

Scrutinising Nigeria's Electoral Trajectory: The Electoral Act 2022, The 2023 Polls, and the Judiciary's Verdict

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Abstract

The Consistent scheduling of elections remains a cornerstone of Nigeria's democratic development. The 2023 general elections, marking the seventh consecutive electoral cycle since the 1999 democratic transition, significantly tested the nation's democratic infrastructure, particularly in light of electoral reforms encapsulated in the highly anticipated Electoral Act 2022. This paper critically examines the influence of this Act on the 2023 general elections and explores the ramifications of the Presidential Election Petition Tribunal's (PEPT) judgment for the future of elections in Nigeria. It scrutinises the deployment of technological innovations, such as the Bimodal Voter Accreditation System (BVAS) and the INEC Result Viewing Portal (IReV), for voter accreditation and results transmission, alongside the attendant operational difficulties. The analysis also highlights persistent challenges that cast doubt on the Independent National Electoral Commission's (INEC) capacity to deliver transparent, free, and equitable elections in 2023. Employing a qualitative methodology, this study draws upon an extensive review of desktop literature, including official documents, academic books, journal articles, media reports, and legal instruments. Key findings indicate that several provisions within the Electoral Act 2022 suffer from ambiguity, with certain sections being overly broad or allowing excessive latitude for subjective interpretation. To bolster the credibility of future electoral contests, the study advocates for the safeguarding of voter interests through enhanced legal certainty across all electoral stages, necessitating the elimination of ambiguities within the Electoral Act and associated INEC guidelines. Such clarity is crucial to mitigate the risk of conflicting interpretations and foster greater public trust.

Keywords: Electoral Reforms, Electoral Act 2022, Election Technology, Electoral Litigation, Nigerian Elections

Introduction

Nigeria's electoral history since gaining independence has been characterised by persistent anxieties surrounding irregularities, violence, and acrimonious political contests (Ibrahim, et al., 2011; Ojo, 2021). The aspiration for good governance via democratic means was frequently disrupted by military interventions and their extended periods in power. Consequently, the 1999 transition to civilian rule represented a significant milestone, heralding a renewed commitment to constitutionalism and democratic electoral competition for political succession.

Following the 1999 transitional election, Nigeria has conducted six subsequent general elections (2003, 2007, 2011, 2015, 2019, and 2023), the longest uninterrupted sequence in its post-colonial era. Despite concerted efforts to refine the electoral system, these elections have

consistently raised concerns regarding: (i) the Independent National Electoral Commission's (INEC) capacity to organise free, fair, credible, and peaceful elections; (ii) the propensity of political actors to subvert electoral processes in a bid to secure victory at any cost; and (iii) declining voter turnout, indicative of growing apathy (The Cable, 2023).

In response to these challenges, Nigeria has undertaken several electoral reform initiatives, notably the 2008 Electoral Reform, which led to the Electoral Act 2010, primarily addressing the widespread criticisms of the 2007 elections (Ojo, 2021). While the 2010 Act introduced some improvements, persistent issues like electoral violence, voter disengagement, and questions regarding election credibility necessitated further reform, culminating in the Electoral Act 2022 (Ojo, 2021). This Act introduced significant provisions, including earlier disbursement of election funds to INEC (Section 3(3)), reinforcement of INEC's neutrality (Section 8(5)), revised timelines for party primaries and candidate submissions (Section 29(1)), and crucially, legal backing for electronic voter accreditation and results transmission (Section 47(2)). There was considerable public and analytical opinion suggesting that the 2022 Act could enhance voter confidence, potentially leading to increased participation, as evidenced by the 93.4 million registered voters for the 2023 polls, an increase of 9.4 million from 2019 (Suleiman, 2023).

The persistent concerns regarding INEC's conduct, political actors' behaviour, and voter participation necessitate policy interventions grounded in empirical research. Past elections have been plagued by logistical failures disenfranchising citizens (Aluaigba, 2016), imposition of candidates, multiple voting, vote buying, and electoral violence, all contributing to voter apathy (Abati, 2022b). Voter turnout statistics illustrate this decline: 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 diminishing participation poses a significant threat to democratic deepening.

This study aims to interrogate the impact of the Electoral Act 2022 on the 2023 general elections and the implications of the subsequent presidential election litigation. Specifically, it seeks to:

- i. Assess the effect of the Electoral Act 2022 on INEC's conduct throughout the 2023 election cycle.
- ii. Analyse the consequences of the Presidential Election Petition Tribunal's judgment on the Electoral Act 2022 and the prospects for future elections.
- iii. Identify opportunities for fostering peaceful, fair, and credible elections beyond 2023.
- iv. Proffer evidence-based recommendations to enhance Nigeria's electoral framework.

The scope is primarily focused on the interplay between the Electoral Act 2022, the conduct and outcome of the 2023 presidential election, and the interpretations offered by the Presidential Election Petition Tribunal. This study adopts a qualitative research design, primarily utilising multiple sources of data. It involves an extensive desktop literature review, incorporating empirical studies, official documents, published books, academic journal articles, reputable media reports, and relevant legal documents, including the Electoral Act 2022 and court judgments. This approach allows for a comprehensive analysis of the phenomenon under investigation, drawing on existing scholarship and official records to evaluate the impact of the electoral reforms and the subsequent legal challenges.

1. Studies on Electoral Management and Outcomes

Mainstream literature on electoral integrity commonly identifies structural and institutional factors as the major influence on electoral integrity (Madueke and Enyiazu, 2025). The structure of a society is seen by some scholars as a significant contributor to issues affecting electoral integrity. James et al. (2019) define structural factors as encompassing the “economic and social structure that shape power relations between citizens and elites, such as economic inequality and heterogeneity.” This perspective assumes that citizens' economic status, educational attainment, media access, and proximity to urban centres significantly influence the integrity of electoral processes.

Other studies also buttress this point, they suggest that more affluent nations generally have a greater likelihood of sustaining electoral democracy (Brownlee and Miao, 2022; Nwagwu et al., 2022). Specifically relating to developing contexts, Nwagwu et al. (2022) observe that poverty, illiteracy, and unemployment render marginalised voters particularly vulnerable to practices such as vote buying. They contend that impoverished individuals, including those in low-income states like Nigeria, may find it difficult to resist monetary inducements for their votes. Concurrently, illiterate voters may face challenges in understanding electoral guidelines or utilising election-related technologies. Consequently, it is often argued that a society with a substantial middle class is more conducive to electoral integrity, as this demographic tends to demand better governance and accountability in exchange for their votes and taxes (Van de Walle 2012). While this argument holds merit, it can be critiqued for implying that states must fully resolve issues of poverty and illiteracy before achieving credible elections, potentially overlooking other critical variables and the agency of various actors.

Another stream of scholarship emphasises the direct impact of legal frameworks, rules, legislation, and electoral systems on electoral integrity (Miller and Li 2023; Debrah and Owusu-Mensah 2023). The specific types of electoral systems and voting mechanisms adopted by a state are considered to have potential consequences for electoral integrity outcomes. Norris (2018) found that proportional representation (PR) systems tend to correlate positively with higher levels of electoral integrity compared to other systems. Her evidence suggested that PR outperforms majoritarian systems in overall electoral integrity, helping to reduce risks of electoral fraud and gerrymandering, while also promoting equal opportunities for women and other minority groups. Norris (2018) concluded that PR “generally serves to protect the integrity of the electoral process and provide checks on manipulation and malfeasance at different stages.”

However, this perspective is not without its detractors. Ferrer (2022), using the case of New Zealand, argued that the adoption of PR is not, in itself, sufficient to reduce electoral irregularities. This suggests that while the choice of electoral system is important, other institutional dynamics and contextual factors play a crucial role in shaping the integrity of the electoral process.

Within Nigeria, a growing body of literature examines various facets of electoral integrity, including the role of voters and supporting institutions in shaping the integrity of Nigerian electoral processes (Nwozor et al., 2021; Onapajo and Babalola, 2019; Onuoha et al., 2020). However, these studies have sometimes paid limited holistic attention to the Election Management Body (EMB).

Much of the existing research on Nigerian elections concentrates on specific themes and their impact on electoral integrity. These include vote buying (Stockemer and Amaechi 2023),

electoral violence (Okpotor 2020; Igwe 2012), ethnoreligious factors (Babalola 2020), and the role of technology (Onyekwelu 2023).

Madueke and Enyiazu (2025) observe that a few studies have examined the challenges affecting the Nigerian electoral body in conducting credible elections (Campion and Jega 2023; Ezeador 2023), they often lack a comprehensive assessment of how various attributes of the electoral institution itself affect its capacity. For example, Onapajo (2020), despite a title suggesting a broad examination of the challenges faced by Nigerian electoral institutions, primarily focused on the single factor of the EMB's lack of independence, without thoroughly examining other organisational aspects of the INEC that might affect its capacity to deliver credible elections.

The foregoing review reveals that while existing studies on Nigerian elections are valuable for understanding various contributory factors to electoral integrity, they often do not provide a rigorous, holistic examination of the frameworks relating to election especially the electoral act and the legal precedence emanating from election petition tribunals. therefore, aims to contribute to filling this gap by examining Nigeria's electoral act and the court ruling on electoral matters, and how it affects the future of elections in Nigeria.

2. The Electoral Act 2022: Innovations and Expectations

The Electoral Act 2022 has been widely regarded as a significant legislative effort to reform Nigeria's electoral system in the Fourth Republic. International observers, such as the IRI/NDI International Election Observation Mission to Nigeria (2023), acknowledged it as the first comprehensive electoral reform package in over a decade, addressing numerous deficiencies previously identified by civil society and election monitors. Abati (2022a) similarly described it as a pragmatic step by the National Assembly to enhance electoral integrity and the leadership selection process.

The Act empowers INEC to determine voting methods and results transmission, review results declared under duress, and legally incorporate technology in elections. It redefines over-voting based on accredited voters and mandates provisions for Persons with Disabilities (PWDs), alongside altering timelines for electoral activities (European Union, 2022). Suleiman (2021) highlights key changes from the 2010 Act, such as the early release of funds to INEC (Section 3(3)), extended timelines for party primaries (Section 29(1)), legal backing for electronic accreditation and transmission (Sections 47(2) & 50(2)), and stricter rules on political appointee participation in primaries (Section 84(12)) (see Table 1 in original text for a detailed comparison).

These provisions, as Suleiman (2021) argued, were intended to bolster INEC's independence, address logistical challenges, and reduce human interference, thereby improving electoral credibility. The power to review results declared under duress, for instance, was demonstrated when INEC headquarters nullified the premature declaration of a winner in the Adamawa State 2023 governorship election (Ogundapo, 2023). The redefinition of over-voting using accredited voters was also seen as a measure against inflated voter numbers. The IRI/NDI (2023) noted that early funding for INEC was a positive step, while Abati (2022a) lauded the Act for introducing robust electoral rules. Positive outcomes were anticipated, drawing from experiences in off-season elections in Anambra, Osun, and Ekiti, where technology appeared to enhance transparency and acceptability (Abati, 2022a).

3. Technological Deployment in the 2023 Elections: BVAS and IReV

The 2023 elections were marked by INEC's deployment of the Bimodal Voter Accreditation System (BVAS) for voter authentication and the INEC Result Viewing Portal (IReV) for public access to polling unit results. These technologies were expected to be game-changers, enhancing transparency and reducing electoral malpractice (Osodi-Anadolu, 2023). BVAS, an upgrade from the Smart Card Reader, was designed to verify voters biometrically and transmit accreditation data (Abati, 2022a).

Despite these advancements, the technological infrastructure faced significant challenges. The IReV portal, while a step towards transparency, did not present data in a readily analyzable format, making scrutiny difficult for citizens and observers (IRI/NDI, 2023). Furthermore, access to IReV was initially restricted. Yiaga Africa (2023) pointed out that ambiguous drafting of certain provisions in the Act created confusion in the results management process. A critical issue was INEC's failure to ensure consistent comparison of electronically transmitted results with hardcopy results at collation centres, as mandated by the Act where disputes arose. The fact that only 73% of presidential election results were on IReV when a winner was declared further fuelled controversy (Yiaga Africa, 2023). These technological shortcomings, compounded by what Yiaga Africa (2023) termed "ineffective and ill-timed communication" from INEC regarding delays, significantly eroded public trust.

However, some positive impacts of technology were noted. Iremeka (2023) and Ogieva and Ajisebiyawo (2023) observed that the deployment of BVAS contributed to unexpected electoral outcomes, with several prominent politicians, including sitting governors, losing their bids for various offices. This suggested that BVAS, by enforcing stricter accreditation, limited opportunities for traditional forms of rigging.

4. The Presidential Election Petition Tribunal (PEPT) Judgment: Interpretations and Implications

As has become customary in Nigeria's Fourth Republic, the outcome of the 2023 presidential election was contested in court. Leading opposition candidates alleged widespread irregularities, including result manipulation and INEC's failure to adhere to its own guidelines regarding real-time electronic transmission of results via IReV (Premium Times, 2023). A key contention was whether securing 25% of votes in the Federal Capital Territory (FCT) was a mandatory constitutional requirement.

The PEPT delivered a judgment that had profound implications. It ruled that the Electoral Act 2022 did not make electronic transmission of results mandatory, stating that INEC retained discretion over the mode of transmission under Sections 52 and 65 of the Act. This interpretation contradicted the widespread public understanding and the emphasis INEC itself had placed on real-time electronic transmission. The Tribunal also held that FCT votes did not possess a special status superior to votes from other states and dismissed claims regarding the president-elect's disqualification based on a US civil forfeiture case, distinguishing it from a criminal conviction (Premium Times, 2023).

This judgment, particularly the stance on electronic transmission, was met with disappointment by many who had viewed technology as a bulwark against manipulation (Oloruntade, 2023). Olowogboyega (2023) argued that the 2023 elections demonstrated that technology alone is insufficient without corresponding political will and that while BVAS

addressed some issues, it also created new vulnerabilities. Igbiodolor (2023) contended that the judiciary's affirmation of INEC-declared results, especially in the face of observer reports highlighting credibility issues, could diminish citizen interest in future elections due to a perception of judicial unfairness. The ruling that INEC is not legally bound to electronically transmit results, despite significant public investment and expectation, was seen by some, like Unini (2023), as a misinterpretation of INEC's discretionary powers, which they argued pertained to the choice of electronic device rather than the act of electronic transmission itself.

Ojukwu, Umeifekwem, and Okeke (2023) and the European Union Election Observation Mission Nigeria (2023) criticised the IReV portal for not adhering to open election data principles, limiting genuine public scrutiny due to unreadable or missing forms and access restrictions. The EU EOM (2023) specifically noted that the integrity of IReV was "greatly tarnished" by failures in prompt transmission and publication of presidential results.

5. Pathways to Enhanced Electoral Credibility in Nigeria

Achieving credible, free, and transparent elections necessitates adherence to principles of transparency, allowing all stakeholders to verify compliance with electoral laws (Ezeador, 2023). The original text from which this article is derived rightly points out that unclear provisions in the Electoral Act 2022 and inconsistencies in INEC regulations created ambiguities that need urgent resolution.

Several key areas for reform emerge from the analysis:

- **Legal and Regulatory Clarity:** Future electoral credibility hinges on amending the Electoral Act and INEC regulations to eliminate ambiguities, particularly concerning the electronic transmission of results and result collation procedures. This will prevent conflicting interpretations and bolster voter confidence.
- **INEC's Independence and Capacity:** The selection process for INEC Commissioners and Resident Electoral Commissioners (RECs) requires greater transparency and a focus on non-partisanship and merit, as recommended by the Electoral Reform Committee (2008). Consideration should be given to transferring appointment powers from the President to an independent body like the National Judicial Council (NJC) to insulate INEC from political influence. Okeke (2023) suggests unbundling INEC into specialized commissions to enhance efficiency and focus.
- **Transparency in Technological Deployment:** As highlighted by the European Union Election Observation Mission Nigeria (2023), INEC must improve transparency regarding its technological systems. Specifications, test results, procurement details, and operational protocols for BVAS and IReV should be publicly available. The law should mandate disclosure to permit public scrutiny.
- **Results Management System:** INEC must establish a robust, transparent, and easily verifiable results processing system. This includes real-time uploading of all polling unit result forms (EC8As) directly from polling units in a machine-analyzable format and making collated results at all levels publicly accessible (European Union Election Observation Mission Nigeria, 2023; Okeke, 2023).
- **Timely Adjudication of Electoral Disputes:** Pre-election litigation often creates uncertainty. Legal timelines should be adapted, and adequate resources provided for

swift adjudication and prompt publication of judgments (European Union Election Observation Mission Nigeria, 2023). Furthermore, the burden of proof in election petitions, currently on the petitioner, should be revisited. The Electoral Reform Committee (2008) recommended shifting this burden to INEC and the respondent, as they are better positioned to prove substantial compliance with electoral laws.

- **Digitisation of the Electoral Process:** While BVAS has improved accreditation, Nigeria should progress towards complete digitisation of voting and results collation to reduce human interference, minimise delays, and enhance voter confidence (Okeke, 2023; Oyemike, 2023).
- **Accountability and Audit:** A comprehensive, independent, multi-stakeholder audit of the 2023 elections is essential to identify lapses, ensure accountability for irregularities, and inform future reforms. Prosecution of electoral offenders, particularly those involved in results manipulation, is also crucial (Yiaga Africa, 2023).
- **Political Party Reform:** The dominance of a few parties despite numerous registered entities raises questions. Okeke (2023) suggests reforms, possibly drawing from the Uwais Report, to incentivize genuine party development, perhaps through a mixed electoral system combining first-past-the-post with proportional representation.

Conclusion

The 2023 general elections in Nigeria, conducted under the framework of the Electoral Act 2022, have yielded mixed results. While the Act introduced laudable technological innovations like BVAS and IReV aimed at enhancing electoral integrity, their implementation was fraught with challenges that ultimately undermined public confidence. The subsequent judgment by the Presidential Election Petition Tribunal, particularly its interpretation of the provisions regarding electronic transmission of results, has further complicated the quest for transparent and credible elections. Key issues such as INEC's operational deficiencies, the cumbersome nature of voting and collation, and a pervasive lack of trust in electoral dispute resolution mechanisms persist.

Incremental reforms, as demonstrated by the 2023 experience, appear insufficient to inspire the necessary confidence in INEC and the broader electoral process. The failure of the IReV system to consistently deliver on its promise of transparency significantly impugned the perceived integrity of the elections. For Nigeria to advance its democratic journey, a more profound and systemic overhaul of its electoral architecture is required. This must include unambiguous legal frameworks, a demonstrably independent and capable electoral management body, transparent technological deployment, and a justice system that commands public trust in its handling of electoral grievances. Without these fundamental changes, future elections may continue to be contentious, further eroding citizen engagement and democratic consolidation.

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