from the IReV portal to continue collation. Where none of these exist, the Collation

[60] Clause 3 Regulations and Guidelines for the Conduct of Elections, 2022.
[61] Clause 14 Regulations and Guidelines for the Conduct of Elections, 2022.
[62] Clause 18 Regulations and Guidelines for the Conduct of Elections, 2022.
[63] Clause 38 Regulations and Guidelines for the Conduct of Elections, 2022; INEC's Press Release on Arise TV on "Alleged Plot to Abandon the Transmission of Polling Unit Results to IReV Portal", Friday 11th November, 2022.
[64] Clause 48 (a) Regulations and Guidelines for the Conduct of Elections, 2022.
[65] Clause 48 (b) Regulations and Guidelines for the Conduct of Elections, 2022.

Officer shall ask for duplicate hard copies issued by the Commission to the following bodies in the order below:

(i) The Nigeria Police Force; and
(ii) Agents of Political Parties.[66]

However, where an election is postponed as a result of serious breach of the peace or natural disasters or other emergencies in line with section 24 of the Electoral Act, 2022, and it is ascertained that the total number of voters who collected their PVCs in the POs affected by the postponement is less than the margin by which the leading candidate is ahead of the second candidate in the election, indicating that the result of the election will not be affected by the outcome of polls in the PUs affected by the postponement, clause 59 provides that the Returning Officer shall make a return for the election in the constituency.

Notwithstanding the INEC Regulations and Guidelines, in *Obi & Anor v INEC & Ors*[67], the court held that by law, the INEC Regulations and Guidelines for the conduct of elections, 2022 is subordinate to the Electoral Act; where a provision of the Guidelines conflicts with the Act, the Act prevails.

3.4 Police Act, 2020

To make relevant the 2020 Police Act, section 126(3)[68] creates offences on Election Day. Subsection (1) provides that "No person shall do any of the following acts or things in a polling unit or within a distance of 300 metres of a polling unit on the date on which an election is held –

a) Canvass for votes;
b) Solicit for the vote of any voter;
c) Persuade any voter not to vote for any particular candidate;
d) Persuade any voter not to vote at the election;
e) Shout slogans concerning the election;
f) Be in possession of any offensive weapon or wear any dress or have any facial or other decoration which in any event is calculated to intimidate voters;
g) Exhibit, wear or tender any notice, symbol, photograph or party card referring to the election;
h) Use any vehicle bearing colour or symbol of a political party by any means whatsoever;
i) Loiter without lawful excuse after voting or after being refused to vote;
j) Snatch or destroy any election materials; and
k) Blare siren.

Highlighting the gravitas of the aforementioned acts, subsection (3) clearly provides that a person who contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine of ₦100,000 or imprisonment for a term of six months for every such offence. These offences make room for the relevance of the Police Act, 2020 in electoral processes. Section 4 (a) to (e) of the Act[69] provides as the primary functions of the Police Force in the conduct of election as follows:

a) Prevent and detect crimes, and protect the rights and freedom of every person in Nigeria as provides in the Constitution, the African Charter on Human and Peoples Rights and any other law;

[66] Clause 93 Regulations and Guidelines for the Conduct of Elections, 2022.
[67] (2023) 38 WRN 1 PETC.
[68] Electoral Act, 2022.
[69] Police Act, 2020.

b) Maintain public safety, law and order;
c) Protect the lives and property of all persons in Nigeria;
d) Enforce all laws and regulations without any prejudice to the enabling Acts of other security agencies; and
e) Discharge such duties within and outside Nigeria as may be required of it under this Act of any other law.

Consequently, the Act empowers the Police to arrest, investigate and try a suspect or defendant alleged or charged with committing an offence, in this case, electoral offences, established by an Act of the National Assembly or under any other law.[70] In its pro-activeness, the Act clothes the Police with the discretionary power to intervene for the purpose of preventing the commission of an offence.[71]

4.1 Conduct of Elections in Nigeria

It is regrettable that since the return to civilian rule in 1999, the country's hunt for democratic system of government has met copious challenges as a result of electoral umpire without autonomy, elections without integrity, politicians without morality, election petitions baked with technicalities, etc.

The 1999 general elections were greeted with violence and irregularities. These activities cast a shadow over the country's transition and created a negative impact on Nigeria's political scene as a whole. The integrity of the electoral process was called into question, which led to extensive disenchantment among voters and nurturing a habit of electoral fraud and corruption that continues to clog the wheel of the country's political advancement to this day. In like manner, from 2003 general elections till 2023, the testimonies have not changed despite consistent electoral reforms. The 2023 general elections were the first general election to be conducted under the 2022 Electoral Act after a prolonged clamour for electoral reform. The Act introduced substantial alteration of timelines for election activities. New procedures for results management, and voter accreditation were also prescribed in the new legal framework. INEC in like manner, also issued new Regulations and Guidelines for the elections and prescribed detailed procedure for the conduct of the election. With the passage of 2023 general elections, the Fourth Republic has witnessed its uninterrupted seven successive general elections. Unlike others of two-horse race, 2023 general elections showcased a race between the leading candidates of All Progressives Congress (APC), Labour Party (LP) and Peoples Democratic Party (PDP).

Political party primaries are provided by the law to serve the purpose of candidate nomination and shall be monitored by the Commission.[72] The conduct of party primaries not only creates room for political position for average party members, but also weakens the influence of political elites within the party, which will consequently aid the institutionalization of internal democracy within the party and by extension guarantee credible general elections.[73] One sad reality observed during the 2022 party primaries was the reckless public display of transactional politics among top political parties which deprived the 2023 general elections the politics of integrity as envisaged by the Act. This transactional nature of the primaries made it to be keenly contested in contravention of extant laws and in most cases snowballed

[70] Section 32(1) Police Act, 2020.
[71] Section 84(1) Police Act, 2020.
[72] Section 84(1) Electoral Act, 2022.
[73] Fidelis C. Nnaji, 'Flawed Party Primaries and the Challenges of Electoral Credibility in Nigeria: A Critical Analysis', *African Journal of Politics and Administrative Studies (AJPAS)* Vol. 14, Issue 11 (December, 2021), p 67.

into court litigations.[74] The notorious case between Bashir Machina and Ahmad Lawan[75] highlights one of the irregularities of 2022 party primaries. Having failed to secure his party's nod to run for president, Mr. Lawan tried to reclaim the party's ticket for Yobe North, a district he has represented since 2007. Despite Mr. Machina's victory at the 28 May primary, the leadership of the APC submitted Lawan's name as candidate for the district. Ruling on the matter, a Federal High Court in Damturu, Yobe State ruled that Ahmad Lawan, is not the candidate of the APC. The court held that Bashir Machina is the authentic candidate of the party having won the legally recognized primary supervised by INEC. This was also upheld by the appellate court. To the chagrin of concerned citizens and in contravention of the Act, the Supreme Court declared Ahmad Lawan as the authentic candidate of the APC for Yobe North Senatorial District for the 25 February general elections. In the majority decision and inundated with arid technicality, Justice Nweze said Mr. Machina ought to have commenced his suit by a writ of summons going by the allegations of fraud levelled against the APC in transmitting Mr. Lawan's name to INEC. This position without explanation, departed from the court's view in *Odey v Alaga.*[76] In this instant case, the Supreme Court held thus:

> Rules of court remain the mere vehicles that assist the court to resolve the matters litigated upon by parties. They must therefore, not be allowed to override the substantive rules which define the right which the parties seek to enforce.

In the lead dissenting judgment, Mr. Agim held that APC's primary election held on 9 June which produced Mr. Lawan was an "illegal contraption". He further said that the purported primary election held on 9 June 2022, was a "ruse" as it was not monitored by INEC. While we respect the lead judgment, we disagree with it and align with the dissenting judgment. By the virtue of internal democracy principles as envisaged by the Electoral Act, 2022, all candidates must either be elected directly or indirectly. When it is indirect, the candidates must be democratically elected. With profound respect, the court failed to recognize this principle. It is trite that it is always the duty of the court to overrule political parties whenever they present candidates that did not go through the rules of the Constitution and their own internal rules and principles.

Also, in violation of the Electoral Act, according to reports received by the Situation Room, there was delayed deployment of election officials and materials across the country, leading to late commencement of accreditation and voting in more than 70% of the polling units visited.[77] The delays appeared to be predominant in the South-East and South-South states as well as in Kaduna State and the FCT. In these areas, there were significant delays in the commencement of polls, with several polling units opening as late as 11.30am, while some polling units did not close as at the official closing of polls by 2.30pm. This further runs afoul of the provisions of Clause 17 of the Regulations and Guidelines which expressly provides that at 8:00am or at a time prescribed by the Commission, the Presiding Officer (PO) of a PU shall introduce himself/herself, the Poll Officials, Polling Agents and Accredited Observers present and cross-check the adequacy of electoral materials. Situation Room observed that the late opening of polls and continuation of accreditation and voting till late into the night in many places, subjected the voters,

[74] Section 84(14) of the Electoral Act, 2022.
[75] Bolanle Olabimtan; <http://www.thecable.ng/breaking-machina-loses-as-supreme-court-affirms-lawan-as-yobe-apc-senatorial-candidate/amp?/breaking-machina-loses-as-supreme-court-affirms-lawan-as-yobe-apc-senatorial-candidate>; Accessed August 27, 2024.
[76] (2021) All FWLR (Pt.1100) 664 at 751.
[77] Report on Nigeria's 2023 General Elections: Nigeria Civil Society (Situation Room), p 34.

many of whom arrived the polling units very early in the morning, to unpleasant voting experience and disenfranchised. The late commencement of the Presidential and National Assembly election was compounded by the difficulties experienced in the use of BVAS for voter accreditation as provided for in section 47(2) of the Electoral Act 2022, that a person intending to vote shall be verified to be the same person on the Register of Voters by the use of BVAS or any other device approved by the Commission, in the manner prescribed in these Regulations and Guidelines.[78] As adopted by INEC, the 'glitches' experienced include failure of the device to start, failure to authenticate voters, discharge of battery, and intermittent power malfunctioning. In addition, other critical incidents were reports of shortage of materials, intimidation of voters and election officials[79], campaigning or campaign materials near polling units[80], vote buying[81], snatching and destruction of ballot boxes[82], and failure to post official results.
To address the lack of transparency that usually brand the results management process, INEC introduced the IReV portal[83] as a dedicated web portal for the public to view polling unit results as soon as they are finalized on election day. However, on the election day, Nigerians were deeply disappointed by the glitches experienced in the use of IReV. It was observed that election officials in many polling units were unable to access the IReV portal and to upload results of the presidential election. There were reports of election officials who either refused or were unable to upload results. This failure of the IReV produced allegations of results fraud by INEC and injured the integrity of the general elections. In addition, the failure of INEC to fulfill a contract with the Nigerian people, damaged the reliability of the electoral process and raised suspicions of possible result manipulation.

It was painfully noted that notwithstanding the extensive provisions in the legal framework, some provisions were drafted in vague terms which created confusion and uncertainty in the results management process. The electoral legal framework conceives a hybrid results management process that entails manual collation and electronic transmission of results from the polling unit. In the course of the presidential election, a delay was widely observed in uploading polling unit results on IReV portal. At the risk of verbosity, the exercise of the power conferred on INEC to make rules guiding its actions birthed the 2022 Regulations and Guidelines, which amongst others provided for the electronic transmission of the results by the presiding officer, stated in Clause 38.[84] The provision highlights the incorporation of technology for an expeditious transfer of results from diverse locations and also suppresses the occurrence of electoral malpractice. However, the nascent status of Nigeria in technology, which was evidenced in the connection failures when attempting to provide all presidential election results electronically, have led to controversy in the interpretation of provisions pertaining to the transfer of election results.

Another legal contention witnessed was the issue of 25% votes in FCT. In the build-up of the 2023 general elections, Olisa Agbakoba, SAN, wrote to INEC to provide an interpretation of the provisions of section 134(2) (b) of the 1999 Constitution, as amended. According to him, this is to clarify the

[78] Clause 18 Regulations and Guidelines for the Conduct of Elections, 2022.
[79] Section 126(1) (f) Electoral Act, 2022.
[80] Section 126(1) (g) Electoral Act, 2022.
[81] Section 126(1) (a)-(d) Electoral Act, 2022.
[82] Section 126(1) (j) Electoral Act, 2022.
[83] Section 60(5) Electoral Act, 2022; Clause 38 Regulations and Guidelines of the Conduct of Elections, 2022; INEC's Press Release on Arise TV on "Alleged Plot to Abandon the Transmission of Polling Unit Results to IReV Portal", Friday 11th November, 2022.
[84] Regulations and Guidelines of the Conduct of Elections, 2022.

constitutional votes, *id est*, score of 25% of votes cast in two-thirds of the 36 states and the FCT, required for an election into the office of the President.

From arguments advanced by learned authors, it is observed that the provision of the law is clear in this regard. It would have been interpreted differently if the law had used the word "including". The employment of the word "and" strongly suggests that the winner of the election must have secured 25% in the FCT before being declared as winner by INEC. Contrary to this view, the Presidential Election Petition Court (PEPC) while delivering judgment during the sitting on Wednesday, September 6, 2023, held that 25% votes in FCT is not required to win the presidential election. According to Justice Haruna Tsammani, the word "and" as used in section 134 shall be seen "as if it were one of the states of the federation", adding that the FCT shall be taken into the calculation of the two-thirds of the states of the federation as if it were the 37 states.[85] Aligning with the PEPC's view, the Supreme Court held that a candidate does not need to get at least 25% of the votes in the FCT to be Nigeria's president.

5.1 Conclusion and Recommendations.

This research found that the current electoral laws are not adequate due to some lawful and practical trials. The findings were that INEC is solely responsible for the entire process of election; that is, before, during and after. Such tasks have substantially affected the quality and integrity of general elections conducted in Nigeria. While the current Act has contributed positively to Nigeria's electoral jurisprudence, the study also discovered that the Act possesses some ambiguities which opened the flood gate of diverse interpretations. It unveils the complication of the legal and regulatory framework for the conduct of elections in Nigeria. Though the Constitution seeks to provide a comprehensive guide for the conduct of election and procedures in resolving disputes arising therefrom, it fails to provide adequate time for petitioners in an election petition considering the sui generis of election petition. In the same manner, the Electoral Act attempts at introducing technology in the conduct of elections for quality and transparent output, but does not provide for effective redress when the electoral umpire veers off the tangent. There is within the Constitution and the Act, presumption of correctness on the part of the electoral umpire regardless of gross violation of the provisions of the law.

Voters are faced with different electoral issues ranging from registration for voter's card, collection and voting process on election day. Unfortunately, the Constitution and the Act does not really provide for effective redress mechanism for intending voters disenfranchised and voters disenfranchised on election day, it only sets out electoral offences which INEC currently finds difficult in prosecuting; and this has increased the level of voters' apathy in Nigeria.

Again, negative roles that political parties and their candidates played in destroying the democratic principles premised on the lacuna created by the Electoral Act and assisted by INEC. This is basically seen in the acceptance of unverified documents from nominated candidates and their political parties. This in umpteen times has resulted to pre-election litigations, politicization of the judiciary, and robbing the Nigerian political space the required integrity. Therefore, the research recommends as follows:

1. The amendment of the 2022 Electoral Act to remove ambiguities from the Electoral Act and reduce the amount of discretion INEC can exercise in the process of conducting elections by

[85] Obi & Anor v INEC & Ors (2023) 38 WRN 1 PETC.

transferring specific guidelines and regulations into the Electoral Act and making them mandatory.

2. In line with Justice Uwais Electoral Reform Report, INEC should be unbundled. INEC has a lot as its responsibilities; hence it has been lacking in attending to issues like political parties monitoring and regulation, monitoring of political parties' campaign spending, prosecution of electoral offenders among others. Unbundling of INEC will allow greater efficiency.
3. A comprehensive review of the procedure of appointing an INEC Chairman, National Commissioners and Resident Electoral Commissioners. The present electoral laws allow the President to appoint INEC Chairman, the National Commissioners and Resident Electoral Commissioners. These structures slant the loyalty of these critical INEC staff to the President, hence they can be easily pocketed by ruling party. The relevant laws need to be amended to take away the power to appoint these critical staff from the president. The procedure practiced by Kenya could be instructive here. In Kenya, the IEBC Act provides that the Commission shall consist of a chairperson and eight (8) other members.[86] The procedure for appointment of chairperson and members of the Commission shall be in accordance with the procedure set out in the First Schedule.[87] In ensuring undue influence and transparency, the Schedule requires the President to appoint a Selection Panel which shall invite applications and publish names of all applicants. The Panel is then required to consider the applications, shortlist and interview the applicants. After the interviews, the Selection Panel is required to select three persons qualified to be appointed as chairperson and thirteen persons qualified to be appointed as members of the Commission and forward these names to the President for nomination of one person for appointment as the chairperson and eight persons for appointment as members. The President is then required to forward the list to the National Assembly for approval.[88] Upon consideration and approval, the National Assembly forwards the names to the President for appointment. Nevertheless, in the case of Nigeria, it is the President that directly appoints the chairman and members of the electoral body subject to confirmation by the Senate.[89]
4. A constitutional amendment to provide that election petitions should be concluded before swearing-in and the establishment of special election court to handle presidential and other election cases at various levels and their decisions would be final.
5. That the procedural laws of electoral jurisprudence be revisited. It has become expedient to take a second look at the number of days allowable in law for a petitioner to file his petition at the election petition tribunal. Also, contrary to the provisions of Evidence Act, the onus of proof in an election petition should be shifted to INEC and the respondent other than the petitioner. The thinking is that since INEC conducted the election and the respondent is the beneficiary, it will be easy for INEC and the respondent to prove that the election was conducted substantially in accordance with the electoral law.
6. In line with the new innovations of 2022 Electoral Act, electronic voting and mandatory electronic transmission of results be enacted, and establishment of electoral offences commission for the sole purpose of prosecuting electoral offenders.
7. In ensuring transparency and integrity, that INEC should engage in integrity test of the candidates. This recommendation clearly brings to limelight that INEC has failed to discharge its function as a regulatory body and shifts such to the judiciary. It is strongly advised that INEC

[86] Section 5(1) Independent Electoral and Boundaries Commission Act, 2011.
[87] Section 5(2) Independent Electoral and Boundaries Commission Act, 2011.
[88] Emma Kinya; <http://kenyalaw.org/kenyalawblog/electoral-process-in-kenya/>; Accessed August 27, 2024.
[89] Section 154(1) 1999 Constitution (as amended) Cap C23 LFN, 2004.

should substantially ensure the integrity of the candidates by subjecting all indispensable documents to integrity test.

The entire gamut of the discussion in this research sturdily suggests that there is need to improve on electoral laws of Nigeria. It should be noted that the need to improve Nigeria's electoral jurisprudence mirrors the importance of addressing the ambiguities and shortcomings of the extant electoral laws. Captivatingly, the fourth republic has witnessed remarkable efforts toward achieving credible and transparent elections in Nigeria, through various amendments of the Constitution and past Electoral Acts to meet with the modern day global electoral needs and challenges. Consequently, considering the substantial possible harm that the weakness in the major legislations can cause to Nigeria's electoral jurisprudence, it is expedient that the following issues; removal of ambiguities from the Electoral Act, inclusion of some clauses of INEC's Regulations and Guidelines in the Electoral Act, unbundling of INEC, and establishment of Electoral Offences Commission be given immediate attention. It is our final submission that failure to address the concerns raised, there will neither be a free, fair, credible, and transparent 2027 general elections nor subsequent ones.