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Report Paper



# REVIEWING THE NIGERIAN 2022 ELECTORAL ACT: WHAT IT MEANT FOR THE 2023 ELECTIONS

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# ABOUT CDD

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Pelumi Obisesan Aina is a PhD Candidate in Development Studies at SOAS, University of London and a Visiting Researcher at the Centre for Democracy and Development. Her research interests include the dynamics of conflicts and crises in Sub-Saharan Africa and their impact on women. Pelumi has been published by the Institute of Security Studies, West Africa Think Tank, Premium Times, Daily Trust and Business Day among others. Her current research focuses on women's experiences and perspectives of transitional justice measures implemented against the background of the Boko Haram crises in the Lake Chad Basin.

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For the first time in many electoral cycles, Nigerians were hopeful about the possibility of the 2023 elections being credible. In the lead up to the elections, civic engagement was heightened to extents rarely seen in the country's Fourth Republic especially among youths. While there are other possible factors for this unusual engagement with the electoral process, the introduction of the Electoral Act 2022 was one of the main propellants for the increase in optimism and credibility ratings of the Independent Electoral Commission (INEC). This optimism was mirrored in the 9,518,188 voters that registered to vote for the first time in the 2023 elections.<sup>1</sup> However, this increase in registration numbers did not result in a seamless electoral experience or an increase in voter turnout as anticipated by observers. In comparison to the 2019 elections, there was in fact, a 7% decline in voter turnout in the Presidential elections and the election were still marred by irregularities results declared by INEC are being contested in court at the time of writing. Against this background of the mismatch between expectations and reality, it is necessary to review the Electoral Act 2022 and its impact on the 2023 elections.

Since 2001 when the first Electoral Act was introduced, discourse around the amendment of an existing Electoral Act typically marked the beginning of the “high political season” in Nigeria. <sup>2</sup>Consequently, it became customary for the National Assembly to create new electoral laws or revise existing ones in the lead up to the general election. There was however a breakaway from this trend before the 2019 elections when President Muhammadu Buhari declined assent to Bill for Amendment four times in 2018. The 2023 election cycle, however, saw a return to the trend on electoral legislation. Exactly one year to the scheduled 2023 presidential elections, and after an initial assent decline, President Muhammadu Buhari assented to the 2022 Electoral Act consequently repealing the 2010 Act and its amendments which regulated the past three electoral cycles. Accordingly, the 2022 Electoral Act, the 1999 constitution and INEC's own guidelines constituted the legal framework for the conduct of the 2023 general elections.

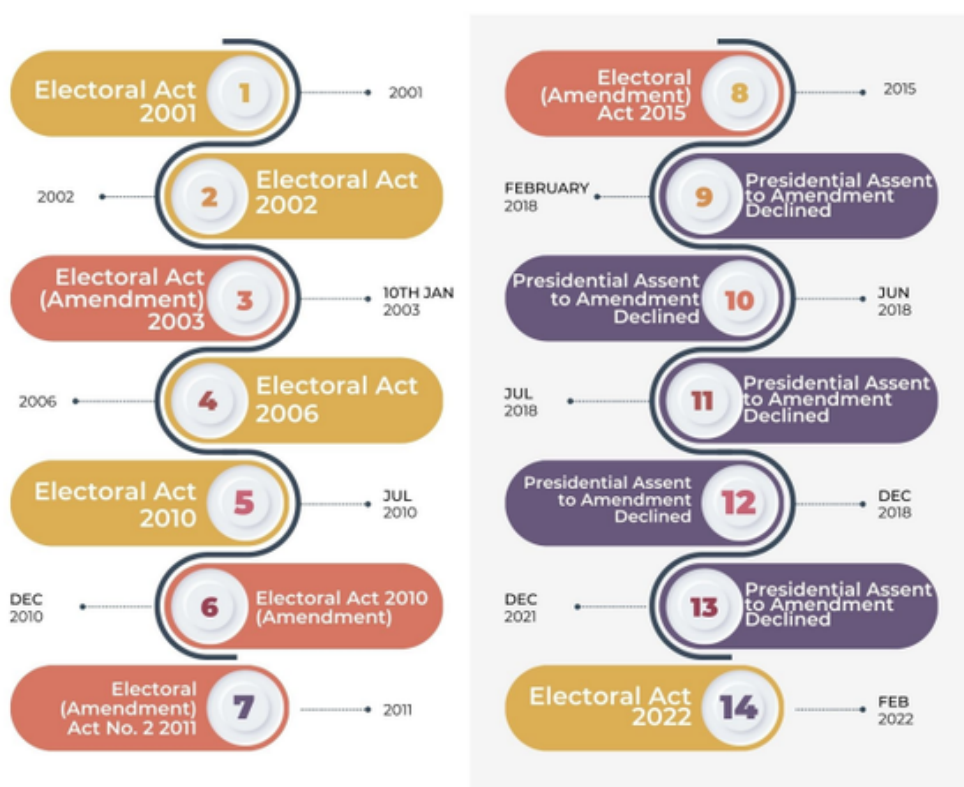
The 2022 Act is significant as the sole electoral law approved by ex-President Buhari. While some view the Act as the fulfilment of the Buhari-led administration's promise to deliver a free and fair electoral system,<sup>3</sup> <sup>4</sup>others criticize him for his reticence to sign into law, amendments that could have affected his re-election in 2019. This makes Buhari the only Nigerian President in the Fourth Republic who did not assent to legislations that could regulate the electoral process while he was on the ballot. Given that the 2022 Act has been in the works since 2016 and the five rejections that followed in the two terms of President Muhammadu Buhari,<sup>5</sup> <sup>6</sup>the current Act may be the most anticipated Act in Nigeria since 2001. The seven-year period between 2015 and 2022 is the longest Nigeria has gone without a new or amended Electoral Act. This report reviews the Electoral Act 2022, the changes it introduced to the electoral process and how those changes played out at the polls and during the entire 2023 election cycle which is still ongoing in view of the unfolding post-election litigation processes.

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<sup>1</sup>Are, J. (January 11, 2023), INEC: 53,264 objections received over voters register — ineligible names have been removed, The Cable. Retrieved 20 June, 2023 <sup>2</sup>Aiyede, R. (2007), Electoral Laws And The 2007 General Election in Nigeria, Journal of African Elections. Retrieved February 20, 2023



## The Evolution of Nigeria's Electoral Act



On a general note, the Electoral Act 2022 significantly sought to bolster the independence and effectiveness of the electoral commission. Provisions on financing and the electoral body's capacity to determine the modes of voting and results transmission are some examples in this regard. Given that increased independence of the electoral commission and a technology-based process have been central points of advocacy for the Nigerian civil society, the signing of the 2022 Electoral Act portended new possibilities for elections in Nigeria. Unlike in previous election cycles, there was an increase in the credibility ratings of the electoral process in the lead up to the elections as the provisions of the 2022 Act seemed to truly put INEC in the driver's seat.

This paper reviews how the implementation of the Electoral Act 2022 played out in the current electoral cycle while underlining how the Act bodes for future elections in Africa's largest democracy.

### Legislating the Lead Up to the 2023 Elections.

The 2019 elections saw the registration of up to 91 political parties<sup>7</sup>– the highest number of registrations for an election in the country's electoral history.

<sup>7</sup>Ndujihe, L. et al., (June 30, 2019), "[2023: INEC in dilemma over large number of political parties](#)", *Vanguard Nigeria*. Retrieved February 23, 2023



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This high number posed a management challenge to INEC and facilitated last minute disruptions. Despite providing the resources to accommodate all 91 parties at the polls, there were last-minute candidate withdrawals. <sup>8</sup>In the lead up to the 2023 elections, INEC set to reduce the number of parties on the ballot to ensure future elections do not follow the same pattern. Consequently, in 2020, INEC deregistered 74 parties by enforcing the amendment of Section 225A of the Constitution of the Federal Republic of Nigeria, (Fourth Alteration) Bill, No. 9, 2017. <sup>9</sup>The latter empowered the electoral body to deregister political parties when they failed to meet certain registration criteria and fail to win 25% of the votes in either a Presidential, Governorship, Local Government chairmanship or a seat in the National or State Assembly or a Councillorship.

Reinforcing Section 225A of the Constitution, the Electoral Act in Sections 75(1), 75(3), 75(4) and 76 also make registration requirements more stringent to ensure that registration is done more conscientiously, and only viable political parties get their registration requests approved.

*75 (1) Any political association that complies with the provisions of the Constitution and this Act for the purposes of registration shall be registered as a political party PROVIDED however, that such application for registration as a political party shall be duly submitted to the Commission not later than 12 months before a general election.*

*(3) If the association has not fulfilled all the conditions under this section, the commission shall within 90 days from the receipt of its application notify the association in writing stating the reasons for non-registration.*

*(4) A political association that meets the conditions stipulated in the Constitution and this Act shall be registered by the Commission as a political party within 60 days from the date of receipt of the application, and if after the 60 days such association is not registered by the Commission, unless the Commission informs the association to the contrary, it shall be deemed to have been registered.*

*76. The decision of the Commission not to register any association as a political party may be challenged in the Federal High Court, provided that any legal action challenging the decision of the Commission shall be commenced within 14 days from the date of receipt of the decision on non-registration from the Commission.*

These new provisions are the culmination of efforts for a smaller and more viable candidate pool. With only 18 parties registered for the 2023 elections, this legislation made a difference in the 2023 electoral cycle. The candidate pool was smaller and portended less of a confusion to the electorate who could better decide whose manifesto best resonated with them. Given the success of implementation of these provisions, it follows that the trend of registering viable political parties will continue unless a law that minimizes the existing provisions is enacted in the future.

Arguably, these provisions can be manipulated as a witch hunting tool to bar some political parties from the ballot. However, according to Section 46 of the Act, INEC's decision can be judicially challenged and reversed as was the case for the Young Progressives Party (YPP). However, given the timelines (90 days) for the (dis)approval notification, it behoves on the political party seeking registration to be intentional and timely in its application.

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<sup>8</sup>Asadu, C. (January 24, 2019), [INEC rejects Ezekwesili's withdrawal from presidential race](#), *The Cable*. Retrieved February 23, 2023

<sup>9</sup>Sanni, K. (February 6, 2020) [INEC deregisters 74 political parties](#), Premium Times. Retrieved February 22 2023



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## **Intentionality at the Polls: Fewer Parties, Stricter Timeframes**

In the lead up to the 2023 election, there were speculations about parties withdrawing their nominees from the race to endorse other candidates. However, the legal possibility of this was significantly reduced under the new Act. According to Section 31, party nominees can only be withdrawn 90 days before the election – double the timeframe provided under the 2010 Electoral Act. This reflects INEC’s goal of making candidates more intentional about the polls. Furthermore, due to the reduced number of parties that could field candidates at the polls, voluntary withdrawal from Presidential contest was eliminated as no candidate withdrew from the Presidential race as was the case in 2019.

## **Guaranteeing INEC’s Financial Independence**

Among other things, the 2022 Act sought to guarantee the financial independence of the electoral body. In line with a recommendation from the 2007 Justice Uwais’ electoral legislation reform panel, the current Act provides for INEC’s increased financial autonomy. While the 2010 Act required the Ministry of Finance to vet INEC’s fund request prior to release, the Commission can now receive election funds directly through the newly established Independent National Electoral Commission Fund – which is funded by payments from the federal government, returns on investments made from the fund, and other grants. Additionally, the Act stipulates that election funds due to the Commission for any general elections be released not later than one year before the next general election. Nonetheless, the fund for the 2023 elections were released in instalments and the timeline of its full receipt by INEC was not in exact compliance with the Act’s requirements. The currency scarcity caused by the naira redesign policy also significantly affected the disbursement of fund required for logistics on election days.

## **Personnel Appointments**

The question of neutrality of the Resident Electoral Commissioners (RECs) remains unresolved despite provisions of the 2022 Act. Ahead of the 2023 elections, 19 appointed RECs were nominated by President Muhammadu Buhari. Of the 19 submissions, 14 were new nominations. This nomination of INEC staff by the incumbent government goes against recommendations of the Uwais panel that INEC’s board and top officials like the Chairman should be nominated by the National Judicial Council (NJC), and not by the President. This recommendation was to ensure that chosen officials are neutral and not subject of any political coloration. Consequently, the nominations were challenged by a coalition of CSOs<sup>10</sup> on grounds ranging from alleged affiliation with the ruling APC and alleged corruption indictments.<sup>11</sup> Though the 2022 Act does not state that RECs in particular, must be non-partisan, all INEC staff are mandated to be.

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<sup>10</sup>The CSOs include Yiaga Africa; International Press Center; Center for Media and Society; The Albino Foundation; Elect Her; Nigerian Women



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*“All staff, electoral officers, presiding officers, returning officers and security officials taking part in the conduct of an election shall affirm or swear to an oath of loyalty and neutrality as in the Second Schedule, indicating that they will not accept bribe or gratification from any person, and shall perform their functions and discharge their duties impartially and in the interest of the Federal Republic of Nigeria without fear or favour.” (Section 26 (1))*

These nominations were nonetheless approved by the Senate on the basis that the allegations of partisanship were false.<sup>12</sup> The incident with the REC in Adamawa who clearly displayed partisan behaviour by declaring a candidate before the end of collation challenges the Senate’s approval and the nomination model. In addition, Section 6(4) of the Electoral Act 2022 mandates that the appointment of RECs should be in line with the Constitution’s Federal Character requirements and the Federal Character Commission Act. This provision put into the letter of the law a measure that was already in practice considering the composition of the country.

## **Enabling a Technology Driven Process**

Section 9(2) of the 2022 Act mandates the Commission to keep a Central Electronic Register of Voters in addition to the hardcopy requirement of the 2010 Act. This requirement was designed to minimise litigation arising from identity fraud. Additionally, in fulfilment of Section 19(1), which requires the Commission to publicly display the preliminary voters’ register for public scrutiny at least 90 days before the polls, INEC published the voters’ register on the Commission’s website and across polling units in the country from 12 – 25 November 2022.

*“During the period of the display of the voters’ list under this Act, any person may—*  
*(a) raise an objection on the form prescribed by the Commission against the inclusion in the supplementary voters’ register of the name of a person on grounds that the person is not qualified to be registered as a voter in the State, Local Government or Area Council, Ward or registration area or that the name of a deceased person is included in the register ; or*

*(b) make a claim on the form prescribed by the Commission that the name of a person registered to vote has been omitted.” Section 19(3), Electoral Act 2022*

This exercise was a first and underscored INEC’s determination to leverage technology for transparency. This provision for public scrutiny of the Central Electronic Voters’ Register democratized the verification of authentic voters and sought to minimise the potential for electoral fraud and identity-based rigging schemes like *Omuma Magic*.<sup>13</sup> <sup>14</sup>At the end of the exercise over 53,264 objections were received<sup>15</sup> and as mandated by Section 19(2) of the Act, all objections were considered. As evidenced by difference of the number of preliminary voters’ register (93,522,272) and the final voters’ register (93,469,008), 53,264 illegal registrants were removed.<sup>16</sup>

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<sup>11</sup>Ewepu, G. (August 27, 2022) “2023: CSOs kick against Buhari’s nomination of INEC RECs”, Vanguard Nigeria. Retrieved May 23, 2023

<sup>12</sup>PLAC, (October 7, 2022) “Senate Approves Nineteen Persons for Appointment as RECs for INEC” Retrieved February 23, 2023

<sup>13</sup>In Omuma ward of Imo state, the number of voters were allegedly exaggerated by registration numbers. It is claimed that foreign citizens and dead people were found on voter register.

<sup>14</sup>Aworinde, T., (December 23, 2022) ‘Viral Omuma Issue Resolved,’ INEC Decries Duplicate Voter Registrations In Imo, Channels TV. Retrieved June 20, 2023





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The more contentious aspects of the use of technology in the 2023 elections were the Commission's use of technology during core processes of the electoral process, such as voter accreditation and vote transmission. The introduction of technology punctuated discussions and drove interest in the lead up to the election. As enabled by the 2022 Act, INEC introduced the Bimodal Voter Accreditation System (BVAS) for biometric accreditation and INEC Result Viewing Portal (IREV), a result viewing and the transmission platform with the aim of minimising the chaos and opacity associated with the viewing and transmission models used to process and aggregate election results in previous electoral cycles. Though the BVAS and IREV are not cited in the Act, the 2022 Act was the first one that enabled the electoral body to determine its preferred modes of accreditation, voting and transmission. INEC introduced BVAS and IREV to Nigeria in off-cycle elections held in 2022 in Osun and Ekiti states and the way it was deployed in those elections made the electorate believe that the 2023 elections would be more credible due to the influence of technology.

Nevertheless, the deployment of technology did not achieve the desired results uniformly. While BVAS achieved its *raison d'être* of minimizing the efficacy of identity-based rigging models like underage and multiple voting, IREV failed considerably in its aim to increase the transparency of the collation process. This shortcoming was especially pronounced during the presidential elections. In addition, IREV and the extent of its range of utility in the process have become a subject of controversy in post-election litigation with the Supreme Court declaring that INEC is not bound to electronically transmit result in the Osun state case.<sup>17</sup> Data obtained from CDD observers in the field suggest the BVAS malfunctioned in 11.8% of cases for gubernatorial elections, while the absence of the results of up to 13,000 polling units on the IREV platform after the elections led to more distrust of the system and provided disinformation strategists with the leeway to mislead the electorate. Besides being one of the leading sources of contention in the 2023 election cycle, technology has proven not to be the silver bullet to Nigeria's electoral challenges. It remains to be seen what the Presidential Election Petition Court (PEPC) will rule in litigations based on irregularities with IREV and BVAS.

## **Timelines: between judicial rascality and judicial pragmatism**

The 2022 Act provides a strict timeline for adherence to conditions set out by the electoral body. While INEC and most political parties adhered to these revised timeframes, the judiciary, however, flaunted them despite continuing decries from the civil society. The postponement of the gubernatorial elections by one week was also a direct consequence of a court ruling in the aftermath of the 25 February presidential election.<sup>18</sup> Allegedly the country with the highest number of electoral litigations in the world,<sup>19</sup> the influence of the court still looms large in the Nigerian electoral process despite the 2022 Act.

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<sup>15</sup>Are, J. (January 11, 2023), INEC: 53,264 objections received over voters register — ineligible names have been removed, The Cable. Retrieved 23 February 2023

<sup>16</sup>Are, J. (October 26, 2022), "INEC: Preliminary number of registered voters stands at 93.5m" The Cable. Retrieved, 15 June, 2023

<sup>17</sup>Olabimtan, B. INEC not bound to electronically transmit results says Supreme Court, the Cable. Retrieved 15 May, 2023

<sup>18</sup>Onyekwere et al., (9 March 2023), "Court orders BVAS reset as INEC shifts guber polls to March 2018", Guardian. Retrieved April 15, 2023

<sup>19</sup>Addeh, E. And Igbintade W., 29 March 2023, Falana: It's Disturbing that Nigeria Has Highest Election Matters in Court Globally



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In conformity with Section 28(1) of the Act, requiring that election notice be published *at* least 360 days in advance of the election date, the electoral body published notice of elections on 28th February 2022 – 363 days before the presidential and National Assembly elections. The dates initially slated for the elections – 18 February 2023 and 4 March 2023 – were respectively revised to 25 February and 11 March to conform to the Act’s provision.<sup>20</sup> This contrasts with the 90-day provision of the now repealed Electoral Act 2010. For by-elections, however the new Act retains 14 days as the notice period.

Party Primaries were also held earlier in the 2023 electoral cycle, as the Act in Section 29(1) mandates political parties to notify INEC of their nominated candidates no later than 180 days before the election. This is 120 days earlier than the 60 days provision of the previous Act. To comply with this provision and make room for litigations that may arise, INEC mandated that initial submission of nominated candidates from political parties be made between April 4 and June 3, 2022.<sup>21</sup> Though political parties adhered to this provision in their candidate nomination, the court called for fresh primaries beyond the indicated dates directly contravening this provision of the 2022 Electoral Act. Fresh gubernatorial primaries were court-ordered in Akwa-Ibom,<sup>22</sup> and Taraba state.<sup>23</sup> At the federal constituency level, fresh primaries were also ordered in Obafemi-Owode Abeokuta North, Akoko South-East and Akoko South-west Federal Constituency in Ondo State, Obafemi-Owode were affected among others. Some candidates also saw their bid nullified and reinstated severally by the courts. For example, Dauda Lawal was reinstated as the PDP governorship candidate in Zamfara State less than 60 days to the election.<sup>24</sup> Peter Dakum’s candidacy as the Labour Party governorship candidate for Plateau was also upheld by the court on 15 March, only three days to the gubernatorial election.

Though some commentators termed the courts’ seeming disregard for the prescribed timelines as judicial rascality,<sup>25</sup> political actors who filed the court petitions may argue that such rulings are in pursuit of electoral justice. Nonetheless, the disruptive nature of such rulings on the electoral process cannot be overstated.

Section 84(13) provides that political parties that fail to comply with the guidelines outlined by Section 84 of the Electoral Act in conducting primaries, will have their nominated candidates excluded from the ballot. In the 2023 election cycle, there were a good number of instances where parties complied with the Act’s provisions in this regard. However, there were some alleged exceptions that made a good number of gubernatorial primaries, subjects of litigation with Zamfara PDP gubernatorial being one of the most prominent cases.<sup>26</sup> INEC, for its refusal to recognize candidates emerging from primaries that were not in line with its guidelines was the subject of over 600 law suits.<sup>27</sup> Most of the candidates that INEC rejected in accordance to the provisions were reinstated by the courts. While some may argue

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<sup>20</sup>Adenekan, S. (February 26, 2022), “INEC changes dates for 2023 general elections”, Premium Times. February 20, 2023.

<sup>21</sup>Adenekan, S. (April 5, 2022), 2023: INEC warns political parties against non-compliance with timetable, Premium Times. Retrieved 20 June

<sup>22</sup>Umo, I. (November 14, 2022), Court Orders Fresh APC Gov’ship Primaries In Akwa Ibom, Daily Trust. Retrieved February 23, 2023

<sup>23</sup>Ozozoyin, G. (February 1, 2023), Reactions trail S’Court judgement on Taraba APC governorship election, Daily Post. Retrieved May 25, 2023

<sup>24</sup>Babangida, M. (January 6, 2023), “Appeal Court Reinstates Dauda Lawal As Zamfara PDP Governorship Candidate”, Premium Times. Retrieved February 23, 2023

<sup>25</sup>Peterside, D. (November 21, 2022) “2023: Battling intemperate language, fake news and judicial rascality”, Premium Times. Retrieved February 23, 2023

<sup>26</sup>Adegbite, T. (September 16, 2022) Court nullifies PDP gubernatorial primary in Zamfara, Tribune. Retrieved February 20, 2023



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that this eventuality implies independence of the judiciary, the disruptive role of the courts to the Act's objectives is noteworthy.

In the post-election phase of the 2023 cycle, the role of the judiciary still looms large. While it is an encouraging trend to see dissenters take matters to court instead of to the streets, the extent of post electoral litigation also evidences eroding trust in INEC and the electoral process. The high number of elections petitions also lend some credence to the argument that there is a tendency towards an excessive judicialization of the electoral process. Despite the revised provisions and the conduct of the elections, contenders in the Presidential elections are now relying on the courts to adjudicate on the results of the elections. Leaving the outcomes of democratic processes like elections to the say-so of the court instead of the polls significantly defeats democracy's objectives.

### **Longest campaign cycle: Necessary or Problematic?**

The campaign season that preceded the 2023 elections was the longest in Nigeria's electoral history. Section 94(1) of the Act is directly responsible for this outcome. It provides for the commencement of campaign activities 150 days to elections and requires that they end 24 hours before the polls. This is in contrast with the 90 days allowed under the previous Act. This clause's intended effect was to give political parties more time to disseminate their manifesto promises while allowing voters more time to determine their preferred candidates. However, given how the campaigns played out in the 2023 election, it is important to question the necessity of an increased campaign period. Despite a longer campaign period, governance questions were not at the fore of electoral discourse in the 2023 cycle. Instead, character allegations, ethnic contentions, inter-party squabbles and questions around the personal background of the candidates dominated the campaign discourse.

Longer campaign period also did not eliminate election day campaigning. Despite the Act's provision in Section 94(2) prohibiting election day campaign, data from CDD observers at the polls suggest that campaign and outright vote buying were a prominent feature of the 2023 elections with more of it occurring during the gubernatorial and state House of Assembly Elections. 11.3% of CDD observers reported some form of vote buying during the presidential elections and 25.3% of observers reporting vote buying during the gubernatorial elections. The Nigerian Police Force also specified that 781 arrests were made for reasons including political thuggery and ballot disruption<sup>28</sup> while the Economic and Financial Crimes Commission (EFCC) made 65 arrests for alleged vote buying during the governorship polls.<sup>29</sup> For arrested defaulters, it remains to be seen whether the two years' imprisonment and/or fine of five hundred thousand Naira will be applied.

*No registered political party in Nigeria, its aspirants or candidate shall be prevented from holding rallies, processions, or meetings at any time for their constitutional political purposes, and the Police shall in a consultative manner, resolve any conflict of time and venue between and amongst parties where such arises.*  
Section 91 (4)

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<sup>27</sup>Nnochiri, I. (March 27, 2023) 2023: We're currently facing over 600 court cases, INEC cries out, Vanguard Nigeria. Retrieved May 25, 2023

<sup>28</sup>Emperor, S., (March 27 2023), "2023 Elections: Police Arrest 781 Electoral Offenders", Channels TV.

<sup>29</sup>Vanguard, (March 18, 2023), "2023 gov elections: EFCC arrests 65 persons for alleged vote-buying" Retrieved May 25, 2023



## Campaigning with Identity Slurs

Despite the Act's proscription of identity-based incendiary speeches and slogans to garner votes in Section 92(1-2) occurrences of ethno-religious slurs by political actors went unchecked. The above provisions prohibited political and campaign slogans from being insulting language that could offend someone's religious, ethnic, tribal, or sectional sentiments. Nonetheless, candidates and their spokespersons were repeatedly documented motivating the electorate to vote on ethno-religious basis.<sup>30</sup> *Bayo Onanuga*, the spokesperson for Bola Tinubu Presidential Campaign Council unapologetically spoke against the Igbos and their participation in Lagos politics<sup>31</sup> in the lead up to the gubernatorial elections in Lagos. *The PDP candidate was also to have canvassed for votes on ethnic grounds during the Arewa Policy Dialogue in Kaduna*<sup>32</sup> while the Labour Party's Presidential candidate was also associated with an audio file where he was allegedly soliciting for votes on religious grounds. *The authenticity of the audio is yet to be established.*<sup>33</sup>



However, the campaign season featured recurring incidences that violated these provisions with no telling repercussions for defaulting candidates. Besides the potential for ethno-religious slurs to spark violence, it also does not augur well for Nigeria's diversity and democracy. For future elections, stricter verification and enforcement mechanisms should be in place.

<sup>30</sup>Daily Trust, (March 26, 2023), "How Ethnicity, Violence, Internal Crisis Influenced Governorship Poll In South" Retrieved May 25, 2023

<sup>31</sup>Ahmed Oluwasanjo, (March 19, 2023) Igbos are aliens in Yorubaland; they should never come near Lagos politics again, Tinubu's spokesman Bayo Onanuga declares, Gazette. Retrieved February 23, 2023

<sup>32</sup>Egobiambu, E. (October 16, 2022), 2023: Northerners Need Someone From North, Not Igbo Or Yoruba – Atiku, Channels TV. Retrieved February 23, 2023

<sup>33</sup>Adeyemi, I. (April 2, 2022), Leaked Audio: Peter Obi's 'religious war' phone call with Oyedepo stirs controversy, Premium Times, May 27, 2023



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## Upward Review of Limits and Loopholes in Financing Legislation

Section 88(2-7) of the Act introduced a new maximum limit on election expenses for candidates with the limit for the presidential election being N5,000,000,000 (Five billion Naira), and limit for governorship election being N1,000,000,000 (One billion Naira). Though a specific reason for the increase was not stated, it mirrors the growing importance of money in Nigeria's elections. This report also estimates that it was reviewed to manage the impact of inflation on election expenses.

Section 88(9) fixed the penalty for defaulting candidates at 1% of the amount permitted as expenditure limit or imprisonment for a term not exceeding 12 months or both. However, while the Act details how the audited financials of political parties will be assessed for adherence to prescribed limits, it is not clear how the finances of candidates will be assessed to know when these set limits have been reached or crossed.

Likewise, while the Act explains what constitutes election expenses, it is unclear whether election expenses incurred by candidates feed into the parties' election expenses or if they are separate. Subsequently, in Section 89(2), where the Act provides that the limit on election expenses will be determined in consultation with the political parties, it gives room for opacity and manipulation which makes the limitation clause redundant and ceremonial at best. There is also an important question of how to track and assess cash donations and expenses because this means not all the monies received can be accounted for, audited or be subject to INEC's review.

These loopholes leave room for manoeuvre by defaulters. Notwithstanding INEC's promises to track election financing patterns in the 2023 elections, the Commission has so far remained inactive in that regard.<sup>34</sup> Given the wide range of responsibilities that INEC is saddled with, there have been arguments that the electoral body does not have the capacity or mechanism to handle the tracking of election financing. This has led to calls to strip the Commission of this responsibility and hand it over to other capable bodies who have the necessary expertise and resources. This is to ensure effective tracking of election financing and expenses.<sup>35</sup>

## Including Vulnerable Populations

Data from CDD election observers suggest that the attention paid by the Act to voters with Disabilities (PWDs) and voters with special needs translated to increased inclusion for them at the polls. Though 7% of observers noted that polling units were not accessible for persons with disabilities, despite having voters with such needs, the data suggest a higher rate of inclusion compared to 2019. As required by Section 9 (1)(b) of the Act, the voters' register for the 2023 elections was disaggregated by disability status and type of disability. This meant that INEC had foreknowledge of polling units with voters that needed special assistance and accessibility needs and could deploy adequate materials accordingly.

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<sup>34</sup>Alliance for Financial Monitoring, (March 9, 2023), "INEC silent about enforcement of campaign finance provisions in the new electoral act" Retrieved May 25, 2023

<sup>35</sup>Imukudo, S. (October 5, 2022), "2023: INEC lacks 'mechanism' to monitor election financing" Premium Times. Retrieved July 27, 2023



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Section 54(2) of the Act additionally mandates INEC to take reasonable steps, including off-site voting where necessary, to ensure PWDs, and special needs and vulnerable persons are not disenfranchised. While Section 54(1) allows visually impaired and incapacitated voters to be accompanied to the polling units by a chaperone of their choice, CDD observer data suggests that the elderly and PWDs were indeed assisted during the voting process – especially in the Northwest.

*54 (1) A Voter with visual impairment or other form of disability who is otherwise unable to distinguish symbol or who suffers from any other physical disability may be accompanied into the polling unit by a person chosen by him or her and that person shall, after informing the Presiding officer of the disability, be permitted to accompany the voter into the voting compartment and assist the voter to make his or her mark in accordance with the procedure prescribed by the Commission.*

*(2) The Commission shall take reasonable steps to ensure that persons with disabilities, special needs and vulnerable persons are assisted at the polling place by the provision of suitable means of communication, such as Braille, large, embossed print, electronic devices, sign language interpretation, or off-site voting in appropriate cases.*

With over 2.2 million displaced people in Nigeria due to the insurgency and environmental issues, Internally Displaced People (IDPs) constitute a vulnerable population. To ensure their inclusion, INEC prioritised IDPs in its legislation and framework. The IDP framework did not however result in increased inclusion for Nigeria’s IDP population. In some parts of Bayelsa, where people were displaced by floods in October 2022, many lost their permanent voter’s cards and many others could not go back to their assigned polling units to vote due to the displacement.

Nonetheless, the Act was weak on diaspora inclusion and affirmative action reporting. Nigerians in diaspora who were looking forward to seeing their diaspora voting rights instated by the new Act, were disappointed. In a similar vein, despite the negligible number of women candidates’ cycle-on-cycle, the Act has no affirmative action provision to increase women representation.

## **Conduct and Postponement of elections in emergencies.**

The lead up to the 2023 elections was marred with widespread violence and insecurity, which made certain regions volatile and flashpoints for violence during the polls. Though the Act made provisions, in Sections 24(2) and Section 24(3), for the postponement of elections in contexts of insecurity where a “cogent and verifiable” threat and breach of peace is confirmed, these provisions were not mobilized for the Presidential elections. Elections were rather postponed for logistics and infrastructural reasons as was the case in some parts of Bayelsa state during the Presidential elections. For the gubernatorial elections, however, one can cite its mobilization in ten polling units of the Victoria Garden City (VGC) Lagos. The REC invoked suspected violence against INEC staff as justification the postponement of gubernatorial elections. The elections were held the following day – 19 March 2023.

Besides violence and infrastructural reasons, another emergency that impacted the conduct of the elections was the death of a candidate. Where a candidate dies before the elections, INEC is mandated by the 2022 Act in Section 34(1) to postpone the elections for up to 14

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days. However, there was an uneven enforcement of this provision in the 2023 election cycle. While it was enforced in the case of the defunct Oyibo Chukwu, Labour Party candidate for the Senatorial seat in Enugu East,<sup>37</sup> who was murdered three days to the Presidential and National Assembly elections, it was not in other cases.<sup>38</sup> In Abia, where the PDP governorship candidate,<sup>39</sup> Prof Uche Ikonne, died and in Adamawa where the National Rescue Movement candidate, Aliyu Maina, died weeks before the elections,<sup>40</sup> elections in both states were held alongside other gubernatorial elections and not postponed as required by the Electoral Act.

Section 34(3)(a) mandates the postponement of elections, in the case of death, for a maximum of 21 days where polls have commenced. There was no occurrence that warranted such a mobilization and enforcement.

## **Results Declaration: Overvoting and Declaration Under Duress**

The definition and implications of overvoting were revised in Section 51(2) the Electoral Act 2022. Before the 2022 Act, over-voting resulted when the number of votes cast is more than the total number of registered voters in a polling unit. This flawed definition was one of the recurring sources of contention during post-election litigation.

*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. Section 51 (2)*

The above section now empowers INEC to determine over-voting by using the number of accredited voters as the benchmark rather than the number of registered voters. Consequently, overvoting occurs when “the number of votes cast at an election in any polling unit exceeds the number of accredited voters in that polling unit.” In a situation over-voting occurs, the Act mandates the presiding officer to cancel the votes of the polling unit. Where there is no cancellation, candidates of the election can legitimately challenge the results of the election as APC did in Bauchi.<sup>41</sup> It is, however, unclear if all polling units where over-voting occurred were reported and all the votes cancelled. In Adamawa and Kebbi states, where the gubernatorial elections were declared inconclusive, overvoting in some regions of both states were some of the reasons outlined. Takai state constituency<sup>42</sup> of the Kano State House of Assembly was also declared inconclusive due to reported over-voting in five polling units. The foregoing was only made possible by the Electoral Act’s provisions.

It is also noteworthy that Section 65 (1) of the Act gives INEC the authority to investigate election result declarations made under duress. However, such a review must be completed within seven days of the declaration. This new introduction to the Act addresses the issue of results declared under duress<sup>43</sup> which has the potential of returning a candidate that would have otherwise lost the election. However, Section 65(2) underlines that INEC’s review may also be subject to a judicial review.

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<sup>37</sup>Njoku, L. (March 7, 2023), Oyibo Chukwu’s murder: Brother nominated as LP senatorial candidate, The Guardian. Retrieved May 25, 2023

<sup>38</sup>Okoli, A.(February 22, 2023), Labour Party Senatorial candidate, Oyibo Chukwu killed in Enugu, Vanguard Nigeria. Retrieved May 25, 2023

<sup>39</sup>Chinagorom Ugwu, (January 25, 2023), Abia PDP governorship candidate is dead, Premium Times. Retrieved May 25, 2023

<sup>40</sup>Vanguard, (January 27, 2023), NRM guber candidate in Adamawa, Aliyu Maina is dead, Vanguard Nigeria. Retrieved May 25, 2023

<sup>41</sup>Shibayan, D. (March 20, 2023), ‘Over voting’: APC asks INEC to cancel Bauchi governorship election, The Cable. Retrieved June 25, 2023

<sup>42</sup>Premium Times, (March 19 2023) , “INEC declares Takai state constituency election in Kano inconclusive,”

<sup>43</sup>Onyeji, E. (February 25 2019), “Under duress’, INEC official declares Okorochoa winner of senatorial election”, Premium Times. Retrieved June 7, 2023



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## Post-Election Litigation in 2023: Between the Letter of the Law and Judicial Interpretation

In accordance with the Act's mandate in Section 130 (3a) that election tribunals be constituted not later than 30 days before the election, members of the election petition courts were inaugurated on November 7, 2022, well-ahead of the 30-day requirement.<sup>44</sup> The Act also lays out the grounds on which an election petition is warranted:

- (1) An election may be questioned on any of the following grounds—*
- (a) a person whose election is questioned was, at the time of the election, not qualified to contest the election.*
- (b) the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;*
- or*
- (c) the respondent was not duly elected by majority of lawful votes cast at the election. Section 134 (1)*

In the 2023 election cycle, petitions submitted to the Presidential Election Petition Court (PEPC), were based on one or more of the relevant grounds. The People's Democratic Party, the Labour Party and the Allied People's Movement's petitions are seeking to overturn the declared election results by attempting to prove that Tinubu did not get at least 25% of the votes in the Federal Capital Territory (FCT) as required by the Section 134 (1) and (2) of the 1999 Constitution of Nigeria as amended - while also proving that the vice-presidential candidate, Kashim Shettima was not qualified to contest because he was doubly nominated as a senatorial and Vice Presidential candidate before the February 25 polls – a contravention against the provision of the Electoral Act 2022 the authenticity of the credentials submitted to the electoral body by the declared winner – his previous conviction records in the United States. The response of the United States' judiciary –

One the most controversial issues at the PEPC is the winner's 25% vote requirement in the FCT. While some argue that the FCT's special status makes it imperative for the winning candidate to garner at least 25% of the capital's votes,<sup>45</sup> others contend that it is unnecessary.<sup>46</sup>

- (1) A candidate for an election to the office of President shall be deemed to have been duly elected, where, there being only two candidates for the election –*
- (a) he has the majority of votes cast at the election; and*
- (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. Section 134(1)*

Given that President Tinubu is the only declared President in the Fourth Republic who did not poll at least 25% of the votes in the FCT, this case will set a precedent regarding the interpretation of this contentious section of the 1999 Constitution (as amended). If the judgement delivered on the Awolowo vs Shagari 1979 case regarding the interpretation of the same section of the constitution is anything to go by, the case will be determined by the interpretation of the presiding judges and not by the letter of the law or even logic.

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<sup>44</sup>Ejekwonyilo, A. (November 7, 2022). 2023: CJN warns election tribunal judges against corruption, Premium Times. Retrieved February 23, 2023

<sup>45</sup>Daily Trust, (April 23, 2023,) Presidential 25% Requirement: Why FCT Voters Are Special. Retrieved March 23, 2023

<sup>46</sup>Ochojila, A. 6 July 2023, Tinubu didn't need to score 25% in FCT, Senate Majority Leader tells court, The Guardian. Retrieved June 23, 2023





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## Recommendations and Implications for Future Elections

While the Electoral Act is making its mark on Nigeria's democracy, enforcement remains a challenge that can derail its objectives. The many useful changes that it introduces to the electoral process in Nigeria is indicative of the capacity of Nigerian processes to change. The Act's attempt at inclusion and ensuring vulnerable populations like IDPs and PWDs are not disenfranchised is a mark of progress in Nigeria's democracy. However, as over 7% of observed polling units did not provide PWDs with the necessary support, it is necessary to create an enforcement outline that can include pre-election checks and PWD inclusion certification of polling units.

Given Nigeria's growing population in the diaspora and their economic contributions to the country, being able to cast their votes during elections will be a step in the right direction. However, the current Act is silent on this point. In a similar vein, the 2023 election cycle saw a negligible participation of women with only one of the 18 Presidential candidates being a woman and 26 of the 420 gubernatorial candidates being women. Women's declining participation in elective politics, despite parties like the APC and PDP giving them free nomination forms, is indicative of the need to resort to legally rooted affirmative action in favour of women. Against the background of the success of advocacy efforts for PWDs inclusion in the electoral process, it is expected that women focused civil society organizations campaign for affirmative action in favour of women contesting at the polls ahead of the 2027 elections. Revisions to the Act should include points on these important inclusion themes.

The judicial nonchalance towards the timeframes prescribed by the Electoral Act could have significant repercussions on the elections and in the long run, on Nigeria's democracy. There should be strict laws that ensure that where a consensus candidate cannot emerge from primaries by 180 days to the election, the party should be willing to forfeit its nomination for the elective position concerned. Furthermore, just like the Act set out relevant grounds for a post-election petition, there should also be relevant grounds established without which members external to a party should not be able to challenge said party's nomination in the lead up to the election.

On election financing and limitation on expenses, the current Act is riddled with loopholes that provide defaulters with relevant grounds to escape prosecution or sanctioning. The Act should be revised to clearly spell out what constitutes a violation of set limits and guidelines. As the Act is only as binding to the degree which it can be enforced, more investment should go into tracking and sanctioning violations of its provisions. Outsourcing the election expense tracking and reporting to an organization with capacity to verify violations and enforce sanctions will be of immense benefit to INEC and bolster the Act's effectiveness.

The introduction of technology to core electoral processes was a mixed bag during the 2023 elections. While credibility seemed to be restored and civic engagement increased in the lead

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up to the polls, the aftermath of the elections ushered in increased scepticism about the use of technology in elections. It remains to be seen how technology will be utilised in future elections. In the immediate future, it remains unlikely that Nigerians will trust a technology-based process in the future as much as they did in the lead up to the 2023 elections.

The most spoken about feature of the Act is its enablement of INEC to determine the mode of voting and transmission of votes, which includes technology. The subsequent introduction of technology like BVAS and IREV made the electorate believe that the votes were going to be transmitted electronically and this impression was not corrected by the electoral body. Precisions only came after the fact in Court. The Act should include provisions that require the electoral body to pre-inform voters about the mode of transmission that will be adopted during elections. This even more important given the polemics that result transmission through IREV has generated.<sup>47</sup>

The timelines for a full post-election litigation process, including appeals, as established in the Act ranges from eight to ten months. Given these timelines, INEC-declared winners would be sworn in before the final judgements are delivered. Abuse of the power of incumbency by sworn in winners could influence the outcome of the proceedings. On the hand, if the court overturns INEC's declaration, it could cause disruptions to governance. To stem disruptions to governance and to prevent more states from falling into the off-cycle election category, some analysts advocate for a shorter run for post litigation processes in the image of what was obtained in Kenya.<sup>48</sup> Others, however, align with existing timelines but argue that the elections should be held at least one year before the official swearing in and inauguration to allow the conclusion of court proceedings before the inauguration of officials.

The current election cycle showed disparities in the enforcement of emergency measures as defined by the Act. For instance, the Act-dictated implication of a candidate's death – 14-day postponement – was unevenly applied. Where differences in enforcement may be necessary, it should be clearly spelt out in the Act to prevent political actors from challenging election results on unfounded technicalities. Furthermore, Section 24 which prescribes a postponement of election in contexts of insecurity where there is a cogent and verifiable. The important questions that a revision of the Act should also explicitly consider, regarding violence, is who determines when the threat to peace and security is “cogent and verifiable?” What scale of violence is significant enough to warrant a postponement in some parts or all the country? How will cogency of threat and fatality be measured? In a case where elections have commenced and the decision to postpone is made, will already cast votes remain valid? In view of the forgoing, given the evolution of the 2023 election cycle and the ambiguities within the 2022 Electoral Act that led to mass confusion and unmet expectations, it is imperative to undertake a thorough review Act to enhance its precision and reassess its enforcement mechanisms. These are necessary next steps for Nigeria's democracy.

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<sup>47</sup>Addeh, E. (April 11, 2023), INEC Replies APP, Says Electronic Collation of Results Not Mandatory, This Day. Retrieved June 12, 2023

<sup>48</sup>Iwok I, and Ochei, A. (April 13, 2023), Election petitions: What Nigeria can learn from Ghana, Kenya, Business Day. Retrieved 20 July.

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