

**DEEPENING DEMOCRACY IN NIGERIA: THE DYNAMICS OF ELECTORAL
ACT 2022, AS A REFLECTION OF THE PEOPLE'S WILL**

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**A LONG ESSAY WRITTEN AND SUBMITTED TO THE FACULTY OF LAW,
UNIVERSITY OF BENIN, BENIN CITY, IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF
LAWS (LL. B)**

NOVEMBER, 2023

CERTIFICATION

This is to certify that **Samuel Tobechukwu OKANI**, with Matriculation Number **LAW1704776**, duly carried out this essay with reference to the works of other individuals, which have been duly acknowledged. This entire work is the product of my research and this project has neither in whole nor in part been presented for another degree elsewhere.

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APPROVAL

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I OKANI TOBECHUKWU SAMUEL, hereby affirm that apart from references made to the works of other authors, which have been well acknowledged and cited, the entire work is solely a product of my personal research, and that this project has not been presented for another degree elsewhere.

Signature and Date

DEDICATION

I dedicate this essay work to God Almighty, for the grace and strength to carry out this research. Also, to my late dad Dr. E.E Obano and my late grandmother Mrs. C.E Omoigui for always encouraging me to be the best version of myself.

Lastly, I dedicate this work to my biggest inspiration, my queen and best friend, Dr. (Mrs.) J.E Obano, who never left me alone in the pursuit of this degree.

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ABSTRACT

The election conducted in Nigeria from 1959 till date has been undergoing series of changes and reforms. By the introduction of the Electoral Act which was empowered by the 1999 constitution of Nigeria. Unlike the previous times which election was conducted by decrees and systems. After the transition from military regime to civilian government, the Electoral Act was introduced to govern the electoral system. This Electoral Act over time have served the will of the political class and the party in government. The people were thus far excluded from freely participating in the electioneering process to determine who governs them. This was made possible by the weakness of the Electoral Act that gave room for electoral manipulation and voters intimidation and violence. With the introduction of the Electoral Act 2022, the Act repealed the previous Act and introduced new clauses into the electoral system. The research focus on the dynamics of the Electoral Act, if it reflects the will of the people. This work also reviewed the provisions of the repealed Act and evaluate it with the new Electoral Act 2022 to extract how it promote citizen participation, through laying foundation for free and fair election. Conclusively after critically analysing, the dynamics of the Electoral Act 2022 this work was able to x-ray the positive position of the Act and also some provision which excluded citizens from total participation and in same vain some ambiguity in the Act which may deny the citizens from reaping the benefit. The research finds that notwithstanding the positive output of the new Electoral Act there are weaknesses. Recommendations were made which will straighten the Act so as to deepen democratic participation and improve the people's confidence on the process.

CHAPTER ONE

INTRODUCTION

BACKGROUND TO THE STUDY

The term “Democracy” has been defined by many scholars both in the old era and in contemporary times as relating to a people-based government. Ariwoola in *National Democratic Party v. Independent National Electoral Commission*.¹ Defined democracy in his judgment as “the method by which a person is elected to public office in a democratic society.” In other words, numerous definitions of "democracy" have been offered. However, although they used distinct vocabularies, the themes of their multiple definitions were in agreement. All their focus on democracy is on government with the consent of the governed.² A form of regime that derives from popular sovereignty in which ordinary citizens are endowed with the right and ability to govern themselves.³ The essential or real meaning of democracy derives from two Greek words 'demos' and 'kratia' meaning, people and rule respectively.⁴ While democracy means the government by the people, it does not stand alone. It is the input of the people that is achieved via periodic elections and other electoral participation.⁵ The major issue is the people's vote via the ballot for the candidate of their choice voluntarily without fear or intimidation. So election is a key factor in the democratic process failure in the process of conducting an election can hamper, tarnish, or

¹ (2013) 20 WRN122

²²² Osa, B Joseph NIGERIA AND DEMOCRATIC ELECTIONS : Journal of Good Governance and Sustainable Development in Africa (JGGSDA) vol.2 no3 december, 2014.

³ D.T. Osabu-kle, Democracy and its Practice : General Theory of democratic relativity, Carleton University

⁴ ibid

⁵ Veronica Hinz and Markku Suksi. Election Elements : On the International Standards of Electoral Participation , Institute for Human Rights, Abo Akademi University Turku/Abo, 2003.

even abort democracy and its practice.

Lavitsky and Ways summarised it clearly this way that there will not be democracy in the sense of the word without a clear election.⁶ So in Nigeria, election precedes our independence as elections were held in different regions of Nigeria at different times. For example, in southern Nigeria, it started in 1957 and in northern Nigeria in 1959.⁷ It can therefore be argued that democracy was first introduced into Nigeria by MacPherson's constitution which was put together in 1951 because the people of Nigeria were consulted at every level from the village to the district through the divisional and provincial to the regional level⁸. After the 1951 Constitution, other constitutions emerged which built on it to usher in our independence. In our journey thus far as a nation we have been rising and falling regarding democracy as we have witnessed military intervention at various times which revised the nation into autocratic rule the military regime but with the return to democracy in 1999 ever since our return, the nation have been consistent democratically. Not minding the consistency when compared with the depth of the advancement in the backdrop of our periodic election and election process, the institution we are still far from national or international standards. These shortcomings were observed by Shehu Musa Yar Adua in the 2007 General election which ever held in Nigeria due to widespread irregularities and malpractice that characterized it.⁹ This work seeks to evaluate the impact of the previous electoral Act on the stability of democracy in Nigeria in comparison with the

⁶ Lavitsky & Way 2010 Competitive Authoritarianism :Hybrid Regimes After the Cold War

⁷ *Ibid*

⁸ Human Right Watch 2007

⁹ Section 221 of the Constitution of the Federal Republic of Nigeria 1999

new Electoral Act 2022. The dynamics of the provisions of the new Act whether or not it will deepen our democratic experience and create the needed advancement. Mention will be made about the gaps in the new electoral Act and suggestions will be made. The Electoral Institute The electoral process is a major bridge that leads to a stable democratic practice in any country that seeks to travel far and enjoy the journey of democracy. The electoral process is fundamental and based on it, kin attention and consideration should be geared towards it.

In Nigeria for instance, the constitution in section 221 of 1999 CFRN provided for political parties thus. "no association, other than a political party, shall canvas for Vote for any candidate at any Election....."¹⁰

Section 153(f) of CFRN 1999 also provided for statutory executive bodies, which the Independent Electoral Commission (INEC) happened to be part of. The law provided for the establishment of the electoral body and its organs. The Electoral Act was however enacted by the national assembly as regulatory legislation that empowers the Independent Electoral Commission (INEC) towards carrying out the duty of conducting the election, registering political parties and playing a supervisory role in the management of the political party. Section 2 of the Electoral Act 2022, provides for the function in addition to what was provided for in the constitution. The commission is empowered to perform the following duties:

1. Conduct voter and civic education

¹⁰ *Ibid*

2. Promote knowledge of sound democratic election process and Constitution of the Federal Republic of Nigeria 1999 Electoral Act 2022

3. Conduct any referendum required to be conducted under the provision of the constitution or in the Act of the national assembly.¹¹

It was from the grand norm that the Electoral Act derived its power to make regulations concerning elections in Nigeria.

Historical Background of Election in Nigeria

Historically in Nigeria, election has been conducted way before independence. Before the independence of Nigeria, there had been the engagement of critical stakeholders at that time towards uniting the people and ensuring participation in the governance of the state. In 1922, the Legislative Council of Nigeria was created by an order in council, which was amended in 1928 and 1941. Of the 52 members of the legislative body, only 4 members were Nigerians; 3 from the municipality of Lagos and 1 from Calabar township. These 4 persons were elected under franchise limited by property and income qualifications. This arrangement excluded the northern protectorate in the tiny representation, and also limited participation in ownership of property and earning. In 1945 there was an introduction of a constitution, which was known as the Richard constitution this constitution however retained all the political structure except that it made some changes by appointing a northerner as an unofficial member of the legislative body and also reduced the earnings for

¹¹ Jibrin Ibrahim , Nigeria's 2007 Elections the fitful path to Democratic Citizenship ; United States Institute of Peace Special Report.

qualifications. It also made some other contributions to the election process including the qualification of members and specifies the jurisdiction of the Supreme Court on election matters. Notwithstanding the governor failed, as he did not consult the people on the constitution. The Richard constitution gave way to the McPherson constitution which made all efforts to consult the people in making his constitution, this resulted in the full introduction of elections. It was the introduction that started the political process in Nigeria which embraced the free participation of the people. All this time while the election is been conducted by the governor the rate of irregularities cannot be compared to when it is now been conducted by an electoral body solely saddled with the duty of conducting an election after independence. It is the belief of most people, that it is the electoral bodies that are the root causes of our electoral problems. Beginning with the Nigerian Electoral Commission (ECN), which oversaw the 1959 election, Nigeria saw its first neocolonial civilian administration during which the country used a parliamentary system of government with proportional representation.¹²

The unbroken civil rule, which started by the transitional government and by the election of 1999 was conducted under the electoral framework based on the decree of the military regime, which gave birth to a civilian government. Hence after the transition, the power of legislating for the advancement of Nigeria was however vested on the National Assembly. Starting from then the subsequent election has been based on the framework of the Electoral

¹² Festus Iyayi, Election, INEC, and the problem of Election Mindsets in Nigeria: being a paper presented at the INEC National Conference on Nigeria's 2007 General Elections : the challenges ahead, 'Held at the ladi kwali shaerton Hotel and Towers, Abuja 29th-31st Augst 2006.

Act enacted by the National Assembly. However, it has been reported, how INEC manipulated the election in many ways to legitimize the electoral process and by extension the result.¹³ INEC was reported by the transition monitoring group (TMG) to have played a critical part in the abnormality that characterised the 2003 election which manifested in the way they handle the sensitive election materials which jeopardized the outcome of the election, and the process of the election was mired by over voting ballot snatching, diversion of material to mention just but a few. ¹⁴

Fast forward to 2007 under the headship of INEC as a body, we saw an election that was conducted which did not meet national, regional or international standards for democratic elections. The observation of the TMG and European Union observation group and others point to the fact that the electoral body is only dancing to the beat of the ruling party and has therefore contributed to the election problems in Nigeria. However, the transition monitoring group observation did not necessarily explain why these commissions so behaved.¹⁵

History of Electoral Law Reform in Nigeria

The historical background will not be complete without also showing the historical background of electoral laws reforms in Nigeria from 1959 to 1964 before independence and Even after independence upon attainment of independence Nigeria Electoral

¹³Transition monitoring Group (2003) Do votes count? Final report of the election of the 2003 General Election in Nigeria.

¹⁴ *Ibid*

¹⁵ Afe Babalola, Election Law And Practice 2007

(transitional Provisions) Act 1961 was enacted.¹⁶ The Act validated the Elections Regulations 1958 and the federal legislative house Regulations 1959. This Electoral law was merely the adoption of the 1958 Election regulations, except where it specifically disqualified women from voting in northern Nigeria, so in the real sense it cannot be captioned as the autonomous Electoral Law of Nigeria. The elected federal Parliament however enacted the Act in 1962.¹⁷ In 1964 there was an amendment which abolished the payment of deposit on lodging of petition and increased the amount payable before nomination from 25 pounds to 100 pounds.¹⁸

In 1966 the military took power through a coup d'état and suspended civil law, through decree, they made their law. In preparation for the transition in 1977, the military government promulgated an Electoral Decree. The decree provided for a presidential system of government and statutorily recognised the political parties as the only vehicle through which anyone can seek elective position as was created under the decree.¹⁹ In addition, any party that wish to participates in the election must be registered with the Electoral Commission.²⁰ The decree also provided for the spread of the offices of political parties and also reduced the age for eligibility to vote from 21-18. The Electoral Decree made far-reaching provisions that changed the Electoral Law for the first time since after independence.

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ Section 77 Electoral Decree 1977

¹⁹ Section 78 of the Electoral Decree 1977

²⁰ See Cap 105 Laws of Federation of Nigeria 1990

The 1982 Electoral Act²¹, the Act was enacted and it repealed the 1977 Electoral Decree. The 1982 Electoral Act was divided into seven parts, the Act mandated the federal Electoral Commission to compile a new voter register for election. The Act was however similar to that of 1977 but with few adjustments. The Act was employed in the 1983 election in which the ruling party was returned to power. In that same year, military took over power through another coup d'état. There was also another counter-coup after which there was another Electoral Decree, which was known as The Transition to Civil Rule (Political Programme) Decree.²² It was the programme timetable for the return to civil rule by the counter-coup leader, but the plan which was supposed to be for 6 years altered severally and finally power was returned to the civilian government in 1999 however the period within the transition programme there were so many electoral reforms which was the bedrock on which subsequent Electoral Law were built. This also extended our faulty system.

The history of Electoral reform starts from operating a proportional representational system in a parliamentary system of government.²³ Option A4 is an electoral system which was adopted in 1992/93 which requires voters to queue behind the poster of their preferred candidate and after the voter on each queue, each queue be counted to determine the winner of the election. However, in 1998 the option A4 system was replaced with the open secret ballot system which was put in place to usher General Abacha into civilian administration which did not materialize.

²¹ See Transition to Civil rule(Political Programme) Decree 19 of 1987

²² *ibid*

²³ Rebecca O. Banjo, Independent National Electoral Commission(INEC) and the Conduct of 2003 Presidential and National Assembly Elections in Nigeria: A PARADIGM SHIFT. African Journal of Social Science and Humanities Research. Vol 6 issue 3. 2023

However, in 2002 the Electoral Act was enacted known as Electoral Act 2002. The things it brought to the table are voter registration, political party operation, area and local government council elections of the federal capital Territory Abuja, electoral offence, and election petition tribunal, this provision gave legal backing and introduced a new phase to the electoral system. The Electoral Act 2002 has so many shortcomings which were exploited in the outcome was massive violence and other vices that made the election rated low. This weakness gave room for more reform in 2006 there was another enactment of the Electoral Act known as the Electoral Act 2006. This act ushered in more roles for the electoral body which included conducting voters and civic education, promoting knowledge of the sound democratic electoral process and conducting any referendum required by law. Among other things introduced by the Electoral Act as against the 2002 act was the campaign funding ceiling, empowering the tribunal to lead the way in a situation of election result contestation, as above INEC certification. Empower the commission to appoint its own secretary. But just like the 2002 Electoral Act, there were also weaknesses which characterised the 2006 act as was discovered in the general election of 2007. The 2007 general election was described by observers and other onlookers including President Shehu Umaru Musa yar Adua, as one of the worst elections ever held in Nigeria due to widespread irregularities and malpractice that characterized it. As a result of the shortcomings of the 2007 election which anchored on the frameworks provided by the 2006 Electoral Act, which was viewed and criticized as flawed. Uwas committee was formed which made many recommendations Which majorly found their way into the Electoral Act 2010, which was mainly to seek to detach the electoral body from the political base which was detrimental to

the electoral process. In the previous Act members of the electoral commission could be members of any political party and the commission's funds came from the sitting president which is the executive, which will justify the saying that he that that plays the pipe determines its sound. So this Act introduces among many things that INEC members cannot be members of any political party. It must also be stated here that the Electoral Act 2010 was in 2015 amended. However the Electoral Act 2022 in many ways has come to the rescue of the electoral system through the innovative provisions that were introduced and the review that was made of the previous Act, this will be the focus of this work.

1.2 Statement of Research Problem

The previous electoral Act in Nigeria showed significant gaps which prompted the enactment of the new electoral act aimed at addressing these shortcomings. This research critically examines the provision of the new act to evaluate its effectiveness in the issues common in the previous act. In addition, the study investigates how these new provisions contribute to the advancement of democratic principles and the deepening of democratic processes in Nigeria

1.3 AIMS AND OBJECTIVES OF THE STUDY

AIM:

This research aims to critically examine the provisions of the 2022 Electoral Act and to investigate its effectiveness in solving and deepening the electoral process in Nigeria.

THE SPECIFIC OBJECTIVES ARE:

1. To review the history of electoral reforms and the progress in Nigeria
2. To review the provisions of the previous Electoral Act and its negative effect on our democracy.
3. To critically evaluate the new provisions of the Electoral Act 2022 and how it covers the gaps that exist in the previous act
4. To evaluate how these new provisions in the Electoral Act 2022 have contributed to deepening the democratic process in Nigeria.

1.4 SCOPE OF THE STUDY

Nigeria electoral system is a complex one and it cannot be discuss in haste. The Electoral Act 2022 is a very recent piece of legislation and its evolving and requires time to determine the effect on the democratic process however this work only focuses on the provisions which are new introduction into the Act in comparism with previous one to x-ray its reflection on the people.

CHAPTER TWO

CONCEPTUALISATION AND LITERATURE REVIEW

2.1. INTRODUCTION

The importance of this study has been intensified and brought to bear mainly on the pages featuring the practical application of the dynamics of the Electoral Act 2022.

Although there is no single textbook on the topic of this project, there are related works done by scholars, lawyers, and academicians on the subject matter. Since the subject matter cannot be discussed in a vacuum, the concept of democracy and the place of participatory democratic theory shall be highlighted.

For democracy to be entrenched, elections and citizen participation are fundamental. The import of this assertion is that a free and fair election is an important key in the electoral process. In the same way that citizens' involvement in different levels of decision-making depends on who leads them, their choices should not be neglected. In the light of the democratic system, Lavisky and Way posited that there will not be democracy in the sense of the word without a clear election.²⁴ Democracy, which is the focus of this work, means the government of the people, by the people, and for the people. Talking about citizens' participation, this chapter will deal with participatory theory, elections as a concept and review of elections, and the impact of the Electoral Acts 2022.

This chapter is relevant to this research work as it seeks to create a tool with which the knowledge gap in the field of democratic practice can be further advanced. Laws like the

²⁴ Lavistky & Way, 2010, *Competitive Authoritarianism :Hybrid Regimes After The Cold War*

Electoral Act are enacted to structure citizens' participation and guide the election management body toward ensuring that the wishes of the people prevail. Their provisions should allow people to freely make choices, and the candidate so elected by the majority of lawful votes cast is returned elected.

2.2 LITERATURE REVIEW

Among other things, this chapter will try to review the literature on participatory democracy theory, specifically the literature on citizens' involvement in their state's political system. This chapter will also conduct a review of the literature on the idea of elections in democratic systems. The concept's literature review is relevant to this work because it emphasizes the need for public participation in the democratic process and the necessity of credible elections that represent the will of the electorate in order for democracy to grow.

2.3. PARTICIPATORY DEMOCRATIC THEORY

The participatory democratic framework will serve as the foundation for this endeavour. The Cambridge Advanced Learners Dictionary & Thesaurus defines participation as "the act of taking part in an event or activity."²⁵ The word "participation" is the source of the adjective "participatory." Similar to this, scholars define participation as a process in which two or more parties influence one another to make judgments. Each participant in the decision-making process has an equal say in how it will turn out.

The view of Baker "is that the idea that ordinary citizens should participate more in deciding their collective affairs is as old as democracy itself. The question has always been the same:

²⁵ <http://dictionary.cambridge.org/dictionary/english/participation/> accessed 28 September

are we as citizens collectively entitled to run our own lives, or are we supposed to let others run them for us?"²⁶ The argument of a group of democratic elitists' is that regardless of the operational form of government, it was best, and perhaps even inevitable, for elective power to lie in the hands of a group of elite, who might as well be elected but who ought to have to be giving power freely to govern without interference from the masses. However, the participatory Democrats argued that power should not be given but rather equally shared among all citizens so that everyone has an equal say in collective affairs. So the idea of participatory democracy is about the democratic processes towards attaining the most equal distribution of power in society.

Flowing from the definition of the term participation, participatory democracy theory is simply the theory of citizens taking an active part in the democratic process of a given country. The variables that play a role in the motivation and demotivation of citizens to participate or not are all factored into this theory. Jeffery Hilmer argues for the rebirth of the theory of participatory democracy in his work by describing its history, theoretical development, and demise, as well as its singular capacity to shed light on current empirical research.²⁷ Barber shared the perspective of another group of proponents of participatory democracy who suggested an alternative strategy to win over everyone, including extensive decentralization of decision-making to the smallest unit of citizen assemblies, a civic videotext political information service, an informal lay justice system, increased use of

²⁶ Baker, John, *“What Is Participatory Democracy? Community Workers Cooperative 1997*

²⁷ JEFFREY D, Hilmer, *the state of participatory democratic theory published online 24 February 2010*

referendums, and electronic voting.²⁸

Some people have raised participation as a debate topic; however, the theory of deliberative democracy has been specifically conflated with "participatory," although it should be stressed that it is not; instead, it primarily focuses on the manner of participation in public discourse to foster national consensus or a common solution.²⁹ According to Hilmer, deliberative democracy cannot take the place of participatory democracy, as deliberative democracy is only a part of participatory democracy and not the whole in itself. Some scholars, however, place them side by side by going into their theoretical genealogy, their first formulations, the reasons that support their elaboration, and the conceptual network that may be identified at the roots of their genesis, expressions, and development.³⁰ The idea that the two concepts are to be placed side by side or even subsumed as one was supported by Steiner, who is of the view that, in recent times, they have undergone a great expansion such that they can now be properly defined as a theoretical field within which various approaches and practices coexist and reciprocally interact.³¹ Additionally, some current democratic theorists base the concept of democracy not on the importance of citizens' participation but on deliberative rather than participatory processes. This is in accordance with the position of deliberative democracy as opposed to participatory democracy.³² Although participatory and deliberative democratic theory are somewhat similar, a closer look at some deliberative theorists' work reveals that they have a strikingly different

²⁸ Benjamin Barber, *Searching for "strong democracy"* (1984)

²⁹ *ibid*

³⁰ Antonio Florida, *Participatory Democracy Versus Deliberative: Element For Positive Theological Genealogy*

³¹ Parkinson J, Mansbridge 2012, *Deliberative Systems :Deliberative Democracy At Large Scale*

³² *ibid*

understanding of politics than their participatory forebears. The point is that deliberative theorists, unlike participatory theorists, do not present an idealized vision of society.³³

Given this work, participatory democratic theory is the theoretical framework being emphasized rather than deliberative theory. Jane Mansbridge first mentioned or created the term "participatory democratic theory," which Arnold Kaufman incorporated into academic jargon in a piece.³⁴ The importance of Robert Dahl, one of the American fathers of political science, cannot be overstated when talking about the topic of participatory democracy philosophy. Since its inception in the early 1960s, the term "participatory democracy" has acquired a variety of meanings, some of which are complementary and others of which are in contradiction.³⁵ On the complementary side, it is evident that citizens' interests should be the focus of every political decision-making process at all governmental levels. Democracy requires that citizens participate in the process, giving them the chance to contribute to decision-making and providing the impetus for change.³⁶ A whole new thinking about the function of participatory democratic theory that sees it as vital to the functioning of the democratic process seems reasonable when it comes to the applicability of the theory in conditions existing in an era of abundance during an age of scarcity.³⁷ This is true in a sense, as citizens' action is the only way out of clear-cut leadership deficit.

Julia Keughten has this to say about the participation in France:

³³ *ibid*

³⁴ Arnold S, Kaufman, 1960 Human Nature And Participatory Democracy, Fredrich C.J(ed), Responsibility, Nomos III

³⁵ Nora Roberto Silver, Brooklyn Institute For social Rechearch.

³⁶ Conference of INGO's of the Council of Europe

³⁷ Ayeh Botwinick and Peter Bachrach, Democracy and Scarcity: *Towards a Participatory Democracy*

"The yellow vests" in France's populist politics, global pandemics, and restricted liberties democracies all around the world have been significantly challenged over the past several years. Meanwhile, the youth are actively participating in the political debate, and online activism is as effective as ever. This evolution of democratic dynamics has called for a rethinking of the daily practice of political participation. In that light, participatory democracy has gained momentum, fueled by the promise to innovate and instill a new way of making collective decisions."³⁸

Similar to how technology was first introduced, Luigi Pellizoni examined participatory democracy from the standpoint of the average person when it came to the use of technology. This is to gather public opinion, mobilize stakeholder groups, and organize organizations, not only to mediate conflicts of interest but also to include their perspective in a problem-solving process.³⁹ Radical unpredictability calls into question established methods of policymaking and renders many environmental and technological challenges insoluble.

In conclusion, citizen participation in democratic processes is the cornerstone of democratic advancement. If this is undermined, it will result in exclusion, aristocracy, or even an autocratic form of government, which will push the popular will of the populace into the shadows, and, at that point, democracy will be proclaimed to be dead. Therefore, the dynamics of the Electoral Act and the strengthening of democracy in Nigeria will be addressed by this work's application of the participation concept.

³⁸ Julia keugten, Institute of Montaigne 2023

³⁹ Luigi pellizoni , 2003 ,Uncertainty And Participatory Democracy: Environmental Values Vol 12

2.4. CONCEPT OF ELECTION IN A DEMOCRATIC SYSTEM

A democracy is a form of administration in which the people directly exercise their political sovereignty.⁴⁰ Democracy broadly refers to a process whereby a group decides together on issues based on the equality of each member's free choice.⁴¹ The idea that people can actively engage in choosing who should lead them is supported by Michael Sodaro. Additionally, they might take part in determining laws and societal policies.⁴² This perspective echoes Bobbio's, who believed that the only way to distinguish democracy from all despotic forms of governance is based on the set of rules that determine who has the authority to make collective decisions and which mechanisms are to be used.⁴³

In a democratic society, elections serve as the main vehicle for transferring the electorate's permission to the government as authority for representation. According to the Electoral Act, an election is "any election held under the Act, including a referendum."⁴⁴ Omoregie drew attention to the fact that the definition provided by the Act is extremely restricted and constrained, as it seems to imply that elections refer to only those that the Independent National Electoral Commission (INEC) is authorized to administer.⁴⁵

The Black Law Dictionary defines election "as the act of choosing or selecting one or more from a greater number of persons, things, courses, or rights".⁴⁶ Collins Dictionary defines

⁴⁰ <http://en.wikipedia.org/wiki/democracy>. accessed 28 September 2023

⁴¹ 'Democracy', Metaphysics Research lab, Stanford University 2006

⁴² Micheal J. Sodaro, Comparative Politics: A Global Introduction 2004.

⁴³ Norberto Bobbio, The Future of Democracy: A Defence of The Rule of the Game(Minneapolis University of Minnesota press 1987)

⁴⁴ section 152 of the Electoral Act 2022

⁴⁵ E.B.Omoregie , Elections and Electoral Security in Nigeria

⁴⁶ Black law dictionary 9th edition

an election as a process in which people vote to choose a person or group of people to hold an official position.⁴⁷ However, for an election to be so defined, it must demonstrate that it complies with both form and substance, which is a fundamental need. It is important to keep in mind that an election is considered to have occurred when the two essentials coincide. Omoregie asserts that success is not achieved when there is a divergence between the form and the substance.⁴⁸ The essentials are the tools used to conduct the election, including ballots, ballot boxes, voters' lists, etc. While voters and other human variables made up the content. The essential question is whether citizens who fall into the category of substance are given the freedom to select among competing opponents. Elections cannot be deemed to have taken place where voters are not free to willingly cast their ballots for the candidate of their choice.⁴⁹ Election is a concept that is accomplished by a procedure that involves people choosing among competing candidates for a job by engaging in a process. Therefore, the form of an election is represented by the logistics and materials, while the substance of an election is represented by the participants, who will be asked to make a decision using the logistics and materials. In line with the above thought, the court also, in case law, defined what election is in *Ojukwu v Obasanjo*⁵⁰ where the court defined election as the process of choosing by popular votes a candidate for political office in a democratic system of government. The court of appeals in the case of *ANPP &ORS v Osuyi & ORS*⁵¹ held that the word election as provided for in the constitution in Section 137 (1)(b) of the 1999

⁴⁷ <http://www.collingsdictionary.com/english> [Accessed 20 september 2023]

⁴⁸ *ibid*

⁴⁹ Study Guide: The Right to Vote (University of Minnesota Human Rights Center)

⁵⁰ (2004) JELR 45027 (SC)

⁵¹ (2008) LPELR 3781(CA)

(CFRN) Means adult suffrage, which involves material for voting and supervising and counting of votes by electoral personnel. In *Buhari v. Obasanjo*⁵², the court held that the word "election based on the contest" used in Section 134(1)(b) of the 1999 Constitution means the process of choosing by popular vote a candidate for political office in a democratic system of government.

*Atiku Abubakar v. Yar Adua*⁵³ in which the Supreme Court defined election as a process spanning a period and comprising a series of actions from voter registration to pollination, was cited by the court in *Oke v. Mimiko*⁵⁴, as notice by the court that election covers more than was provided for in Section 152 of the Electoral Act 2022. When considering the circumstances in Nigeria, it is still uncertain whether the process that we refer to as an election in Nigeria can be said to have satisfied this criterion. Omoregie held the opinion that a process cannot be defined as an election when it does not meet the two requirements of form and substance, and the work completely aligns with his view. In light of the court's ruling in the aforementioned case, it can be seen that the popular vote and the right of the people to make their own decisions are crucial. This is not, however, the complete picture, as the *Oke v. Mimiko*⁵⁵ decision shows that the political class largely considers winning the popular vote at the expense of other considerations. case, which was what happened after the vote was registered, whether or not the declared number of votes cast as a popular vote was exaggerated or whether the number of people who were prepared to vote was reduced

⁵² (2005)JELR 34515 (SC)

⁵³ (2008)19 NWLR (Pt1120) 1 at 70

⁵⁴ (2013)LPELR 21368(SC)

⁵⁵*ibid*

by coercion or other vices. An election dispute was caused by all of these reasons; thus, it is now up to the judiciary to decide whether or not an election can be considered to have taken place under the given conditions. This will start the process of looking into election integrity in future studies.

2.5. THE CONDUCT OF THE 2023 GENERAL ELECTION

It is a known fact that the credibility of trustworthy voter registration should be used to promote the success of any election since pre-election rigging involves the manipulation of the voting register, which is regarded as the cornerstone of credible elections.⁵⁶ The Independent National Electoral Commission (INEC) received high marks for their transparency because they were able to produce a reliable voter list. Since the fourth republic (which included elections in 1999, 2003, and 2007), INEC elections have gained a reputation for a variety of electoral fraud and manipulation, including violence, political assassination, and outright ballot snatching. In particular, in 2007, scholars and political observers joined in condemning the procedure, noting the following: "The sordid manipulation and outrageous maladministration made a travesty of the electoral process."⁵⁷ A different source stated it more succinctly: "The April 2007 general elections seem the most flawed in Nigeria's electoral history."⁵⁸

A wide range of citizens and observers both locally and internationally praised the outcome of the 2011 election as a result of the reform, saying things like, "The April 2011 election

⁵⁶.Rebecca Oluwatosi Banjo,African Journal Of Social Science And Humanity Research

⁵⁷ *ibid*

⁵⁸ Omotola, 2009,Garrison ' Democracy in Nigeria: The 2007 General Election and Prospect of Democracy consolidation'' Common Wealth &Comparative Politics

marked a genuine celebration of democracy in Africa's most populous country. Previously held beliefs that Nigeria could only hold flawed elections are now being discarded."⁵⁹

The pledge to review the voter list and the re-registration of voters using recently obtained biometric technology were only two of the many elements that seemed to shift the course of the electoral process. The election did have one difficulty; however, there were improvements in Nigeria's electoral procedure. The 2015 general election saw the introduction of technology to clean up voter data based on the previous register of 73.5 million voters, which was reduced to 67.4 million as a result of the discovery of duplicate, fictitious, or deceased individuals on the voter register. This election was conducted by INEC and produced the first-ever opposition victory at the presidential level.⁶⁰

Many people agreed that the introduction of voter cards and smart card readers helped to improve the electoral process because they made it very difficult for the outcome to be tampered with, either by unidentified individuals or by arbitrarily and fraudulently manipulating numbers. As a result, President Goodluck Jonathan of the PDP was forced to concede defeat to the opposition party, the APC. It saw reduced court cases and pointed to voters' confidence in the election management body.⁶¹

In 2019, INEC continued to expand on the technological advantages it had already achieved, although many local observers had already praised the election's outcome. This was because

⁵⁹ Commonwealth Observer Group 2011 Nigeria Election Interim Statement, April 18, Available at <https://aceproject.org>

⁶⁰ Independent National Electoral Commission (INEC) and the Conduct of 2023 Presidential and National Assembly Elections in Nigeria: A PARADIGM SHIFT. African Journal of Social and Humanities Research.

⁶¹ *ibid*

INEC had added 84 million new voters to the voter rolls, which led some international observers to doubt the validity of the procedure for registering voters. One such international observation organization is the European Union Observer Mission, which noted in its report that the gathering of voter cards in one location looks to be "implausibly high in some area or region as against other regions where voter registrations include deceased persons'."⁶²

The 2019 election was keenly contested by Alhaji Atiku Abubakar of the PDP and Gen. Muhammadu Buhari of the APC, who are the frontline candidates. After the declaration of Mohammed Buhari as the winner of that election, the ground on which Atiku Abubakar challenged his victory was that Atiku scored the majority of votes cast in the election, as was observed from the INEC server and the court as follows: "that the appellant failed to prove that the server they downloaded The result belongs to INEC accordingly, and all the result calculations and analyses based on the said unreliable server are of no use. ⁶³ that a petitioner who contests the legality or unlawfulness of votes cast in an election and subsequent result must tender in evidence all the necessary documents used at the election." The court went further to state that the petitioner "must call witnesses to testify that the illegality or unlawfulness substantially affected the result of the election." There is, therefore, no statutory provision that authenticates the appellant's contention that the first respondent could transmit the result of the election electronically. While the guild line made provisions for the accreditation of votes through the use of smart card readers, the statute makes it clear

⁶² The European Union Observer Mission Report 2019.

⁶³ (2019) JELR 91596 (SC)

that voting cannot be done electronically. There is no mention of collation and/or transmission of the election result."

With the repeal of the 2010 Electoral Act and the enactment of the 2022 Act, which, among other things, was the introduction and also gave solid backing to the deployment of technology for a freer and fairer election, the new Electoral Act backs the transmission of results electronically to the INEC server, which will guarantee real-time access by the public. This, however, no doubt reduces human interference in the electoral process and prevents manipulation and fraud, thereby improving electoral credibility.⁶⁴ The improvement that the Electoral Act introduces via its provisions is what this work is all about, as is its impact on the 2023 election in Nigeria.

2.6. THE CONCEPT OF ELECTION AND ELECTORAL PETITION TRIBUNAL

The Electoral Tribunal is the judicial court set up to settle election disputes. In Nigeria, the law made provision for the role of the election tribunal in sections 239(1)(a) and (2) and 285(1)(a) and (2) of the 1999 constitution of the Federal Republic of Nigeria.

239; (1) subject to the provisions of this constitution, the court of appeal shall, to the exclusion of any other court of law in Nigeria, have original jurisdiction to hear and determine any question as to whether:

Any person who has been validly elected to the office of president or vice president under this constitution; or

⁶⁴ Obinne O, Advancing electronic voting system in Nigeria's electoral process: legal challenges and future directions (journal of sustainable Development Law and policy.

285; (1) there shall be established for the federation one or more election tribunals to be known as the National Assembly election tribunals, which shall, to the exclusion of any other court or tribunal, have original jurisdiction to hear and determine petitions as to whether:

Any person who has been validly elected as a member of the National Assembly;

(2) There shall be established in each state of the federation one or more election tribunals to be known as governorship and legislative House Election Tribunals, which shall, to the exclusion of any other court or tribunal, have original jurisdiction to hear and determine petitions as to whether any person has been validly elected to the office of Governor or Deputy Governor or as a member of any legislative house.⁶⁶

The constitution provided for a tribunal for election disputes both at the national level and the state level, which covers the presidential election, the National Assembly election, and the governorship election. State Houses of Assembly elections and even the Federal Capital Territory, Abuja. The tribunal seat to hear a petition from an election that has been concluded. So what is an election petition?

An election petition is an originating process by which an unsuccessful candidate in an election or his political party seeks to question the return of a successful candidate at an election as undue, either as a result of noncompliance with electoral law or that the person

⁶⁵ Section 239(1) of the CFRN 1999

⁶⁶ Section 285 (1) (2) of CFRN 1999

who has been returned was at the time of the election not qualified to stand for election, or that a substantial number of votes under which the winner was declared are invalid, or because the petitioner was validly nominated to run for the election but was unlawfully excluded from the election.⁶⁷ The key information is that an election petition is formulated to challenge the victory of another candidate based on the fact that the flawed victory should not stand. However, an election petition should follow the process, which aims to show that the said election or return was void or that the victor did score the majority of the total lawful vote cast.⁶⁸ The petition shall be on the ground that it was established and recognized by the law, which is the Constitution or the Electoral Act, and shall prove that there was an omission that has the weight to substantially affect the outcome of the election. There are grounds on which the election of any party can be challenged, which were provided by 134.

— (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 because of corrupt practices or non-compliance with the provisions of this Act; or

(c) The respondent was not duly elected by a majority of lawful votes cast at the election.

(2) An act or omission that may be contrary to an instruction or directive of the Commission or an officer appointed for the election but is not contrary to the provisions of this Act shall

⁶⁷ Electoral law and practice in Nigeria

⁶⁸ Ezekiel v. Dede[1999] 5NWLR (pt 601)80

not of itself be grounds for questioning the election.

(3) With respect to subsection (1)(a), a person is deemed to be qualified for an elective office, and his election shall not be questioned on grounds of qualification if, with respect to the particular election in question, he meets the applicable requirements of sections 65, 106, 131, or 177 of the Constitution and is not, as may be applicable, in breach of sections 66, 107, 137, or 182 of the Constitution.

Section 140 of the Electoral Act 2022 provided for election petitions, and the first schedule of interpretation 4.-(1) stated that an election petition filed under this Act shall:

(a) Specify the parties interested in the election petition;

(b) Specify the right of the petitioner to present the election petition;

(c) state the holding of the election, the scores of the candidates, and the person returned as the winner of the election; and

(d) State the facts of the election petition, the ground or grounds on which the petition is based, and the relief sought by the petitioner.

(2) The election petition shall be divided into paragraphs, each of which shall be confined to a distinct issue or major fact of the election petition, and every paragraph shall be numbered consecutively.

(3) The election petition shall:

(a) Conclude with a prayer or prayers, for instance, that the petitioner or one of the

petitioners be declared validly elected or returned, having polled the highest number of lawful votes cast at the election, or that the election may be declared nullified, as the case may be; and

(b) Be signed by the petitioner or all petitioners or by the solicitor, if any, named at the foot of the election petition.

(4) At the foot of the election petition, there shall also be stated the address of the petitioner for service at which address documents intended for the petitioner may be left and its occupier.

(5) The election petition shall be accompanied by—

(a) A list of the witnesses that the petitioner intends to call in proof of the petition;

(b) Written statements on the oath of the witnesses; and

(c) copies or lists of every document to be relied on at the hearing of the petition.

(6) A petition that fails to comply with subparagraph (5) shall not be accepted for filing by the Secretary.

(7) An election petition that does not comply with subparagraph (1) or any provision of that subparagraph is defective and may be struck out by the Tribunal or Court.⁶⁹

So the Electoral Act provided for electoral petitions and the format in which they would be applied. So conclusively, the tribunal or the court is provided for by the constitution of

⁶⁹ Electoral Act 2022

Nigeria, and the content of the petition is provided by the Electoral Act.

In conclusion, it is a fact that democracy involves people's participation in the democratic process of a given state, and the theoretical framework is based on participatory democratic theory as opposed to deliberative theory solely on its own. Participatory as to the role the people play in who governs them and how they are selected. The second concept of election—how the people participate in a democratic process—is choosing via election. Elections are critical for citizens to determine the kind of leaders they want to govern them. So when an election is not properly done in its form and substance, society might get leaders they don't want, and the outcome of the election might be challenged in an election tribunal on three grounds: (1) that the candidate who was returned elected was not qualified to contest the election; (2) that he did not score a majority of the lawful vote; and (3) that the election as a result of corrupt practice and noncompliance with the Act becomes void.

CHAPTER THREE

EVALUATION OF THE ELECTORAL ACT 2022 AND ITS DYNAMICS

INTRODUCTION

The electoral process of a state plays a key role in the determination of governance in the given state. The electoral process is an ideal and integral part of the democratic process, whether in a developed or developing nation. A malfunctioning electoral system inadvertently produces maladministration or bad governance.⁷⁰ The conflict in most countries especially the developing ones is a result of the electoral process that brought their leaders into power. This flawed electoral process in many ways kept Africa and even Nigeria in a crippled state of backwardness.

This narrative can be changed by the enactment of the Electoral Act if there is none in existence already

If however there is one in existence, a review may be necessary to guide the electoral system. In Nigeria for instance, on 25th of February 2022, His Excellency President Muhammadu Buhari signed into law the much-awaited and somewhat controversial Electoral Act Amendment Bill.⁷¹ In this chapter, this research will consider the new provisions of the Electoral Act and evaluate its dynamics viz-a-viz the previous position.

The Electoral Act 2022 brought with it various changes that will immensely influence the electoral process in Nigeria. These dynamics will go a long way in reducing manipulation of

⁷⁰ Electoral Act 2022, the implication and developmental trend it brings to electoral process in Nigeria.

⁷¹ *ibid*

the electoral process or rigging of elections in Nigeria if implemented strictly. This chapter aims to review key provisions of the Act.

3.1 FINANCIAL INDEPENDENCE OF INEC AND EARLY RELEASE OF ELECTION FUNDS TO INEC

The Electoral Act 2022 retained the provision establishing the Independent National Electoral Commission Fund, where payments from the Federal Government, interest on investments made from the fund, and aids, grants, or other accruals shall be paid to enable the Independent National Electoral Commission to perform its functions. Also, the new Act also created financial autonomy for INEC, by providing the receiving of funds for the conduct of elections directly as opposed to getting funds after vetting by the Ministry of Finance as provided under the former Act.⁷² Section 3(3) of the Electoral Act 2022 provides that funds for general elections must be released at least one year before the election.⁷³ The disbursement of funds for the elections shall be made in accordance with the rules set out by the commission. This is an innovation as the previous Act provided that funds will be released, to the independent electoral commission, but without clearly stating the time when such money will be released. This provision, however, liberated the electoral management body from being held down by the government in power. Hence funds cannot be withheld for any reason, as the time of such release of funds is no longer discretionary rather it is statutory. The import is that election will be well prepared for before time as all that is required to be procured, will be procured. All needed arrangements for the security

⁷² Section 3(1) and (2) of the electoral Act 2022

⁷³ Section 3(3) of the electoral Act 2022

and logistics will be catered for before time and it will give INEC freedom from manipulation.

3.2 EARLY CONDUCT OF PRIMARIES AND SUBMISSION OF CANDIDATES LIST

The New Act stipulates that political parties shall hold a primary and submit the list of candidates not later than 180 days before the date appointed for a general election. The new Act went on to clearly point out the candidate should be produced from valid primaries of the political party.⁷⁴ This is in contrast to the former Electoral Act which prescribed that this submission should be done not less than 60 days before the date of general elections. The change in the timeframe to submit the names of party candidates from 60 days to 180 days makes it mandatory for political parties to conduct their primaries early enough and validly so, as to meet up with the submission of their list of candidates at least 180 days before the general elections.

3.3 ASPIRANTS HAVE THE POWER TO INSTITUTE AN ACTION AGAINST FALSE INFORMATION

By virtue of Section 29(5), only aspirants who participated in a primary election of political parties can approach the Federal High Court for redress where there is reasonable grounds to believe that any information given by his political party's candidate in his affidavit or any document submitted by that candidate in relation to his constitutional requirement to contest the election is false.⁷⁵ Unlike the repealed Act where any member of the public can

⁷⁴ Section 29 of the electoral Act 2022

⁷⁵Section 29(5) of the electoral Act 2022

challenge a candidate with false information, the new Act has restricted that to only aspirants who participated in primaries wherein the candidate with false information emerged. This, therefore, stops members of the public from challenging a candidate who submits false information to INEC because it is only a candidate who took part in the primary can do so. This is one introduction in the electoral Act that seeks to limit the general citizenry from active participation in the internal affairs of the political party as regards qualification and nomination of candidates. The Act provided, that any person can apply to the commission for a copy of the nomination form, affidavit and any document submitted by a candidate to the commission.⁷⁶ Impliedly, the same act only provided that anybody can have information about the candidate, and may be aware that their document is faulty but cannot challenge the validity of their nomination on this faulty premises. For the researcher, democracy does not support the exclusion of majority views.

3.4 LEGAL BACKING OF ELECTRONIC VOTING AND TRANSMISSION OF RESULTS

The Electoral Act 2022 gives legal backing for the use of smart card readers, electronic accreditation of voters, and any other voter accreditation technology that INEC deploys.⁷⁷ The Electoral Act installed the card reader, not the voters register as the major instrument for accreditation. In the circumstances where the card reader deployed by INEC fails to function and a fresh card reader or technological device is not deployed, the electoral act provided that the election shall be cancelled and another election scheduled within 24 hours. The act

⁷⁶ Section 29(4) of the electoral Act 2022

⁷⁷ Section 47(2) of the electoral Act 2020

however made it mandatory, that for an election to occur in any part of Nigeria, card reader shall be used to accredit voters and thereby determine the number of people that are expected to vote. It also gives legal backing to the electronic transmission of results, from the polling unit. However, this backing is not total as it is reliant on the decision of INEC, as INEC now has the power to determine the manner(s) of transmission of results.⁷⁸ This provision of the electoral unlike the repealed act gave room for electronic transmission but also limited the backing to the discretion of INEC. Therefore, at every given time INEC chooses the kind of transmission it will employ, it owes a bounden duty to make it known to the public and critical stakeholders at the beginning of the electoral process. This is critical because as positive dynamics it may be exploited if there is no clear boundary at the discretion of INEC. Strict adherence to the provision of the Act means that the era of manual voting or manual collation of results has come to an end and rigging is reduced to the barest minimum.

3.5 TIME FRAME FOR PUBLICATION OF ELECTION NOTICE EXTENDED

The Electoral Act provided that the Commission shall not later than 360 days before the day appointed for election to be held under this Act, publish a notice in each State of the Federation and the Federal Capital Territory stating the date of the election and appointing the place at which nomination papers are to be delivered.⁷⁹ The notice is to be published in each constituency in respect of which an election is to be held.⁸⁰

⁷⁸Section 50 (2) of the electoral Act 2022

⁷⁹ Section 29(a) (b) of the Electoral Act 2022

⁸⁰Section 29(2) of the electoral act 2022

This is a provision unlike what we have in the repealed Electoral Act which provided that the Commission should publish this notice not later than 90 days before the date of the election.⁸¹ The import of the extension of time given to the Commission to publish notice is that the Commission has more time to make adequate preparations for the election thereby reducing the event mistakes and the pressure of deadlines. It also by extension gives the political parties more time to conduct their internal affairs, choose their candidates and prepare for the general election. Because of the early notice issued by the INEC, political parties have no excuse with respect to their internal political theatrics and Candidacy over time.

3.6 POLITICAL APPOINTEE NOT ELIGIBLE AS A VOTING DELEGATE OR ASPIRANT

Section 84 of the Electoral Act 2022 makes provision for the nomination of Candidates by political parties. One of its provisions is the exclusion of Political appointees from acting as a Voting delegate. Subsection 12 provides that no political appointee at any level shall be a voting delegate or be voted for at the convention or congress of any political party for the purpose of the nomination of candidates for any election.⁸² For a political appointee to vote and be voted for in a party primary, he must vacate the position before he or she can be eligible to participate in a primary election, convention, or congress of political parties either as a candidate or as a delegate. It is worthy of note that this provision only covers

⁸¹Section 30(1) of the electoral 2010

⁸² Section 84(12) of the Electoral Act 2022

political appointees and does not extend to elected political office holders or public office holders. Note also that the time at which the political appointees are expected to resign from the position is not stated in the Act therefore it seems to be immaterial. However, the Act clearly stated that they cannot be aspirant and delegate in the party primaries. This shows that if any political appointee wishes to contest as an aspirant at the time of aspiring to be a candidate or a delegate he must have relinquished his position before the convention or congress of their party before the enactment of the Electoral Act, 2022.

The issue of political appointees and political officeholders had been controversial prior to this provision of the Electoral Act. Political appointees have most times been mistaken for political office holders and public office holders who have a constitutional provision with respect to resignation before contesting office. Sections 66(1)(f), 107(1)(f), 137(1)(g) 182(1)(g) of the Constitution of the Federal Republic of Nigeria 1999 stipulates that elected public officers, which include civil servants, who want to contest an election must have resigned their position at least 30 days to the date of the election. It is instructive to state that this Constitutional provision does not categorically apply to political appointees but to political office holders or public office holders. This misunderstanding and misapplication of the law gave room to a lot of controversies prompting the call for the resignation of some Ministers and other political appointees in Buhari's administration to resign 30 days before the election date. The Court has in a plethora of cases ruled that political appointees are not public office holders *PPA v. PDP & ORS*⁸³ the court clearly stated that political appointees and political office holders are not 'public servants' as

⁸³(2009) LPELR-4865 (CA)

contemplated by the provision of the constitution. The court per Olukayode Ariwoola, JCA (As he then was) stated that: "the fact that section 318(1) of the constitution listed those it classified as persons in the service means that others not listed are excluded⁸⁴. The mere fact that a person earns a salary, and lives in the government house does not bring him or her within the contemplation of the constitution. So many cases abound to that position in *Adamu v. Takori*⁸⁵ where the court held that an appointee like the attorney general is not a public servant, also in *Oni v. Fayemi & ORS*⁸⁶ where the court held that a minister is not an employee in the public service.

This provision appears to have a positive effect because it will bar political appointees from using their influence in contesting elections and prevent them from remaining in the corridors of power for longer than necessary. This would give room for fresh candidates with no prior political appointments to take up positions, instead of recycling the same old candidates thus designing a pathway for deepening political development. Notably, this provision has been greeted with a lot of controversies and criticism. Some see it as a welcome development while others see it as an infringement of the fundamental human right of the political appointee as enshrined in Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria as amended.

In *Chief Nduka Eddie V. Attorney General of the Federation & Ors*⁸⁷ the Plaintiff challenged the legality of Section 84(12) for breaching the fundamental human right of the

⁸⁴ *ibid*

⁸⁵ (2009) LPELR-3593(CA)

⁸⁶ (2009) LPELR-46622(CA)

⁸⁷ FHC/UM/CS/26/2022

political appointees therefore should be struck down or deleted. The Federal High Court agreed with the Plaintiff and struck down Section 84(12) directing the Attorney General of the Federation to delete the same from the new Act. On appeal to the Court of Appeal in *PDP V.Chief Nduka Eddie & Ors*⁸⁸ the judgment was set aside on the ground that the Plaintiff/Respondent did not show the cause of action and or locus standi but agreed as obiter that Section 84(12) infringes on the right of political appointees.

The President also challenged the Provision of Section 84(12) at the Supreme Court but the court struck out the suit without even going into the merit on the ground that there is no dispute between the President and the National Assembly to invoke the original jurisdiction of the court more so it will be a violation of Constitutional process for the President to urge the court to delete a law that the President took part in making by assenting same. The last is not heard about Section 84(12)

In lieu of the provisions of section 84(12), Section 84(13) Provides that: Where a political party fails to observe the provisions of the Act, stipulating that political appointee is not qualified to aspire as a candidate in the primaries or as delegate, its candidate for election shall not be included in the election for the particular position in issue.⁸⁹ Thus, where a political party violates the provisions of the Electoral Act in respect of political appointees in Primaries, the parties' candidates shall be excluded from the General elections for which the Primary election was conducted.

By this provision, the task is now on the shoulders of the political parties, who must be

⁸⁸ CA/OW/87/2022

⁸⁹Section 84(13) of the Electoral Act 2022

thorough in their screening process of delegates and aspirants, by ensuring that political appointees participating in the primary elections show credible evidence that they have resigned their political appointments. Failure to do this will have a corresponding effect on the collective interest of the political party in fielding a candidate for that general election, and if at all they scale through the electioneering process and subsequently win, it could be a ground for nullification of the election. Ultimately, this will result in giving the political party with the second-highest vote cast an opportunity to emerge as a candidate, as we see in the case of *APC & ORS v. Karfi & ORS*⁹⁰

3.7 VIRTUALLY IMPAIRED, SPECIAL NEEDS, AND VULNERABLE VOTERS.

The new Act in Section 54 provides that voters with visual impairment and other forms of disability who on their own may be unable to distinguish symbols or who suffer from any other physical disability may by their permission be accompanied into the polling unit by a person chosen by him or her and that person shall, 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.⁹¹

The Commission shall make reasonable effort towards ensuring that persons with disabilities, special needs, and vulnerable persons are assisted at the polling units by putting in place suitable means of communication, such as Braille, large embossed print, electronic

⁹⁰(2017) LPELR-47024 SC.

⁹¹Section 54(1) of the electoral act 2022

devices, sign language interpretation, or off-site voting in appropriate cases.⁹²

The effect of this provision is that persons living with disabilities are recognized and given a sense of belonging in exercising their inalienable rights notwithstanding their physical disability. That is to say, your state of health does not take away your constitutional right. This provision against the repealed which never recognised such with special need, that they are part of the society whose also should be protected by those who are to be elected. Also previously as a result of the negligence majority of people with disabilities were disenfranchised and their choices were not accounted for. Intriguingly, with the dynamics of the new Electoral Act, these special classes of citizens are given a sense of belonging and empowered to vote and make choices of who they want to lead.

3.8 PROVISION FOR CENTRAL ELECTRONIC VOTERS DATABASE

The Electoral Act 2022 has added a central database to its innovations and this is commendable. Under the former Act, this Register was kept in manual or hardcopy format without more. The new Act provides that the Commission shall keep the Register of Voters at its National Headquarters and other locations, provided that the Register shall be kept in electronic format in its central database, in addition to being kept in manual, printed, paper-based record or hardcopy format.⁹³

This provision is innovative as it will promote transparency and effectiveness in the Commission's record-keeping and in tracking the number of registered voters who will be voting in the upcoming elections, thereby eradicating illegal voting by non-registered voters

⁹² Section 54(2) of the electoral act 2022

⁹³ Section 9(2) of the Electoral Act 2022

and also aiding a petitioner in the event of an election petition. The introduction of this section into our electoral law has in many ways improved the system of election in Nigeria previously as provided by the repealed Act, the voters register is maintained only in hardcopy and it is not centralized. This gave room for so many election malpractices as persons are registered with a different name, thereby creating an opportunity to manipulate the system, by smuggling names and persons who are under the age of voting into it. Commendably, with the centralization of the voters register, double registration is detected and removed. Central electronics voters register however allows for wider verification of the register as persons who are in other locations or constituencies or states can have access to the record of another area outside their location thereby aiding transparency in the process as was observed in the buildup of the 2023 election.

The centralized electronic voter register makes it easy to update the voters register, which in the past has been a major challenge and in so many ways affected our electoral system. With this introduction which has made it mandatory for the electoral body to maintain both hardcopy and electronic versions of voters register, the voters register is assuredly dependable.

3.9 REDEFINITION OF OVER-VOTING

The Electoral Act 2022 provides that 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.⁹⁴ This is a sharp contrast from the old Act which provided that it is when the number of votes cast at an election in

⁹⁴ Section 51(2) of the Electoral Act 2022

any polling unit exceeds the number of registered voters in that polling unit, that the Presiding officer should cancel the result of the election in that polling unit.⁹⁵

Flowing from the above provision, the meaning of over-voting was rephrased as it now means a different thing from what it used to be. According to the new electoral Act, it means that votes cast at a polling unit exceed the number of accredited voters. This is achieved by the instrument of the card reader, which the Electoral Act has recognized as the only instrument for accreditation. The Electoral Act therefore empowers the polling unit officer to cancel the result of such unit where it is recorded that the number of voters exceeds the number of accredited voters. This was not the same with the repealed Act that provided that over-voting is when the number of votes exceeds the total number of registered voters, unlike the new Act it was only the commission that could cancel the election in that unit. The provision of the new Electoral Act has significantly brought sanity to the issue of over-voting. This has helped in curbing the issue of ballot snatching and stuffing.

3.10 THE COMMISSION'S POWER OF REVIEW OF INVOLUNTARILY DECLARED RESULT

Under the Electoral Act 2022, INEC is now empowered to review the outcome of the election within Seven (7) days of declaration and return where the Commission determines that the said declaration and return was not made voluntarily or was made contrary to the provisions of the law, regulations, and guidelines, and manual for the election.⁹⁶ The new

⁹⁵ Section 53(2) of the Electoral Act 2010

⁹⁶ Section 65(1) of the Electoral Act 2022

Act further provided that the decision of the returning officer on the review can only be reviewed by an election tribunal or court of competent jurisdiction in an election petition proceeding.⁹⁷

The dynamics this provision brought will go a long way in curbing the established system of "declare me winner by all means" which has sat in the mind of most politicians thereby putting the lives of electoral officers in danger, by kidnapping them or threatening them with death. A recent circumstance is the Rochas Okorocha election into the senate, where the returning officer claimed he was held to declare him the winner of the election by duress.⁹⁸

3.11 EARLY COMMENCEMENT AND A LONGER PERIOD OF CAMPAIGN

The Act extended the time for the campaign by providing in section 94 of the Electoral Act 2022 that the period of campaigning in public by every political party shall commence 150 days before polling day and end 24 hours prior to that day.⁹⁹ In comparison with the old Act, the period provided for campaigning in public by every political party shall commence 90 days before polling day and end 24 hours prior to that day.¹⁰⁰

The implication in the electoral system is that it affords political parties and their candidates ample time to market their party and candidates to the populace and plan ways to ensure that they succeed in the election without giving the reason for any failure on inadequate time for the campaign. Secondly, for the electorate, it gives them time to look at the candidates that

⁹⁷ Section 65(2) of the Electoral Act 2022.

⁹⁸<https://www.vanguardngr.com/2019/02/imo-west-how-thugs-forced-me-to-announce-okorocha-winner-returning-officer/html> accessed on 4th October 2023

⁹⁹ Section 94(1) of the Electoral Act 2022.

¹⁰⁰ Section 99(1) Electoral Act (as amended by The Electoral (amendment) Act NO 15, 2015)(2010)

are brought forward by the political party and consider their pedigree and the manifestoes with enough time to interrogate them so as to make an informed decision on who to vote.

3.12 Death of Candidate before or after the election.

The new Act in this provision is fresh air as this provision came to solve the problems usually generated by the death of a Candidate before or after the election. This very provision clearly put to rest the controversy of the action to take when a candidate dies before, during and after the election before the declaration. This is critical as the death of a candidate in elections has generated lots of conflicts among political parties and political actors in the past because the old act did not take care of such issues we resort the doctrine of necessity leading to lawsuits. The case of the Kogi State Gubernatorial election will come to mind. *Faleke v. INEC* Prince Abubakar Audu, who was the candidate of APC and was leading in the election. The election was declared inconclusive as a result of electoral malpractice in an area, the election in that area was cancelled and another election was scheduled before the rescheduled election could be held, Prince Abubakar died. It led to the problem of who will carry on the mandate for the election. In order to take care of the lacuna in the former Act, the new Act provides that where before the commencement of polls a candidate dies, the election shall be postponed and shall appoint some other convenient date within 14 days of the candidate's death.¹⁰¹

If after the commencement of polls and before the announcement of the final winner/ announcement of final result and declaration of a winner, a candidate dies, the election will be suspended for not more than 21 days. Where the election is for a legislative house, the

¹⁰¹ Section 34(1) Electoral Act 2022

election shall start afresh and the political party whose candidate died may if it intends to continue to participate in the election, conduct a fresh primary within 14 days of the death of its candidate and submit the name of a new candidate to the Commission to replace the dead candidate.¹⁰²

Section 34 of the new Act in its provision states that in case of a presidential, gubernatorial or federal capital territory area council election, the running mate shall continue with the election and nominate a new running mate.¹⁰³

3.13 CONCLUSION

The new Electoral Act has so many benefits, which should be applauded, and some flaws, which should be toned subsequently. One of the major developments that the new Act brought is that it has queued into the digital or computer era by having an electronic database and also the electronic transmission of results. This will effectively enable citizens to enjoy exercising their franchise within the modern-day reality and not the old order. It will also reduce rigging or manipulation of the election process in Nigeria. Election rigging is one of the major problems in Nigeria because it is interfering with the choice of the people and when you Interfere with the choice of the people it produces the wrong candidates who will not deliver the dividends of democracy.

The new electoral Act has brought development in pre-election and election petitions as it will definitely not be the same. If the Act is implemented and well applied it will drastically reduce the interference of the Court in election matters.

¹⁰² Section 34(3)(b) Electoral Act 2022

¹⁰³ *ibid*

Without much ado, the Electoral Act 2022 is a laudable effort designed to keep the Nigerian electoral process up to standard practice with that of other democratic countries like India, America and other countries with stable democracy, especially as we approach the 2023 general elections. It is safe to conclude that the new Electoral Act is a timely improvement of the old one. However, attention should be towards strengthening its area of weakness, like its provision on locus stand, and its confusing stand on electronic transmission of results. Notwithstanding, if well applied or implemented will go a long way in bringing sanity and transparency to Nigeria's chaotic electioneering process.

CHAPTER FOUR

ELECTION ACT 2022: A CRITICAL ANALYSIS

4.1 INTRODUCTION

A state's electoral system has a significant impact on how that state is governed. Whether in a developed or developing country, the electoral process is an ideal and essential component of democracy. Maladministration or poor governance is an unintentional result of an election system that is broken.¹⁰⁴ The conflict in most countries, especially the developing ones, is a result of the electoral process that brought their leaders into power. This electoral process, which does not reflect the will of the people, is flawed and, in many ways and, has kept Africa and even Nigeria in a crippled state of backwardness. This chapter will critically analyse each of the new provisions of the Electoral Act 2022 to see how each of the provisions stands in the advancement of the democratic process in Nigeria by reflecting the will of the people.

4.2 INCONCLUSIVE ELECTION BY REASON OF DEATH

The inconclusive election in Nigeria has come to stay. However, trailing it is the lack of clear legal backing in the Electoral Act, which makes express provision for it. This is important, as many elections conducted in different constituencies in Nigeria are not concluded on the day stipulated for the election. The reason for an inconclusive election can be based on different factors, which are:

The margin of victory between two leading candidates,

¹⁰⁴ Electoral Act 2022, The Implication and Developmental Trend it Brings to Electoral Process in Nigeria

Death of a candidate before the conclusion of an election or electoral violence

However, the electoral management body has, in most cases, declared the election inconclusive without clear justification. The primary focus here is on Section 34 of the Act, which provides for inconclusive elections because of the death of a candidate.

4.2.1 TRACING THE HISTORY OF INCONCLUSIVE ELECTIONS IN NIGERIA

The history of inconclusive elections in Nigeria can be traced to the controversies that surrounded the election of Yahaya Bello following the death of Prince Abubakar Audu. Prince Abubakar Audu was the APC gubernatorial candidate, who was leading with 240,867 votes to Captain Idris Wada of the PDP, who had 199,514 votes. However, the election was declared inconclusive as a result of an outstanding area that was cancelled because of electoral malpractice by INEC. Consequently, a re-run was scheduled for the area where the election was cancelled, but before the election could be done, Prince Abubakar Audu died, and the election was declared inconclusive by INEC.¹⁰⁵

Many political pundits have analysed the action of INEC in declaring the election inconclusive as a 'political contrivance' of the ruling party, and probably the presidency, dutifully executed by INEC, to pave the way for an anointed stranger to the ticket of Abubakar Audu.¹⁰⁶ However, this may not be the case concerning the inconclusiveness of the Kogi State election. In this situation, there was no provision in the Electoral Act contemplating such circumstances. The Electoral Act of 2010 only provided for

¹⁰⁵. Obasi M. Chima : LEGAL MECHANISM TO CURBING THE STATE OF INCONCLUSIVE ELECTION IN NIGERIA.

¹⁰⁶ *ibid*

postponement of the elections if a candidate dies before the commencement of the election.

4.2.2 THE CASE OF FALEKE V INEC

Beyond the election's lack of conclusion, Prince Abubakar Audu's death in *Faleke v. INEC*¹⁰⁷ exposed our legal system and our electoral system because the Electoral Act does not provide clear guidance on what to do in such situations. The case's facts follow from what was previously mentioned. The appellant, dissatisfied with INEC's (the first respondent) declaration of the election as inconclusive, then went to the Federal High Court to request an interpretation of sections 1 (2), 179 (2) (a) and (b), and 181 of the 1999 Constitution.¹⁰⁸ Additionally, he asked the court to overturn the first respondent's declaration that the November 21 governorship election was inconclusive and the directive that the first respondent disclose the election's outcome.

He argued this because, in each of the state's 21 local government areas, his joint ticket with Prince Abubakar Audu had successfully garnered the majority of votes cast and one-quarter of the total votes voted. He claimed that the election was declared over by Section 179(2)(a) and (b) of the 1999 Constitution, and that the late Prince Abubakar Audu and himself were declared to have been legitimately elected upon a combined reading of Section 179(2)(a) and (b) and Section 181(1) of the Act. Thus, he was entitled to step in as the governor-elect in the absence of Prince Abubakar Audu. However, the lawsuit was dismissed after the respondents successfully objected that only an election tribunal was authorized by Section 28 of the Constitution to investigate his concerns.

¹⁰⁷(2016) 18 NWLR (pt 1543) 61

¹⁰⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended).

Yahaya Bello, the second respondent, was declared the election's winner and given a certificate of return following the holding of the supplementary election. Following the High Court's ruling, the appellant filed a petition with the Kogi State Governorship and State Houses of Assembly Election Tribunal, primarily based on the interpretation of sections 179(2) and 181 (1) of the Constitution. The respondents raised preliminary objections, questioning the competence of the petition. In considering the preliminary objection alongside the petition, the tribunal upheld the preliminary objection. However, not being the final court and in line with established practices considering the preliminary objection alongside the petition, the tribunal went on to consider the petition on its merits if it was found to have erred in sustaining the objections. It held that the petitions lacked merit and dismissed them. The Court of Appeal rejected the appellant's subsequent appeal as well.

He filed an appeal with the Supreme Court as a result. The sections 179 (1) & (2) and 181 (1) & (2) of the 1999 Constitution, sections 31 (1), 32 (2), and 33 of the Electoral Act 2010, and chapters 3, paragraph 3, 11, and step 14 of the updated version of the manual for election officials were all taken into consideration by the Supreme Court in deciding the appeal. .

The provisions state as follows:

179 (1): A candidate for an election to the office of governor of a state shall be deemed to have been duly elected to such office, being the only candidate nominated for the election.

(a) He has a majority of yes votes over no 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 local government areas in the state.

But where the only candidate fails to be elected under this subsection, then there shall be fresh nominations.

(2) A candidate for an election to the office of governor of a state shall be deemed to have been duly elected where there are two or more candidates.

(a) He has the lighter number of votes cast at the election, and

(b) He has not less than one-quarter of all these votes cast in each of at least two-thirds of all the local government areas in the state.

181 (1) If a person duly elected as governor dies before taking and subscribing to the oath of allegiance and oath of office, or if elected with him as deputy governor, he shall be sworn in as governor, and he shall nominate a new deputy governor with the approval of a simple majority of the House of Assembly of the state.

(2) Where the persons duly elected as governor and deputy governor of a state die or are for any reason unable to assume office before the inauguration of the House of Assembly, the Independent National Electoral Commission shall immediately conduct an election for a governor and deputy governor of the state.

31 (1) Every political party shall not later than 60 days before the date appointed for general Election under the provisions of this Act, submit to the commission in the prescribed forms, the candidates the party proposes to sponsor at the election.

32 (2) No person shall nominate more than one person for election to the same office.

33. A political party shall not be allowed to change or substitute its candidate whose name has been submitted pursuant to Section 31 of this Act, except in the case of death or withdrawal by the candidate.

The Supreme Court, however, unanimously dismissed the appeal on the grounds that INEC has power under the law establishing it to conduct, monitor, and make any such supplementary rule that guides the election, that such rules are enforceable, and that Section 160(1) of the 1999 Constitution can regulate its procedure, confer powers, and impose duties. This ground is that by its proceedings, following the electoral manual. On other jurisdictional issues, however, the Supreme Court ruled that the High Court has jurisdiction over pre-election cases while the Election Tribunal has authority over matters pertaining to the election itself. Therefore, the court determined that it was a pre-election matter and that the tribunal was correct to have dismissed it, taking into account that the appellant's activity was not an election matter because he did not participate in the rerun election. On the question of the nomination of a candidate, the court held that it is only the political party that can nominate a candidate, and for the Supreme Court, the candidate for the election was validly nominated by the political party that has that duty.

This work will not explore all the questions the court answered in this case. However, in the humble opinion of this researcher, the court did not give a logical answer to the question brought before the court. The question was simple: what should be the proper interpretation or construction of sections 176 (1) and (2) and section 181 (2) of the 1997 Constitution and

sections 31 (1), 32 (2), and 33 of the Electoral Act 2010?

Section 179(1) and (2) provide the grounds on which a candidate shall be deemed to have been duly elected, which is by having the highest number of votes cast at the election, which consists of one-quarter of all the votes cast in the local government areas in the state. The question here is whether, having satisfied this constitutional requirement, INEC can successfully rely on its electoral manual to declare the election inconclusive. Shouldn't the electoral body declare the result and the aggrieved go to the election tribunal, which will consider the evidence that will be presented before to determine if there was substantial malpractice and, if there was, declare a supplementary election?

The second question, which bordered on Section 181 (1), which provides that

If a person duly elected as governor dies before taking and subscribing to the oath of allegiance and oath of office or is elected with him as Deputy Governor, he shall be sworn in as governor, and he shall nominate a new Deputy Governor who shall be appointed by the governor with the approval of a simple majority of the House of Assembly of the state.

In view of the above provision, it is clear that the constitution recognizes the role of the deputy as a substitute in the event of any unforeseen circumstance. Therefore, in a situation where the election is declared inconclusive and the governorship candidate dies after, relying on the above section and sections 31 and 32 of this Electoral Act 2010, a candidate nominated by the political party should be submitted to INEC at least 60 days before the election. In this case, the name of the deputy has not been submitted to the electoral body before the date, as was previously the case, because, based on the Electoral Act, when that

deadline is not met, the party is left without a candidate. But in this case, the election was held on November 2, 2015, and by notice on November 22, 2015, it was declared inconclusive. Between that time and December 5, 2015, the party cannot have validly presented a candidate other than the deputy. Notwithstanding that, the party relying on Section 33 of the Electoral Act 2010 could change the party based on who died or withdrew and not both, which is subject to 60 days before the election.

This whole situation where there is no clear direction on what should be done and is entitled to carry on the fight for the mandate when a party of the ticket dies or for any reason could not be sworn in line with the constitution. Section 34(3) of the Electoral Act 2022 provides, thus:

"If after the commencement of polls and before the announcement of the final result and declaration of a winner, a candidate dies,

(a) The Commission shall, being satisfied with the fact of the death, suspend the election for a period not more than 21 days; and

(b) In the case of an election into a legislative house, the election shall start afresh, and the political party whose candidate died may if it intends to continue to participate in the election, conduct a fresh primary within 14 days of the death of its candidate and submit the name of a new candidate to the Commission to replace the dead candidate:

Provided that in the case of a presidential gubernatorial or Federal Capital Territory Area Council election, the running mate shall continue with the election and nominate a new

running mate.¹⁰⁹

This provision of the Electoral Act has deepened democracy as it has improved the electoral system by giving clear directives on what should be done in the unfortunate circumstance where a candidate dies before the election is concluded. This provision, however, answered the question in *FALEKE v. INEC*.¹¹⁰

4.2 THE HARSH EFFECTS OF LOCUS STANDI IN THE ELECTORAL ACT

Locus standi is a Latin phrase meaning 'place of standing', but in general use in law, it is the right to sue. It is the legal capacity of a plaintiff or claimant to institute an action in a court of law in the exercise of his constitutional rights¹¹¹. Section 16(6)(b) of the 1999 Constitution guarantees the right of all persons of legal personality to seek judicial remedy where need be. The question of locus standi as a constitutional matter has, over time, been hinged on Section 6(6)(b) of the 1999 Constitution. The law has always required the claimant to show that he has suffered personal harm or injury from the executive or legislative action, or is in danger of suffering a personal and actual injury from such actions, or that he has an interest in the outcome of such actions.¹¹²

The Supreme Court in the case of *Thomas v. Olutosoye*¹¹³ introduced the public interest test, which the court applied in *Banjo v. Federal Ministry of Education*.¹¹⁴ This additional case-law provision made the issue of locus standi stricter. However, as time went by, the

¹⁰⁹ Section 34(3) Electoral Act 2022

¹¹⁰ *ibid*

¹¹¹ Constitutional law in Nigeria : Through the judgments of the supreme court

¹¹² *Owodunmi v. Register trustee ccc* (2000) 10 NWLR (pt 675) 315

¹¹³ (1986) 1 NWLR (Pt18) 669, at p.685

¹¹⁴ (1996) NWLR (PT464)

Supreme Court moved away from that standard following the case of *Centre for Oil Pollution Watch v. NNPC*¹¹⁵, in which the court relied on the 'change global standard', which is primarily to preserve the rule of law. The court gave its reasons, to wit:

The truth of the matter, as Diplock LJ held in Rev. V. IREC ex parte fed., of-self-employed (1982) A.C. H. L (E) J 640–641, is that the rules as to standing could not be found in any statute, for they were made by the judges of the realm, "by judges they can be changed, and so they have been over the years to meet the need to preserve the integrity of the rule of law.

The current Supreme Court, through judicial activism and dexterity, has expanded the locus standi issue. Public interest groups and non-governmental organizations now have standing to sue when there has been an injury to the public interest, a public good, or public safety.¹¹⁶

Flowing from the above consideration, it is obvious that, time after time, the law changes to meet the current reality and serves the administration of the rule of law. This is so, although electoral matters are sui generis, as was held by the Court of Appeal in the case of *Chief Nelson T. GBE v. Esewe*,¹¹⁷ where it was stated that an election petition is neither a civic nor criminal proceeding. In this light, the new Electoral Act 2022 in Section 84 (14) maintained the harsh provision in the Electoral Act 2010 (as amended in 2015), which excluded critical stakeholders in the electoral system, like party members and aggrieved public interest advocates. It maintained that as long as you are not an aspirant or a candidate, you don't have a locus standi.

¹¹⁵ (2019) 5 NWLR (Pt 1666) 514

¹¹⁶ *ibid*

¹¹⁷ (2023)8 NWLR

4.2.1 APC vs. INEC

In the case of *APC v. INEC*,¹¹⁸ the fact of the case is that the 1st appellant conducted a primary election and returned the 2nd appellant as his candidate, and the 3rd respondent conducted his primary election outside the federal constituency that he sought to represent, which is in contravention of Section 84(5) of the Electoral Act 2022. The appellant challenged the nomination in court via originating summons. The appellant's sole question for determination was whether, from the combined reading of the Electoral Act 2022, sections 84 (1), (2), (5) (c) (1) and (13) and section 285 (14) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), the 1st respondent, who is empowered to conduct elections into different elective political positions in Nigeria, could accept from the 3rd respondent, the 2nd respondent, as a candidate of the 3rd respondent for the 2023 general election into the office of member, House of Representative of that constituency.

In its judgment, the trial court held that the 2nd appellant was a meddlesome interloper and a busybody because he did not aver that he participated in the 3rd respondent's primary election, which he challenged. The court therefore dismissed his appeal. He further appealed to the Court of Appeal, and the appeal was also dismissed. He then appealed to the Supreme Court, which determined the appeal. The Supreme Court considered the following constitutional provisions:

¹¹⁸ (2023)

Section 84 (14) of the Electoral Act 2022;

Notwithstanding the provisions of this Act or the rules of a political party, an aspirant who complains that any of the provisions of this Act and the Guidelines of a political party have not been complied with in the selection or nomination of a candidate of a political party for election may apply to the Federal High Court for redress.

285 (14) (c) of the 1999 Constitution (as amended) is provided as follows:

(14) For this section, "pre-election matter" means any suit by

(c) A political party challenging the actions, decisions, or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law have not been complied with by the Independent National Electoral Commission in respect of the nomination of a candidate of a political party for an election, registration of voters, and other activities of the commission in respect of preparation for an election".

The Supreme Court unanimously dismissed the appeal. Ogunwumiju JSC, delivering the leading judgment on page 587 para 5, stated that "therefore, it is only the aggrieved "aspirant" as defined by the statute who has locus standi to institute pre-election action and no other person." Also, Section 285 (14) (c) talks about how the political party can challenge the decision of INEC if it relates to any decision of INEC directly against the interests of that political party.

Following the principle outlined in Section 84 (14) of the Electoral Act 2022 and Section

285 (14)(c) of the 1999 Constitution, only persons considered as aspirants in an election have the required locus to challenge the outcome or procedure of the primary election. This principle, however, not minding the reasons behind it, has restraint and a limit, which is the citizen's participation in the electoral process of the country. This is true because the researcher aligns with the reasoning adduced in *Center for Oil Pollution Watch v NNPC*,¹¹⁹ which gave room for public interest and the rule of law, not to prove how it has hurt or harmed them beyond the general public. With this, civil organizations and other individuals were now at liberty to watch out for the public or general interest. In the same vein, the locus standing issue in the electoral law should not be tailored in such a way that once you are not in the club of aspirants for a position in a political party, as an ordinary member, you have lost your right to question fundamental breaches in the nomination of candidates in your party. When the party fails to address such issues, you cannot approach the court for lack of local standi. This question of locus standi, and how it has excluded critical stakeholders from participating in the complete electoral process in a democratic system is a harsh reality. Considering the underlying logic of Section 29 of the Electoral Act 2022, which provides as follows:

Every political party shall, not later than 180 days before the day appointed for a general election under the Act, submit to the commission in the prescribed forms the list of the candidates the party proposes to sponsor at the elections who must have emerged from valid primaries conducted by the political party.

The list of information submitted by each candidate shall be accompanied by an affidavit

¹¹⁹ *ibid*

and a vote sworn to by the candidate at the Federal High Court. High Court of a state or a federal capital territory, indicating that he or she had fulfilled all the constitutional requirements for election into that office.

The commission shall, within seven days of receiving the personal particulars of the candidate, publish the same in the constituency where they intend to contest the election.

Any person may apply to the commission for a copy of the nomination form, affidavit, or any other document submitted by a candidate at an election, and the commission shall, upon payment of a prescribed fee, issue such person a certified copy of the document within 14 days.

Any aspirant who participates in the primary of his political party who has reasonable ground to believe any information given by his political party's candidates in the affidavit or any documentation submitted by the candidate concerning his constitutional requirements to contest the election is false may file a suit at the federal high court against that candidate, seeking a declaration that the information contained in the affidavit is false.

By the provisions of Section 29 (1), (2), (3), (4), and (5), it is obvious that the Act recognizes that there is a probability for an aspirant to furnish a document that is false to the commission, and in (4), it is provided that "any person" on a payment can get a certified copy of the document submitted to the commission, but anybody cannot challenge the nomination of such a candidate unless the person is an aspirant. This Electoral Act did not, however, provide for the circumstance where the aspirant is a sole aspirant and was nominated by a yes or no vote. Who then can challenge such a nomination if the party does

not follow its rules or the Electoral Act?

The point here is that the legislature and the judiciary fear that opening wide the door of the court to a public-interest litigant on electoral matters would risk opening the virtual floodgates to a multiplicity of proceedings.¹²⁰ Rather than the Electoral Act or the judiciary looking toward minimizing the effect of opening the floodgate of litigation, attention should be geared towards the political party, ensuring that they put forward aspirants and nominated candidates that are above board and without questionable character. The party is also to conduct the process of nominating aspirants in a transparent manner and in alignment with the party's rules. Failure of the party and the electoral system to be transparent would attract public questioning, which the act and the court seek to curtail.

This research considers the harsh effect of maintaining the locus standi question in the Electoral Act as achieving less in the positive sense towards deepening democracy as it hinders citizens' participation in the political and electoral process, which is of public interest.

In the framework of the rule of law, the implementation of sections 24 and 84 (14)(c) of the Electoral Act will make the majority of the people who are not aspirants, are members of the party, and who pay their financial dues to the party excluded from asking questions when they presume a breach in the party nomination process where the candidate is not qualified. In light of this, the retaining of the strict provisions of locus standi is harsh and does not advance inclusiveness in the electoral process.

¹²⁰ Diannel L. Haskett : locus standi and public interest

4.3 THE ISSUE OF OVERVOTING: SECTION 51 OF THE ELECTORAL ACT 2022

Overvoting is an electoral phenomenon whereby a candidate in an election is alleged to have gotten more votes than the numbers expected. However, before the enactment of the extant Act, the principle in the old Act was that over-voting occurs when votes cast in any polling unit exceed the number of voters registered in that polling unit. This was given judicial notice in *Ikpeazu v. Otiti*¹²¹ and *Nyesom v. Peterside*.¹²²

4.3.1 IKPEAZU V. OTTI

In *Ikpeazu v. Otiti*¹²³, *Ikpeazu* was the appellant, *Otti* was the 1st respondent, *APGA* was the 2nd respondent, *PDP* was the 3rd respondent, and *INEC* was the 4th respondent. This case had many issues for appeal, but our interest is only in the issue as it relates to over-voting.

The material facts of this case are that after an election was conducted by the 4th respondent, the 1st and 2nd respondents were contesting the power of the 4th respondent to cancel the election in some local governments and still went ahead to declare the appellant the winner and elected. The respondent challenged the election on many grounds, including the ground of over voting.

The Supreme Court held, as regards over-voting, that by Section 53(2) of the Electoral Act, votes cast in any polling unit exceed the number of voters accredited in that polling unit.

And as proof of overvoting

To prove over-voting, the petitioner must do the following:

¹²¹ (2016) 8NWLR (1513) pg 51

¹²² (2016) JELR 37137 (SC)

¹²³ *ibid*

Tender the voters register;

Tender the statement of results in the appropriate forms, which would show the number of accredited voters and the number of actual votes.

Relate each of the documents to the specific area of his case in respect of which the documents are tendered.

Show that the figure representing the over-voting, if removed, would result in victory for the petitioner.

In proof of an allegation of over-voting, the petitioner bears the responsibility of calling eyewitnesses from each polling unit to give evidence of the circumstances that led to the over-voting, preferably party agents.

Also, in *Nyesom v. Pederside*,¹²⁴ the court held that a petitioner who seeks to prove overvoting at an election must tender in evidence the voters register amongst other documents. In this case, the 1st and 2nd respondent's arguments on registered voters prove that over-voting is untenable notwithstanding the introduction of the smart card reader machine in the conduct of elections.

This viewpoint was taken further by the deposition of the Supreme Court justice in the person of Okoro JSC in his brief comment on the issue of the use of a card reader machine, an electronic device, in an election. He stated that there is no doubt that the introduction of

¹²⁴ *ibid*

the device in electioneering processes in the country is a commendable effort. He opined that it was no doubt meant to sanitize eradication and reduce, if not eradicate, incidents of over-voting and/or multiple voting. As he had said in different forums, he maintained that this device was not meant to replace the voters registered, nor was it designed to take the position of electoral forms for the declaration of results.

Following the above position, you will agree that it is cumbersome to prove the issue of over-voting, and secondly, the use of an electronic device that was deployed for accreditation is just like any electronic device that is not connected to the source of power. The Act did not support the use of electronic devices, so the voter register still reigns supreme. However, with the enactment of the new Electoral Act 2022, which repealed the 2010 Act, the modality for proving over-voting and the consequences are provided for in Section 51.

It provides that

Provides that any voter shall not vote for more than one candidate, or should it record more than one vote in favor of any candidate at any one election.

Where the number of votes recorded 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.

Where the result of an election is cancelled in a polling unit as was provided for in subsection (2), there shall be no return for the election until another poll has taken place in

the affected polling unit.

4.4. Electronic transmission and use of other devices for the conduct of elections. A case study of *Adeleke v Oyetola*¹²⁵

The Supreme Court reached a decision that needed to be critically appraised to ascertain the intention of the lawmakers and the reach of the law. This is important following some misunderstandings that go with the interpretation of the section of the Act by various players in the political space. The Supreme Court held that the election results from the polling units must be transferred to the INEC database or back-end server and the hardcopy of Form EC8A uploaded on the IREV Portal for the viewing pleasure of the public.¹²⁶ The Supreme Court further stated, "As their names depict, the Collation System and the INEC Result Viewing Portal are part of the election process and play particular roles in that process. The collation system is made up of the centers where results are collated at various stages of the election. So the polling unit results transmitted to the collation system provide the relevant collation officer with the means to verify a polling unit result as the need arises for collation. The results transmitted to the Result Viewing Portal are to give the public at large the opportunity to view the polling unit results on election day."¹²⁷ Clause 38(i)(ii) of INEC's Regulations and Guidelines for the Conduct of Elections, 2022, was referenced by the court to support its claim. This clause was following the authority granted to INEC by Section 60(5) of the Electoral Act, 2022, which required INEC to transfer both the total number of accredited voters and the votes cast into INEC-authorized sites. It's also crucial to be aware

¹²⁵ *ibid*

¹²⁶ (unreported Appeal No: CA/AK/EPT/GOV/01/2023)

¹²⁷ *ibid*

that the Supreme Court ordered that, throughout collation activities at different stages of collation, the electronically transmitted results from the polling units must be used to confirm the accuracy of the manual results on Form EC8A. Additionally, this is in accordance with Section 64(4)(5) of the Electoral Act.

There's no place in the judgment where the Supreme Court held that one is required to bring the manual register of voters to prove over-voting. The court stated that where anyone is alleging non-accreditation or improper accreditation, the party alleging should bring the manual register because ticking the manual register is among the activities required in the accreditation process. The court was explicit "that the evidence required to prove that there was over-voting is the record of accredited voters in the BVAS and the Polling Unit result in Form EC8A." This agrees with Section 51(2) of the EA.

The Supreme Court, however, maintains that "there is no provision of the Electoral Act or the INEC Regulations and Guidelines for the Conduct of Elections 2022 that requires the Presiding Officer of an election in a Polling Unit to transmit the specifics or number of accredited voters recorded by the BVAS to the INEC database or anywhere" doesn't appear to be supported by facts and the law, especially the addition of the generic word "anywhere". To buttress this point, Section 60(5) of the EA states explicitly, "The presiding officer shall transfer the result, including the total number of accredited voters and the results of the ballot, in a manner prescribed by the commission". This means that the transfer of the number of accredited voters is an integral part of transferring the election results to the database, which INEC must transfer to the database. The only choice INEC has is the

medium, which they have already chosen to be BVAS from the polling unit.

The Supreme Court admitted that the transmitted result should be used to verify the correctness of the manually assembled polling unit results. Section 64(4)(a) of the Electoral Act states "A collation officer or returning officer at an election shall collate and announce the result of an election, subject to his or her verification and confirmation that the number of accredited voters stated on the collated result is correct and consistent with the number of accredited voters recorded and transmitted directly from polling units under Section 47(2) of this Act". Here again, the law requires the number of accredited voters to be transmitted with the results from the polling unit. The Supreme Court even further admitted that Form EC8A is required to be uploaded on the IREV Portal for the viewing pleasure of Nigerians. Form EC8A clearly contains the number of accredited voters, which is electronically uploaded on IREV in contradiction to the assertion that the number of accredited voters is not required to be electronically transmitted "anywhere."

So looking at the judgment in *Adeleke v. Oyetola*,¹²⁸ the position of the court was clear on the transmission of results and the use of BIVAS as mandatory in the election process. This should be distinguished from the central electronic register, which the court held is not part of the election process. This Supreme Court decision still went back and exposed the Act's weakness and inconsistency, as stated in Section 50(2), which read as follows: Subject to Section 63 of this Act, voting at an election and transmitting results under this Act shall be in accordance with the procedure determined by the commission. In addition, Section 60(5) states that the polling officer shall transfer the results, including the total number of

¹²⁸ *ibid*

accredited voters and the result of the ballot, in a manner as prescribed by the commission .¹²⁹ When viewed holistically, however, with the INEC election guideline that indicated how it has determined for the result to be sent, this provision, which, when read independently, seems to grant INEC unrestricted authority to solely decide the form of transmission of results at any time,¹³⁰ This was the position of the Supreme Court. However, the Presidential Election Petition Court (PEPC), in the consolidated case of *Peter Obi & ORS v. INEC & ORS* ¹³¹ has held that the Independent National Electoral Commission (INEC) cannot be compelled to transmit election results electronically. The court further held that the petitioner, the Labour Party, cannot raise the issue because it has not appealed the judgment of the federal high court on the issue; therefore, the decision is still binding. Presiding judge Haruna Tsammani said that, besides the decision of the federal high court,

¹²⁹ Section 60(5) of the Electoral Act 2022

¹³⁰ Clause 38 (i)(ii) of INEC Electoral guideline 2023 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. And also clause:

48. (a) An election result shall only be collated if the Collation Officer ascertains that the number of accredited voters agrees with the number recorded in the BVAS and votes scored by Political Parties on the result sheet is correct and agrees with the result electronically transmitted or transferred directly from the Polling Unit as prescribed in these Regulations and Guidelines.

(b) If a Collation or Returning Officer determines that a result from a lower level of collation is not correct, he/she shall use the result electronically transmitted or transferred directly from that lower level to collate and announce the result.

(c) if no result has been directly transmitted electronically for a polling unit or any level of collation, the provision of Clause 93 of these Regulations shall be applied. Use of Results electronically transmitted or transferred directly from polling units for collation.

¹³¹ CA/PEPC/03/2023

neither the Electoral Act 2022 nor INEC manure specifically provided for electronic transmission. "Nothing in the Electoral Act 2022 specifically states that BVAS should be used to transmit election results," he said. The court said INEC has been elated to transmit results manually from the polling unit to the ward collation center, then from the ward to the local government, from the local government to the state, and finally to the federal The court also held that the petitioner failed to prove that the system was deliberately programmed by INEC to manipulate or rig the election.¹³² When this judgment is critically analyzed, it will expose the fact that the court of appeals tribunal was relying on the decision of a lower court, the federal high court, in Labour Party v. INEC ,¹³³ where it held that it is only the INEC that can determine its mode of transmission. Thereby ignoring the established position of the Supreme Court in Adeleke v. Oyenola .¹³⁴

The provision of sections 50(2) and 60(5) of the Electoral Act 2022 allowed for further action or discretion by INEC before the electronic transmission could be supported by the Act, which, in turn, truly formed the basis for the disinformation and misinterpretation. The Act would save us the stress of further searching by making it clear that results should be transmitted electronically, even though other sections already stated that the electronically transmitted result supersedes the hard copy or manual transmission, as was the case in sections 64(6)(a)-(d)(7)(8).

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¹³²<https://www.vanguardngr.com/presidentialtribunaldismiseseoniallegationofrigging.access> on 25 of September 2023

¹³³ (Unreported)FHC/ABJ/CS/1454/2022

¹³⁴ *ibid*

With the passage of the 2022 Electoral Act, Nigeria has the potential to undo its previous democratic system, but whether it would succeed in this goal depends on how the Act is put into practice during election-related activities. According to Omotala (2010), elections are meaningfully democratic if they are largely participatory, competitive, free, and fair. As a mechanism for leadership change, elections are therefore essential to the process of democratization and the consolidation of democracy. The history of elections in Nigeria has been criticized as being unfavourable and a hindrance to quality leadership.¹³⁵ The broad acceptance of election results is based largely on the impartiality and legitimacy of the electoral governance framework. Instructively, the electoral system's independence is primarily what determines everything from the appointment of the electoral umpire(s) to the procedure for registering voters, the display and review of the voter register, the choice of political parties, and general elections.¹³⁶ The regularity, transparency, and acceptability of elections, which are seen as being more significant, are thought to indicate if the fundamental legal, social, and psychological underpinnings for lasting democratic government are being established.

According to the prevailing political culture, where political actors collaborate with state actors to manipulate the population and use violence to their political advantage, there is a great political apathy that prevents well-meaning Nigerians who are afraid for their lives and property from taking part in elections either as candidates or voters. However, with the introduction of the new Electoral Act 2022, Nigeria's electoral process will once again

¹³⁵ The new Electoral Act in Nigeria, Democracy and the challenges and the prospect of free fair and Credible Election: International journal of research and innovation in social science.(IJRISS)

¹³⁶ *ibid*

adhere to the core democratic principle that political parties must court voters by offering them development programs.

It is undeniable that citizen involvement in the election process is the cornerstone of democracy, and measures like the Election Act 2022 aim to foster it. It is admirable that IREV has been introduced, allowing voters and citizens to track the results of the election in real-time, and the statute supports this move. The determination that BIVAS is the only method of accreditation is good since it prevents the vice of excessive voting. Politicians who chose to forego the electronic gadget when there was an alternative have the power to review an election result if the officer declares it under duress. This is also commendable when it comes to upholding the will of the people. Whether these innovations in the Electoral Act in reality fulfill the expectations of the people in their quest for their will to prevail in the choice of who leads is left to be determined at the conclusion of the election process of the 2023 election as the testing ground.

CHAPTER FIVE

EVALUATION, RECOMMENDATION AND CONCLUSION

5.0 INTRODUCTION

We started this work by looking at the historical background of election and electoral reforms in Nigeria at different times. It was observed that it was the weakness of a particular Electoral Act at a point that necessitate the call for its reform. So in recent times with the return of civil rule in Nigeria, starting with the Electoral Act 2002 which is has so many shortcomings which resulted in the outcome of massive violence and other vices that made the election rated low. This weakness gave room for more reforms that resulted in the enactment of electoral act known as the Electoral Act 2006. This Act ushered in more roles for the electoral body, which included conducting voters and civic education, promoting knowledge of the sound democratic electoral process and conducting any referendum required by law. . The 2007 general election was described by observers and other onlookers as the worst election ever held in Nigeria due to widespread irregularities and malpractice that characterized it. As a result of the shortcoming of the 2007 election which anchored on the framework provided by the 2006 Electoral Act, which was viewed and criticised as flawed. The Electoral Act 2010 introduces among many things that INEC members cannot be members of any political party. It was observed that all the previous reforms were targeted at the politicians and the state and not the people.

5.2 EVALUATION

The Electoral Act of 2022 was introduced, much like other electoral reforms before it, but its focus is on ensuring the will of the people prevail through credible election result transmission and voters accreditation to improve the electoral process. From how it was previously, which encouraged political rascality in the form of violence and electoral malpractices, and by virtue of its provisions has created an environment for freer and fairer elections, which will encourage citizens' participation. The new Electoral Act has filled the gap left by the repealed Act by clearly stating that when a candidate dies before the conclusion of an election, such election will be suspended for several days. The research extensively examines the shortcomings of the repealed act by not providing a clear direction in the event of a candidate's death during the election process before the result is announced. This has resolved the issue that arose in Kogi state and caused the *Faleke v. INEC* crisis. The research also considered the issue of locus standi, the new Act provided a restriction on who can sue if the party process is not followed in the primaries, or who can question the qualification of a candidate of a party. This provision not minding the flooded gate of litigation the Act seeks to close, the research sees that it does close the door for citizens to fully participate in the democratic process thereby giving room for a shoddy political process starting from the political party. The effect of this restriction on the citizens is that they will be seeking redress extra judicially which will not advance democracy.

On the issue of Over-voting, this new Act rephrased what used to be known as over-voting in the previous Act to now mean that when the number of votes in a polling unit exceeds the number of voters accredited by the BIVAS in that unit. With this provision, it is only the

number of voters from the total number of voters registered in the polling unit that turn up on the day of the election and are accredited with the BIVAS that are used to determine the appropriate votes expected for the election. The effect is that the politicians will no longer have to hijack ballots provided and arbitrarily thumb print on them and allocate numbers to themselves armed with the number of voters in that unit. So with over-voting being measured by the number of persons who came out to vote and were accredited by the BIVAS anything above it, is over-voting and the result of such unit is nullified.

The Act provided backing for the use of electronic transmission of results and the making the use of BIVAS as the basic accreditation equipment that where it is employed election in such place cannot be valid. The effect is that it deepens democracy, and allows the will of the people to prevail, as a result, is transferred directly from the polling unit in the view of the electorate in the grass root been the outcome of the election not giving room for the manipulation that usually occurs on the way to collation center by agent of the political party.

This work however went through all the new provisions of the Electoral Act 2022 and looked at all its contributions to enhance our democratic process some others of which include the extension of time for campaign, submission of the names of candidates, and time for the release of funds for an election. It is the view of the researcher that if these provisions are implemented, it will deepen our democratic practice and reflect the will of the people.

This work has applauded the provisions of the Electoral Act but has criticised some of the

provision which has either worked negatively to the democratic advancement by excluding citizens from participating fully in the democratic process. Such provisions such as locus standi and the inconsistency of the provision for the transmission of results electronically.

In the cause of this work, flowing from the judicial decision which posited that that election matter is a sui generis even though it is not criminal in nature, it is more civil but the burden to prove is on the petitioner to prove noncompliance on the principle of who assert must prove. This approach however is not helping for electoral justice. These observed weaknesses shall form the points through which we shall make our recommendations.

5.3 RECOMMENDATIONS

We shall be making our recommendation based on the facts of our finding as adumbrated above respectively.

5.3.1 THE REVERSAL OF THE LOCUS STANDI RULE S. 29(5)

The provision of the Electoral Act that it is only the aspirant who participates in the primary of his political party who has reasonable ground to believe that information given by the candidate on his affidavit or any other document is false that can approach the federal high court to question his or her qualification. By this provision, the Act excluded other persons who have reasonable grounds to believe that the information contained in the affidavit or other document presented to the commission is false. This exclusion however is not justified by any other section of the Act rather (4) provides that any person may apply to the commission to get a copy of the nomination form affidavit or any other document submitted to the commission for a fee within 14 days of the application such person will have the

document. A combined reading of (4) and (5) does not add up as the act provided that a person who is not a party or an aspirant can apply and get a copy of the nomination form, affidavit or any other document but cannot challenge the candidate of the party. That is to say that anyone has the right to verify and authenticate the document submitted by the aspirant and when there is a false declaration noticed they cannot challenge it. By the provision of the act, members of the party who may have laboured to build the party observing that the candidate the party is putting forward presented a false document and for the interest of the party seek to challenge the nomination of such candidate by the provision of the electoral Act he cannot because he is not an aspirant. We submit that this provision will only succeed in excluding critical stakeholders in the political process by redefining stakeholders to be only aspirants in a political party's primary election.

It is, therefore, our opinion that that section of the Electoral should revised back to the provision of section 31 (5) of the Electoral Act 2010 which made it clear, and flowing from the (4) that any person who has gotten the document and the affidavit of a candidate who has a reasonable ground believe that the documents are false can challenge it in the federal high court, if found to be true, such candidate can be disqualified by the court.

We hereby submit that when this is addressed it will help in holding the political party responsible to be transparent in the screening process to ensure that their candidate cannot be impeached whatsoever on their credentials and the process of their primaries. Secondly, it will help in curbing the advent of extra-judicial protest since they can't vent their displeasure in the

5.3.2 THERE SHOULD BE A CLEAR PROVISION ON THE TRANSMISSION OF ELECTION RESULT

The provision of the Electoral Act on the transmission of the result section 50(2) 60(5) and 64(6)-(8) left room for inference and misinterpretation which is not healthy for the electoral system as was seen in the conflicting decision of the various courts from the federal high court judgment in *Labour Party v. INEC*.¹³⁷ The presidential election petition tribunal (PEPT) judgment in the case of *Peter Obi & ORS v. INEC & ORS*.¹³⁸ And the comprehensive judgment of the supreme court which spoke to the fact that INEC had already determine the mode via clause 38 and 48 of their election guideline 2022. This was its position in *Adeleke v. Oyenola*.¹³⁹

It is our opinion and submission that this conflict in interpretation by the court and the misinformation among the generality of the population would be resolved if the provision is reviewed to state clearly that election results in compliance with INEC guidelines shall be transmitted electronically side by side with manual transmission. For the purpose of conflict, the result transmitted electronically from the pulling unit will supersede.

¹³⁷ *ibid*

¹³⁸ *ibid*

¹³⁹ *Ibid*

CONCLUSION

Democracy in Africa is under serious attack as a result of a flawed electoral system, which has discouraged the majority of our population from further participation in our electoral and democratic system. However, democracy, as a result of its principle of participation, remains the best form of government that caters for the interests of different classes of citizens if well practiced.

The introduction of the Electoral Act 2022, which is very commendable, will achieve no result if the stakeholders do not make up their minds to see that it succeeds. The electoral umpire has a role to play by adhering to the rule of law in carrying out its functions. This is so because if the electoral umpire is biased towards applying the provisions of the Act in the conduct of the election, the effect of the electoral review will not be felt.

There should be strict implementation of the Act, which will include punishing violators. This should be done strictly so as to sanitize our political system so that the citizens can participate freely in applying their fundamental right of choice in an election to determine who governs them.

The place of the court in our electoral system cannot be overemphasized; they have a major role to play with regard to electoral disputes and the interpretation of the laws. The election should be interpreted from literary rule, golden rule and from the intent of the drafter of the law, as held by the court in *Beck v. Smith*.¹⁴⁰

¹⁴⁰ (1836) 2M&W 191 at p. 195

Finally, the point here regarding the court is that there is a need to have a major focus on electoral justice rather than legal technicalities, as was the case in *Faleke v. INEC*.¹⁴¹

¹⁴¹ *ibid*

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