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THE ELECTORAL ACT, 2022 AND THE 2023 PRESIDENTIAL ELECTIONS LITIGATION: IMPLICATIONS FOR FUTURE ELECTIONS IN NIGERIA

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Abstract
Nigeria's 2023 general election, the seventh since the return to democracy in 1999, was a significant test for the nation's democratic credentials. So it was also for the newly enacted Electoral Act, 2022 and implemented by the Independent National Electoral Commission (INEC). This study interrogates the Act's impact on the election, the implications of the subsequent Presidential Elections Petitions Court (PEPC) judgment for future polls, and the challenges faced during the process. The study examines the deployment of new technologies like the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV), alongside numerous issues that, according to many observers, undermined the credibility of the electoral commission's ability to conduct a transparent election. Using a desk review of official documents, legal and judicial texts, and media reports, the study finds that key provisions of the Electoral Act 2022 are unclear, overly broad, and leave excessive room for subjective interpretation. Furthermore, INEC's own regulations and statements contain critical inconsistencies and inaccuracies. To restore credibility in future elections, the paper recommends ensuring legal certainty throughout the electoral process. This requires eliminating errors and ambiguities within the Electoral Act and associated INEC regulations to protect voters' interests and prevent conflicting legal interpretations.

Keywords: Electoral Act 2022, Technology, Elections, INEC, and Presidential Election Litigation.

1. Introduction

Elections in Nigeria since the post-independence period have been characterised by escalating concerns regarding irregularities, violence, and contentious political manoeuvring. Furthermore, the aspiration to establish good governance through democratic means was frequently truncated by intermittent military interventions and their prolonged hold on power (Ibrahim et al., 2011; Ojo, 2021). The transition to civilian rule in 1999 marked the culmination of a protracted struggle that aimed to restore political succession to the realms of constitutionalism and democratic electoral contestation. Beyond the pivotal transition election of 1999, Nigeria has successfully conducted six subsequent general elections, namely, in 2003, 2007, 2011, 2015, 2019 and 2023. Thisrepresents the longest uninterrupted democratic spell in its post-colonial history. Despite these advancements and concerted efforts to enhance the electoral system, these five elections consistently raised significant concerns. The concerns include: the capacity of the Independent National Electoral Commission (INEC) to conduct free, fair, credible, and violence-free elections; the proclivity of political actors to subvert the electoral process to secure victory at all costs; and persistent voter apathy leading to a continuous decline in voter turnout (IRI/NDI International Election Observation Mission to Nigeria, 2023), European Union Election Observation Mission Nigeria (2023).

To mitigate these endemic challenges, two significant electoral reform initiatives were undertaken: the 2008 Electoral Reform and the 2022 Electoral Reform. The 2008 Electoral Reform, which led to the enactment of the 2010 Electoral Act, was a direct response to the 2007 general elections, which faced widespread criticism both domestically and internationally due to substantial irregularities (Ojo, 2021). While the 2010 Electoral Act introduced some improvements, persistent issues such as electoral violence, voter apathy, and the enduring lack of fully free, fair, and credible elections underscored the necessity for the 2022 Electoral Act (Ojo, 2021). This widely acclaimed 2022 Electoral Act introduced several new provisions, including: early release of election funds to INEC (Section 3(3)), enhanced neutrality and credibility of INEC personnel (Section 8(5)), early conduct of party primaries and submission of candidates' lists (Section 29(1)), provisions for the substitution of deceased candidates (Section 34); legal backing for electronic voting (Section 47(2)), and electronic transmission of results (Section 60 (5) read alongside); using total accredited voters to curtail over-voting (Section 51(2)), provisions for persons with disabilities (Section 54(2)), INEC's power to review results declared under duress (Section 65(1)), disqualification of political appointees from voting or being voted for during party conventions and congresses (Section 84(12)) and an earlier commencement window for campaigns (Section 94).

Previous elections have demonstrated a consistent decline in voter turnout percentages. For instance, during the 2019 General Elections, of the estimated 200 million Nigerian population (NBS 2019), only about 84,004,084 were registered voters and 28,632,225 Million actually voted in the elections (INEC 2019). The voter turnout percentages since 1999 are recorded as: 52.3% in 1999; 69% in 2003; 57.5% in 2007; 53.7% in 2011; 43.7% in 2015; and a mere 34.8% in 2019 (IDEA, 2019). This declining trend in voter participation underscores a significant constraint on Nigeria's democratic development and citizen engagement in governance. As the 2023 elections approached, there were substantial expectations from both Nigerians and the international community regarding the potential of the innovations within the Electoral Act 2022 to foster democratic stability. Key among these concerns was how the aftermath of the 2023 general elections would differ from previous electoral cycles, particularly in terms of preparation, conduct, result management, and overall citizen participation. The 2023 electoral landscape featured eighteen registered political parties and a voter base of approximately 93.4 million (Suleiman, 2023). The Continuous Voter Registration (CVR) exercise indicated an addition of about 9.4 million new voters compared to the 2019 register. Public opinion and analyses from policy experts suggested that this significant increase in registered voters was, in part, attributable to the renewed confidence instilled by the 2022 Electoral Act, fostering a belief among the electorate that their votes would indeed count.

This study adopts a qualitative research methodology, primarily employing a comprehensive desktop review of relevant. We adopted black letter doctrinal analytical approach to critically examine these sources to identify patterns, impacts, and inferences leading to conclusions and recommendations for policy makers and implementers. Thus, the primary aim of this study is to interrogate the impact of the 2022 Electoral Act on the 2023 general elections and the subsequent implications of the Presidential Election Petition Court's judgment for future electoral processes in Nigeria. This study focuses primarily on the provisions of the Electoral Act 2022, their application in the 2023 general elections (with particular emphasis on the presidential election), and the subsequent rulings of the Presidential Election Petition Court (PEPC) concerning these elections. It examines how these judicial interpretations affect the understanding and future application of the Act.

Accordingly, after this introduction, the paper is structured as follows: Section 2 examines the major innovations brought about by the Electoral Act 2022 and how it would impact on the electoral process. This is followed by Section 3 interrogating the performance of the Act as experimented in the 2023 General Elections especially as pertaining the Bimodal Voter Accreditation System (BVAS) technology deployment. Section 4 then ex-rays the Presidential Election Petition Court (PEPC) judgement and its implications for the electoral process in Nigeria; while section discusses the prospects of promoting peaceful, fair, and credible elections beyond 2023. Section 6 is the conclusion drawn from the entire discussion, and recommendations proffered for policy makers.

2. The Electoral Act 2022: Innovations and Expected Impact

The Electoral Act 2022 has been widely lauded as the most significant and comprehensive attempt at reforming Nigeria's electoral process since the inception of the Fourth Republic in 1999. The International Republican Institute and National Democratic Institute (IRI/NDI) International Election Observation Mission to Nigeria (2023) acknowledged that the Act represented the first comprehensive electoral reform package in over a decade, addressing numerous deficiencies in the existing legal framework that had been consistently highlighted by civil society organisations and international observers as an impediment to enhancing the quality and conduct of Nigerian elections. (IRI/NDI, 2023) Similarly, Abati (2022b) described the Electoral Act 2022 as "the most comprehensive and pragmatic effort that the National Assembly of Nigeria has embarked upon … for the integrity of elections and the leadership recruitment process."

The Act provides a robust legal framework empowering Nigeria's electoral umpire, INEC, to determine the methods of voting and the transmission of results. It also grants INEC the authority to review election results declared under duress. Critically, the Act legalised the use of technology in elections, redefined the concept of over-voting, mandated INEC to provide support for Persons with Disabilities (PWDs) during voting, altered timelines for various electoral activities, and introduced new timeframes for political parties regarding candidate nomination. The European Union (2022, p. 1) noted that "the Electoral Act 2022 comprehensively introduces a range of measures that improve the electoral process." It is a product of extensive consultations and contributions from civil society, judicial precedents, INEC itself, and recommendations from credible election observation missions.

Table 1 below, adapted from Suleiman (2021), highlights some of the major modifications introduced by the Electoral Act 2022 compared to the Electoral Act 2010 (as amended).

Table 1: Some Major Provisions/Amendments to the Electoral Act 2010 on the Electoral Act 2022

S/N	Provisions under Electoral Act 2010	Modifications of the Electoral Act 2022
1	Electoral funds are to be released in line with the rules set out by INEC	Section 3 (3): electoral funds to be released at least a year before the election date
2	Submission of political party candidate list to be done at least 60 days before the election date	Section 29 (1): party primaries and submission of candidates be done at least 180 days before the election date

3	Provided no legal backing for E-voting and electronic transmission of results	- Section 47 & 50 (2): use of technology for voter accreditation and electronic transmission of results or as may be determined by the Act; - Section 62 (2) INEC to maintain an electronic register of votes - Section 38 of INEC Regulations and Guidelines for the Conduct of Elections, 2022 detailing the processes of electronic transmission and uploading of results on the INEC Results Viewing Portal (IReV).
4	Allowed political appointees to vote and be voted for during political party primaries	Section 84 (12): ban on political appointees from voting as delegates or standing as aspirants
5	No adequate provisions to assist persons living with physical disabilities and vulnerable populations during voting	Section 54 (2): voters with disability, special needs and other vulnerable populations be assisted by someone chosen by themselves, to vote at the polling unit, and INEC to provide necessary facilities to assist these groups of persons at the polling unit
6	Number of registered voters used to determine cases of over-voting.	Section 54: only number of accredited voters be used as a yardstick to determine cases of over-voting
7	No provision made with respect to results declared by returning officers under duress	Section 65: Specifies the number of day (seven days), within which INEC can review the results declared by any returning officer under duress, and/or where the declaration is made against the election guidelines and laws
8	Political parties had only 90 days before the election date for political campaigns	Section 94: Electoral campaigns can begin 150 days before the election day, and end 24 hours prior to the election date
9	Did not make provisions for the death of a candidate before or during the election, but only empowered the commission to postpone only yet-to-be-commenced elections	Section 34: Course of actions for INEC to address the case of death of a candidate before/during the election date
10	Any member of the public could seek judicial review for a candidate with false information or a forged certificate.	Section 29 (5): Only aspirants who contested against the candidate in the party primaries can seek a judicial review on issues relating to false

		information or forged certificates
11	No adequate provision was made for the neutrality of INEC personnel, and no stipulated punishment for partisanship.	Section 8 (5): INEC personnel (ad hoc officers inclusive) must be neutral and non-partisan. Contravention of this provision attracts a punishment of 5 million Naira, and/or two years imprisonment.
12	Provision for only a national collation centre for the presidential election.	Section 27: State level results collation centre for the presidential election.
13	Political parties' registration could be made at least 6 months before the general election date	Section 75 (1): INEC shall only register political parties that submit their application at least a year before the general election date.
14	Fixed lesser campaign spending limits for political candidates during elections as follows: -Presidential – N1,000,000,000 -Governorship – N200,000,000 - Senatorial – N40,000,000 -House of Reps – N20,000,000 -State Assembly – N10,000,000 -Chairmanship – N10,000,000 -Councillorship – N1,000,000	Section 88 (2-7) increased the maximum amount to be spent on political campaigns by political candidates during elections as follows: - Presidential – N5,000,000,000 - Governorship – N1,000,000,000 - Senatorial – N100,000,000 - House of Reps –N70,000,000 - State Assembly – N30,000,000 - Chairmanship – N30,000,000 - Councillorship – N5,000,000

Source: Adapted with modification from Suleiman (2021) and provisions of the Electoral Act and the INEC Regulations and Guidelines for the Conduct of Elections, 2022.

It however, ought to be stated that the Act must be read with the INEC Regulations and Guidelines for the Conduct of Elections, 2022 issued pursuant to Section 148 of the Act ("The Regulations"). These Regulations complement and effectuate the purport of the Act.

Regarding the innovations brought about by the Act, Suleiman (2021) opined that these provisions collectively sought to improve the electoral process and bolster democratic stability. For instance, the early release of funds to INEC was intended to enhance its independence and address perennial logistical challenges. The legalisation of technology, particularly for voter accreditation (BVAS) and electronic transmission of results (IReV), was anticipated to reduce human interference, manipulation, and fraud, thereby enhancing the credibility of the elections (Justice and Eze, 2023). The power granted to INEC to review results declared under duress, as seen in the Adamawa State 2023 governorship election saga (Ogundapo, 2023), was a significant deterrent against coercive electoral practices. Furthermore, the redefinition of over-voting based on accredited voters rather than registered voters aimed to curb ghost voting. The IRI/NDI International Election Observation Mission

to Nigeria (2023) confirmed that the early funding provision helped address INEC's historical challenge of delayed preparations. Justice and Eze (2023) further asserted that some innovations in the Act positioned Nigeria with some of the most robust electoral rules among emerging democracies. The positive outcomes in off-season elections in states like Anambra, Osun, and Ekiti, before the general elections, were seen as a testament to the potential of the new Act to improve voter confidence and election credibility, largely attributed to the deployment of BVAS and IReV (Justice and Eze, 2023).

3. The 2023 General Elections: the Electoral Act 2022 and Technology Deployment

The 2023 general elections were widely regarded as the most technologically advanced in Nigeria's history, with INEC deploying the Bimodal Voter Accreditation System (BVAS) for voter accreditation and the INEC Result Viewing Portal (IReV) to enhance transparency in results management (Osodi-Anadolu, 2023). These technological innovations generated high expectations for transparency, contributing to a surge in voter registration. The electronic transmission of results was particularly significant, as it was expected to drastically reduce opportunities for rigging. However, the implementation of this technological infrastructure faced intense scrutiny, and INEC's credibility was severely tested (Osodi-Anadolu, 2023).

Despite the IReV system being a notable step towards results transparency compared to previous elections, it fell short of expectations in several areas. The IRI/NDI International Election Observation Mission to Nigeria (2023) pointed out that IReV did not provide information in a complete, bulk, or machine-analysable format, thereby deviating from basic open data principles. This made it virtually impossible for average citizens, political parties, civil society organisations, and even the media to effectively scrutinise the aggregated data from over 170,000 PDF documents. Additionally, the requirement of a login and password for several days post-election created unnecessary barriers to accessing what should have been a fully public portal (IRI/NDI International Election Observation Mission to Nigeria, 2023).

Yiaga Africa (2023) observed that certain provisions of the Act were ambiguously drafted, creating confusion and uncertainty in the results management process. These uncertainties, they argued, could have been mitigated if INEC had proactively clarified its interpretation of critical provisions, such as the requirement for a presidential candidate to secure 25% of votes cast in two-thirds of the 36 states and the Federal Capital Territory (FCT) provided for in Section 133(b) of the Constitution of the Federal Republic of Nigeria, 1999 (the Constitution). Furthermore, INEC's failure to ensure that Collation Officers and Returning Officers consistently compared electronically transmitted results with hardcopy results, where disputes arose, impeded the credibility of the result management process. The IReV portal was designed to handle only polling unit-level results (Form EC8A), limiting comprehensive comparison at ward-level collation. Compounding these issues, by March 1st, 2023, when INEC declared a winner in the presidential election, only 73% of the presidential election results had been uploaded to the IReV (Yiaga Africa, 2023).

These technological shortcomings, coupled with what Yiaga Africa (2023) described as INEC’s "ineffective and ill-timed communication" regarding the delays in electronic transmission, cast significant doubt on the credibility of the electoral process and eroded public trust in INEC's capacity to deliver credible elections.

However, the deployment of BVAS, despite its challenges, was also credited with some positive outcomes. Iremeka (2023) noted improvements, citing instances where prominent politicians, including several sitting governors, lost their electoral bids. Ogieva and

Ajisebiyawo (2023) concurred, attributing the defeat of governors such as Ben Ayade of Cross River, Samuel Ortom of Benue, and Ifeanyi Ugwuanyi of Enugu in their senatorial ambitions to the effectiveness of BVAS in ensuring that only accredited voters participated. They argued that these "heavyweight politicians would have done everything possible to win the elections if the Electoral Act 2022 did not give INEC the requisite and needed legal backing to insist on the deployment of BVAS as the only legal means of accrediting voters" (Ogieva and Ajisebiyawo, 2023).

Oloruntade (2023) observed that despite INEC's assurances, the BVAS and IReV failed to meet the expectations of many Nigerians, with only 45% of results available on IReV three days post-election, attributed by INEC to "technical glitches." This, Oloruntade argued, significantly undermined INEC's credibility and public confidence. Olowogboyega (2023) contended that the 2023 elections demonstrated that technology requires commensurate political will to be effective, and that while BVAS addressed some voting-related problems, it also introduced new vulnerabilities, potentially simplifying rigging by creating a single focal point for disruption.

Igbinodolor (2023) highlighted the views of some credible local and international observers, including the European Union Election Observation Mission, that the election fell short of basic international standards due to violence, poor organisation, lack of transparency, and evidence of fraud. Igbinodolor (2023) further posited that the judiciary's affirmation of INEC-declared results, especially in presidential elections, poses a threat to the legitimacy of future elections, as perceptions of judicial fairness impact voter attitudes and can decrease interest in voting when the process is seen as flawed and sanctioned by the courts.

4. The Presidential Election Petition Court (PEPC) Judgement and its Implications

Consistent with Nigeria's electoral tradition since 1999, the outcome of the 2023 presidential election was challenged in court, the Court of Appeal (CoA) sitting as the Presidential Election Petition Court (PEPC) of first instance. The two leading opposition candidates, namely, Peter Obi of the Labour Party (LP), and Atiku Abubakar of the People's Democratic Party (PDP) filed separate petitions (No. CA/PEPC/O3/2023 and No. CA/PEPC/O5/2023, respectively) alleging widespread irregularities, corrupt practices, result manipulation, vote suppression, over-voting, voter harassment, and incorrect computation of votes in favour of Bola Ahmed Tinubu of the All Progressives Congress (APC). There was also a third petition filed at the same time by Allied Peoples' Movement (APM) against the same respondents and challenging the veracity of the results on other grounds (Petition No. CA/PEPC/O4/2023).

A core allegation was that INEC, in connivance with Tinubu and the APC, deliberately failed to upload scanned copies of polling unit results to the IReV in real-time as stipulated in its regulations and guidelines, thereby facilitating result manipulation. The Regulations Sections 38 provides thus:

> On completion of all the Polling Unit voting and results procedures, the Presiding Officer shall:
>
> i. Electronically transmit or transfer the result of the Polling Unit, 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 Result Viewing Portal (IReV), as prescribed by the Commission.

They also contended that Tinubu did not meet the constitutional requirement of securing 25% of the votes in the FCT. Section 133(b) of the Constitution of the Federal Republic of Nigeria, 1999 (the Constitution) states:

> A candidate for an election to the office of President shall be deemed to have been duly elected to such office where, being the only candidate nominated for the election
>
> > (b) he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja

Other grounds included Tinubu's alleged dual citizenship. Obi and the LP further challenged Tinubu's eligibility to contest the presidential election, alleging that he was previously fined $460,000 by the United States District Court, Northern District of Illinois, Eastern Division, in Case No: 93C 4483, for an offense involving dishonesty and drug trafficking.

But petition by APM challenged Tinubu's nomination based on the alleged double nomination of his running mate, Kashim Shettima. The allegation here was that at the time Senator Kashim Shettima became the vice-presidential candidate, he was still the nominated candidate of the APC for the Borno Central Senatorial election. (See Presidential Elections Petitions Court Judgement, 2023)

On the ground that the election was invalid by reason of corrupt practices and non-compliance with the provision of the Electoral Act, 2022, the petitioners argued that INEC acted in breach of its own regulations and guidelines. The petitioners contended that the electoral body was, in the course of the conduct of the presidential poll, mandatorily required to prescribe and deploy technological devices for the accreditation, verification, continuation, and authentication of voters and their particulars as contained in its Regulations.

Consequently, they prayed the court to not only hold that Tinubu was not qualified to contest the election, but to also declare that all the votes recorded for him were wasted votes owing to his non-qualification/disqualification. (See Ground No. 1, page 4 of the Judgement) Consequently, they urged the Court as follows:

> "That it be determined that on the basis of the remaining votes (after discountenancing the votes credited to the 2nd Respondent) the 1st Petitioner scored a majority of the lawful votes cast at the election and had not less than 25% of the votes cast in at least 2/3 of the States of the Federation, and the Federal Capital Territory, Abuja, and satisfied the constitutional requirements to be declared the winner of the 25th February 2023 presidential election.
>
> "That it be determined that the second respondent, having failed to score one-quarter of the votes cast at the presidential election in the Federal Capital Territory, Abuja, was not entitled to be declared and returned as the winner of the presidential election held on 25th February, 2023.
>
> > (See Prayers 1-4 of the Petition, reproduced on pages 4-6 of the Judgement)

In the alternative, the petitioners prayed for an order cancelling the election and compelling INEC to conduct a fresh election at which Tinubu, Shettima and the APC, listed as 2nd, 3rd and 4th Respondents, respectively, shall not participate. They urged the court to declare that since Tinubu was not duly elected by a majority of the lawful votes cast in the election, therefore, his return as the winner of the presidential election, was unlawful, unconstitutional and of no effect whatsoever.

In their conclusion, the petitioners finally urged for "[A]n order directing the 1st Respondent [INEC] to issue the Certificate of Return to the 1st Petitioner [Atiku Abubakar] as the duly elected President of the Federal Republic of Nigeria", and that "the Certificate of Return wrongly issued to the 2nd Respondent [Bola Ahmed Tinubu] by the 1st Respondent is null and void and be set aside." In the alternative, they prayed for an order "cancelling the presidential election conducted on 25th February 2023 and mandating the 1st Respondent to conduct a fresh election for the President, the Federal Republic of Nigeria" (Prayer 5, Page 7 of the Judgment)

In its judgement, the PEPC delivered rulings that had significant implications for the interpretation of the Electoral Act 2022 and public perception of the electoral process. PEPC, chaired by Honourable Justice Hassan Tsammani, on September 6, 2023, delivered its judgment dismissing the three petitions, especially for lacking material facts and being unmeritorious. The Court thus affirmed Bola Ahmed Tinubu as the duly elected President of the Federal Republic of Nigeria and parties are to bear their cost. The Petitioners proceeded to appeal to the Supreme Court (SC) against the PEPC's decision. The SC, on 26th October, 2023, dismissed the appeal for lacking in merit and further affirmed the decision of PEPC. [Abubakar Atiku & Anor. v. INEC & Ors, (SC/CV/935/2023 -Unreported)] and Peter Obi & Anor v. INEC & Ors, (SC/CV/937/2023 -Unreported)].

The SC extensively addressed the issues raised by Atiku Abuba, but simply dismissed Peter Obi's the issues founding Obi's appeal had been effectively included in the determination of Abubaka's appeal. Kenneth Okonkwo (2023) however, faulted this assumption by the Supreme Court establishing that SC indeed had overlooked a fundamental issue in Obi's appeal, namely, in paragraph 4.18: the allegation of fine/forfeiture issued against Tinubu by the US Court as presented later in this paper.

The judgment essentially reflected the approach of the Evidence Act, 2011 which places the burden of proof on the petitioners to establish with evidence the truth of their allegations. Section 135 of Evidence Act states thus:

> (1) If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.
>
> (2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to section 139 of this Act, on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.
>
> (3) In election matters, whether the commission of crime is in issue or not, proof shall be on the preponderance of evidence or balance of probabilities.

Thus, by virtue of section 135(2) of the Evidence Act, 2011 where a petitioner alleges non-compliance with the provisions of the Act, he/she is required to show how such noncompliance substantially affects them. Failing this, the petition fails. The standard of proof in election petitions is on a balance of probabilities (Section 155(3)), but allegations of corrupt practices are seen as criminal allegations, therefore must be proven beyond reasonable doubt pursuant to section 135(1) and (2) of the Evidence Act, 2011. This burden proved very difficult to discharge especially in view of the fact that essential documents that petitioners would need to tender before the court would normally be in the possession of INEC. Perhaps, in this regard, Nigeria should revisit the recommendations of the 2008 Electoral Reform Committee headed by Honourable Justice Muhammadu Lawal Uwais (Uwais Committee Report). The said Committee Report (2008, 148) among other things,

documented testimonies to the effect that INEC would not easily release such documents to the petitioners. Also, going by this position, all evidence and statements of witnesses, whether subpoenaed or not, must accompany the petition when it is filed, as there will not be time again to allow for substantial amendments. For example, in Peter Obi & Anor. v. INEC & Ors, about 10 out of 13 Labour Party witnesses including expert witnesses, whose statements on oath were filed after the 21-day statutory period for filing petitions, were struck out. Consequently, all the evidence and documents tendered by those witnesses were expunged. (PLAC, 2023). Accordingly, we align ourselves with the Uwais Committee's recommendations, namely, for the law to shift the burden of proof from petitioner to INEC to show that disputed elections were indeed free and fair and complied with the provisions of the ACT. The petitioner only needs to introduce evidence of mismanagement to shift the burden. [See (para 2.5(b) and 2.6.1(d), 5.4.3.1(b) of the Uwais Report]

Crucially, the Court ruled that the Electoral Act 2022 did not compel INEC to transmit election results electronically. The Act thus granted INEC the discretion to prescribe the method of transmission. This interpretation, however, contradicted the widespread public expectation, fuelled by INEC's pronouncements, that real-time electronic transmission via IReV was mandatory and would be a cornerstone of the election's transparency. (Premium Times, 2023). On the issue of the constitutional requirement of securing 25% of the votes in the FCT, the Court held that votes cast in the FCT did not possess superior value over votes from other states, and therefore, securing 25% in the FCT was not a mandatory standalone requirement beyond being part of the overall two-thirds of states.

Regarding the US forfeiture case, the petitioners contended that Bola Ahmed Tinubu was disqualified from running or being elected as President based on Section 137(1)(d) of the 1999 Constitution because he was convicted by a court in the United States of America for fraud. The said section provides thus:

A person shall not be qualified for election to the office of President if:

> (d) he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for any offence involving dishonesty or fraud (by whatever name called) or for any other offence, imposed on him by any court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court or tribunal;

The PEPC, however PEPC determined that the case against Bola Ahmed Tinubu in the United States cited by the Petitioners was a "civil forfeiture" and not a "criminal forfeiture" or conviction that would disqualify Tinubu under Section 137(1)(d) of the Constitution. Thus the Court ultimately upheld Tinubu's election, stating the petitioners failed to prove their allegations.

The PEPC's ruling that INEC is not mandated to electronically transmit results has particularly dampened citizens' confidence in technology's ability to resolve Nigeria's electoral challenges. Unini (2023a) argued that the primary intent behind the 2022 Electoral Act's provisions on technology was indeed to mandate electronic transmission, with INEC's discretion limited to the choice of electronic device. Ojukwu, Umeifekwem, and Okeke (2023) criticised the IReV portal for not complying with open election data principles, limiting citizens' ability to verify results. They noted that a significant percentage of uploaded results were unreadable and that INEC's varying explanations for these issues fuelled speculation of malfeasance. The European Union Election Observation Mission Nigeria

(2023) starkly stated that "the certainty and integrity of the INEC Result Viewing (IReV) portal... was greatly tarnished due to failures of prompt transmission and publication of presidential results as envisaged under the Electoral Act 2022."

5. Promoting Peaceful, Fair, and Credible Elections Beyond 2023

Ensuring credible, free, and transparent elections necessitates adherence to principles of transparency at every stage, allowing stakeholders to independently verify compliance with rules and regulations. This builds public trust and confidence, reducing opportunities for malpractice. While some predictions suggested the 2023 elections might be less violent (Ezeador, 2023), underlying socio-economic stress and high electoral stakes remained. A key challenge identified in the abstract and echoed by observers is the lack of clarity in several provisions of the Electoral Act 2022 and inconsistencies in INEC's regulations and statements. To achieve credibility in future elections, the interest of voters must be guaranteed through legal certainty for all electoral stages. This involves eliminating ambiguities in the Electoral Act and INEC regulations to prevent conflicting interpretations.

The selection process for INEC Commissioners and Resident Electoral Commissioners (RECs) has also drawn criticism for perceived lack of transparency and partisanship, potentially compromising the institution's independence. The Report of the Electoral Reform Committee (2008) had previously recommended constitutional amendments to insulate INEC from executive influence in its composition and funding, suggesting the National Judicial Council (NJC) should handle appointments. Adopting a robust, transparent, and merit-based selection mechanism for INEC leadership, emphasising non-partisanship, is crucial. Transparency in the adoption and deployment of election technology is paramount. The European Union Election Observation Mission Nigeria (2023) noted that specifications for BVAS, test results, procurement details, and operational protocols were not adequately publicised, undermining trust. Future legal frameworks should mandate prompt disclosure of such information to permit public scrutiny.

INEC's management of the results process, particularly the delays and inconsistencies with IReV uploads for the presidential election, severely damaged public trust (European Union Election Observation Mission Nigeria, 2023). Improving results management procedures with a strong, transparent, and easily verifiable system is vital. This includes publishing all forms in a trackable database format, real-time uploading of polling unit results exclusively from the polling unit, and posting results forms at every collation stage. Furthermore, the European Union Election Observation Mission Nigeria (2023) observed that lengthy pre-election litigation and post-election dispute timelines create uncertainty. Streamlining these legal processes to ensure pre-election disputes are resolved well before election days is necessary.

Thus, the Uwais Committee recommendations, according to Okeke, C. (2023) would still be relevant in addressing some of the issues bedevilling the Nigeria’s over all electoral processes. For instance, the dispute resolution process before the Court places the burden of proof on the petitioner rather than on INEC to establish the substantial compliance of the electoral process with the law. This burden should rather be placed on INEC where infractions against the law are manifest. Thus, some of these recommendations are highlighted also in the following section.

Over all, the 2023 general elections, conducted under the Act, highlighted both advancements and persistent challenges. Observers noted logistical failures, disenfranchisement, and a laborious voting and collation process. The promise of technology (BVAS and IReV) did not

fully meet expectations, and INEC's inability to deliver real-time results collation created significant tension (Okeke, 2023). There remains a general lack of confidence in the judicial processes for handling post-election disputes, given that presidential election litigations have consistently favoured the INEC-declared winner. The paper identified key undermining factors: the performance of political parties, INEC's shortcomings, slow procedures, and lack of confidence in conflict management.

6. Conclusion and Recommendations

6.1 Conclusions

The 2023 general elections in Nigeria, while marking a continued democratic trajectory and the introduction of significant technological advancements through the Electoral Act 2022, ultimately demonstrated that incremental reforms have not yet sufficiently instilled widespread confidence in the Independent National Electoral Commission (INEC) and the overall electoral process. The deployment of the Bimodal Voter Accreditation System (BVAS) showed promise in enhancing accreditation integrity. However, the significant shortcomings in the implementation and functionality of the INEC Result Viewing Portal (IReV), which was intended to be a cornerstone of transparency, substantially impugned the integrity of the elections and eroded public trust. Key issues that undermined the 2023 general elections and require urgent attention include INEC's operational deficiencies in delivering real-time, transparent results; the slow and cumbersome nature of the voting and manual collation processes; and a pervasive lack of confidence in the impartiality and efficacy of election conflict management processes and institutions, including the judiciary. The PEPC's interpretation of the Electoral Act 2022, particularly regarding the non-mandatory nature of electronic results transmission, further compounded these concerns, potentially setting a precedent that could impact the transparency of future elections. Addressing these multifaceted challenges through comprehensive legal, institutional, and technological reforms, coupled with a genuine commitment to accountability and transparency from all stakeholders, is imperative for strengthening Nigeria's democratic foundations and ensuring that future elections truly reflect the will of the people.

6.2 Recommendations

Based on the findings and analysis, the following general recommendations are proposed:

i. Need for the Full Digitisation of Voting and Collation: While BVAS improved accreditation, manual collation remains a bottleneck. Transitioning to a fully electronic voting and collation system is essential to reduce time, limit human interference, and increase voter confidence (Okeke, 2023; Oyemike, 2023). This would address issues like result falsification, mutilation, and computational errors.

ii. Reforming Electoral Dispute Resolution and Burden of Proof: The doctrine of substantial compliance places a heavy, often insurmountable, burden on petitioners. PLAC (2023) and the Uwais Committee Report (2008) recommend shifting the burden of proof to INEC and the respondent to demonstrate that an election was conducted in substantial compliance with the law. This reform is critical to restoring faith in electoral justice.

iii. Ensuring Clarity and Consistency in Electoral Laws and Regulations: The Electoral Act and INEC guidelines must be revised to eliminate ambiguities and ensure clarity on all procedural aspects, especially concerning technology use and results transmission. INEC must be consistent in its interpretation and application of these rules.

iv. Independent Audit and Accountability: A comprehensive, multi-stakeholder independent audit of the 2023 general elections should be conducted, as suggested by

Yiaga Africa (2023). This will help identify fundamental changes needed, ensure accountability for lapses and electoral impunity, and inform future reforms. Electoral offenders, including INEC officials involved in malpractices, must be prosecuted.

v. Enhancing INEC's Transparency and Communication: INEC must adopt a culture of proactive disclosure and strategic communication (Yiaga Africa, 2023). Transparent, timely, and effective communication on all electoral matters, including technological deployments and challenges, is crucial for rebuilding public trust.

vi. Need for the Strengthening of Political Party Integrity and Inclusivity: The dominance of a few parties, with many others barely registering an impact (as seen by 14 parties sharing only 2.70% of presidential votes), raises questions about their viability. Okeke (2023) suggests incentivising genuine political parties, possibly revisiting the Uwais Report's recommendation for a mixed-member proportional representation system to ensure wider inclusion, including quotas for women and persons with disabilities.

vii. Need for the Unbundling INEC for Efficiency: INEC, as currently structured, appears overburdened. Following the Uwais Committee Report's recommendations (Report of the Electoral Reform Committee, 2008; Okeke, 2023), INEC should be unbundled into specialised commissions, such as a Political Parties Registration and Regulation Commission, an Electoral Offences Commission, and a Constituency Delineation Commission. This would allow a reformed INEC to focus solely on election conduct.

viii. Reforming INEC's Appointment Process: The appointment process for INEC leadership must be transparent, merit-based, and ensure non-partisanship, possibly involving bodies like the National Judicial Council as recommended by the Uwais Committee (Report of the Electoral Reform Committee, 2008), to bolster INEC's independence and credibility.

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